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CUMULATIVE CONTENTS AND DIGEST APPEAR AT THE END OF THIS PUBLICATION

INDUSTRIAL APPEAL COURT—Appeal against decision of Full Bench—

[2021] WASCA 14

JURISDICTION	:	WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT
CITATION	:	DIRECTOR GENERAL, DEPARTMENT OF EDUCATION -v- STATE SCHOOL TEACHERS' UNION [2021] WASCA 14
CORAM	:	BUSS J MURPHY J LE MIERE J
HEARD	:	5 AUGUST 2020
DELIVERED	:	29 JANUARY 2021
FILE NO/S	:	IAC 2 of 2019
BETWEEN	:	DIRECTOR GENERAL, DEPARTMENT OF EDUCATION Appellant AND STATE SCHOOL TEACHERS' UNION Respondent

ON APPEAL FROM:

Jurisdiction	:	WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT
Coram	:	CHIEF COMMISSIONER P E SCOTT COMMISSIONER T EMMANUEL COMMISSIONER T B WALKINGTON
Citation	:	[2019] WAIRC 00755
File Number	:	FBA 15 of 2018

Catchwords:

Industrial law - Industrial relations - Appeal from the Full Bench of the WA Industrial Relations Commission - *Industrial Relations Act 1979* (WA) s 90(1)(b) - Whether the Full Bench erred in its construction or interpretation of s 23 of *Industrial Relations Act 1979* (WA) - Appeal dismissed

Industrial law - Industrial relations - Whether s 23(2a) of the *Industrial Relations Act 1979* (WA) applied to exclude the jurisdiction of the Commission - Whether the matter is in relation to a procedure that has been prescribed under the *Public Sector Management Act 1994* (WA) - Jurisdiction of the Commission is not excluded - Appeal dismissed

Industrial law - Industrial relations - Whether s 23(1) of the *Industrial Relations Act 1979* (WA) empowers the Commission to award compensation for the unfairness of the refusal to employ a worker where the Commission also orders the employer to employ the worker - Any order made by the Commission must be sufficiently related to the jurisdictional fact enlivening the Commission's jurisdiction - Sufficient relationship between compensation order and refusal to employ - Appeal dismissed

Legislation:

Criminal Code (WA)

Industrial Relations Act 1979 (WA)

Public Sector Management (Breaches of Public Sector Standards) Regulations 2005 (WA)

Public Sector Management Act 1994 (WA)

Working with Children (Criminal Record Checking) Act 2004 (WA)

Result:

Appeal dismissed

Category: B

Representation:

Counsel:

Appellant : Mr R J Andretich & Mr J Carroll
Respondent : Ms P Giles

Solicitors:

Appellant : State Solicitor for Western Australia
Respondent : Slater and Gordon

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

BHP Billiton Iron Ore Pty Ltd v Construction, Forestry, Mining & Energy Union (2006) 86 WAIG 1193

Board of Management, Princess Margaret Hospital for Children v Hospital Salaried Officers Association of Western Australia (Union and Workers) (1975) 55 WAIG 543

Cliffs WA Mining Co Pty Ltd v The Association of Architects, Engineers, Surveyors and Draughtsmen of Australia (1978) 58 WAIG 1067

Director General, Department of Education v State School Teachers' Union of WA [2019] WAIRC 00754

Director General, Department of Justice v Civil Service Association of Western Australia Inc (2005) 149 IR 160

Federated Miscellaneous Workers Union of Australia, WA Branch v Nappy Happy Hire Pty Ltd t/a Nappy Happy Service (1994) 56 IR 62

Kounis Metal Industries Pty Ltd v Transport Workers Union of Australia (1992) 45 IR 392

Kwinana Construction Group Pty Ltd v Electrical Trades Union of Workers (WA Branch) (1954) 34 WAIG 51

Metropolitan (Perth) Passenger Transport Trust v Gersdorf (1981) 61 WAIG 611

RGC Mineral Sands Ltd v Construction, Mining, Energy, Timberyards, Sawmills, Woodworkers Union of Australia (WA Branch) (2000) 80 WAIG 2437

Robe River Iron Associates v Association of Draughting Supervisory and Technical Employees of Western Australia (1988) 68 WAIG 11

State School Teachers' Union of WA (Inc) v Director General, Department of Education [2018] WAIRC 00820

JUDGMENT OF THE COURT:

Summary

1 The appellant, the Director General of the Department of Education, appeals from the decision of the Full Bench of the Industrial Relations Commission by which the Full Bench dismissed an appeal from an order of Senior Commissioner Kenner. The Senior Commissioner ordered the Director General to offer a contract of employment to Mr Buttery and, upon Mr Buttery accepting the offer, to pay to Mr Buttery an amount reflecting the salary and benefits he would have earned if he had been employed by the Director General from 2 October 2017, the date on which the Senior Commissioner found the Director General had unfairly refused to employ Mr Buttery. Mr Buttery is a member of the respondent, the State School Teachers' Union of Western Australia (the Union).

2 For the reasons which follow the appeal should be dismissed.

Relevant background

3 The circumstances leading to this appeal are conveniently summarised by the parties in their written submissions.

4 Mr Buttery was employed by the appellant, the Director General, as a teacher from 2008. Mr Buttery commenced as a teacher at Greenfields Primary School in around July 2011.

5 Following an incident between Mr Buttery and a year 4 student on 31 August 2016 at the school, Mr Buttery was charged with common assault in circumstances of aggravation contrary to s 313(1)(a) of the *Criminal Code* (WA).

6 On 8 November 2016 Mr Buttery was issued with an interim negative notice under the *Working with Children (Criminal Record Checking) Act 2004* (WA) (WWC Act). On 10 November 2016 the Teacher Registration Board cancelled Mr Buttery's registration as a teacher.

7 By letter of 11 November 2016 the Director General dismissed Mr Buttery from his employment due to the existence of the interim negative notice.

8 The interim negative notice did not become final. On 21 December 2016 Mr Buttery was issued with an assessment notice under the WWC Act.

9 On 23 December 2016 the Union notified the Director General of the change in Mr Buttery's circumstances and requested that Mr Buttery be reinstated to his position at the school.

10 On 4 January 2017 the Teacher Registration Board reinstated Mr Buttery's registration.

11 By letter of 16 January 2017 the Director General refused the Union's proposal that the Director General re-employ Mr Buttery.

12 By letter of 24 January 2017 the Union again requested that the Director General re-employ Mr Buttery. By letter of 3 February 2017 the Director General refused to re-employ Mr Buttery.

13 On 2 February 2017 the teaching vacancy that was created following Mr Buttery's dismissal was filled by an employee contracted to work on a 12 month fixed term basis.

14 On 21 February 2017 the Union made an application to the Industrial Relations Commission under s 44 of the *Industrial Relations Act 1979* (WA) (IR Act) seeking that the Director General employ or re-employ Mr Buttery.

15 On 19 June 2017 the criminal charge against Mr Buttery was discontinued.

16 On 20 June 2017 the Union again wrote to the Director General requesting that the Director General employ Mr Buttery as a teacher at the school.

17 By letter of 2 October 2017 the Director General advised Mr Buttery that she was satisfied that he had acted in a manner inconsistent with the Code of Conduct, that he had engaged in excessive physical contact with a student, that his employment record would remain marked 'not suitable for future employment' by the Department and that she imposed a reprimand.

18 On 12 March 2018 the Commission referred the matter, being the matter set out in the Memorandum of Matters Referred for Hearing and Determination under s 44 of the IR Act dated 12 March 2018 (the Memorandum), for hearing and determination pursuant to s 44(9) of the IR Act.

19 The matter was heard by the Senior Commissioner Kenner between 30 July and 2 August 2018. Following the trial, Senior Commissioner Kenner:

- (a) held that s 23(2a) of the IR Act did not exclude the jurisdiction of the Commission to enquire into and deal with the matter;
- (b) found that it was unfair for the Director General to have refused to employ Mr Buttery from 2 October 2017; and
- (c) made orders requiring the Director General to:
 - (i) offer Mr Buttery a contract of employment as a primary school teacher, at a level and salary commensurate with Mr Buttery's qualifications and experience, upon Mr Buttery presenting himself to the Director General's head office on 4 December 2018; and
 - (ii) pay Mr Buttery an amount reflecting the salary and benefits he would have otherwise earned if he had remained employed by the Director General from 2 October 2017 to the date of any acceptance of the above offer of re-employment, less any income received by Mr Buttery from other employment over the same period.¹

20 The Director General appealed to the Full Bench of the Industrial Relations Commission from the Senior Commissioner's decision on eight grounds. Ground 1 alleged that the Senior Commissioner erred in law in failing to find that the Commission had no jurisdiction to enquire into and deal with the matter as a result of s 23(2a) of the IR Act. Ground 8 alleged that the Senior Commissioner erred in law in ordering the Director General to pay Mr Buttery an amount of compensation for what he would have earned if he had remained employed by the Director General for the period 2 October 2017 until the date he accepted an offer of employment, on the basis that there is no power for the Commission to make such an order absent a legal right to compensation.

21 The Full Bench unanimously dismissed ground 1 of the Director General's appeal. Ground 1 of the appeal to this court essentially alleges that the Full Bench erred in dismissing that ground.

22 The Full Bench by majority dismissed ground 8 of the Director General's appeal to the Full Bench. In dissent, Chief Commissioner Scott held that the Commission had no power to award compensation to Mr Buttery. Ground 2 of the appeal to this court alleges that the majority of the Full Bench erred in dismissing that ground, essentially for the reasons that the Chief Commissioner held in respect of ground 8.

Appeal from Full Bench to this court

23 Section 90(1) of the IR Act 1979 provides that an appeal lies to this court from a decision of the Full Bench -

¹ *State School Teachers' Union of WA (Inc) v Director General, Department of Education* [2018] WAIRC 00820.

- (a) on the ground that the decision is in excess of jurisdiction in that the matter the subject of the decision is not an industrial matter; or
- (b) on the ground that the decision is erroneous in law in that there has been an error in the construction or interpretation of any Act, regulation, award, industrial agreement or order in the course of making the decision appealed against; or
- (c) on the ground that the appellant has been denied the right to be heard, but upon no other ground.

24 It appears that the Director General brings her appeal in reliance upon s 90(1)(b). Specifically, the Director General submits that the decision of the Full Bench is erroneous in law in that the Full Bench erred in the construction or interpretation of s 23(2a) of the IR Act in the course of making the decision appealed against.

Appeal ground 1

25 Appeal ground 1 is:

- 1) The Full Bench erred in law in deciding section 23(2a) of the *Industrial Relations Act 1979* (WA) did not apply to exclude the jurisdiction of the Commission in these proceedings because an order to employ made by the Commission to dispose of a refusal to employ application did not involve the filling of a vacant office, post or position.

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- (a) Section 23(2a) of the *Industrial Relations Act* prevents the Commission from embarking on an inquiry into any 'matter' referred to in that sub-section.
- (b) The Full Bench considered that section 23(2a) of the *Industrial Relations Act* only limits the relief that can be granted by the Commission, and does not prevent the Commission from enquiring into a 'matter' referred to in that sub-section.

Appeal ground 1 - the Director General's argument

26 Section 23(1) of the IR Act confers on the Commission jurisdiction 'to enquire into and deal with any industrial matter'. It is common ground that the matter set out in the Memorandum was an industrial matter and hence the Commission had jurisdiction to enquire into and deal with the matter, unless its jurisdiction was otherwise excluded. The Director General submits that the jurisdiction of the Commission is excluded by IR Act s 23(2a) which provides:

Notwithstanding subsections (1) and (2), the Commission does not have jurisdiction to enquire into or deal with any matter in respect of which a procedure referred to in section 97(1)(a) of the *Public Sector Management Act 1994* is, or may be, prescribed under that Act.

27 Section 97(1)(a) of the *Public Sector Management Act 1994* (WA) (PSM Act) provides that the functions of the Commissioner under pt 7 of the PSM Act include the making of recommendations to the Minister on the making, amendment or repeal of regulations prescribing procedures for, amongst other things, employees and other persons to obtain relief in respect of the breaching of Public Sector standards.

28 Section 98(a) of the PSM Act provides that the Governor may, under s 108, make regulations prescribing procedures referred to in s 97(1)(a) and specifying those employees and persons, if any, who are not eligible to seek relief in accordance with those procedures.

29 Public Sector standards are issued by the Public Sector Commissioner pursuant to PSM Act s 21. PSM Act s 21(1)(a)(i) provides for the Public Sector Commissioner to issue instructions establishing Public Sector standards setting out minimum standards of merit, equity and probity to be complied with in the Public Sector in, amongst other things, the recruitment, selection and appointment of employees.

30 By notice published in the *Gazette* on 11 February 2011 pursuant to PSM Act s 21(1)(a)(i), the Public Sector Commissioner published a Commissioner's Instruction entitled Employment Standard, which applies to employees employed by employing authorities of public sector bodies, which includes the Department.

31 Having regard to the provisions of the PSM Act to which we have referred and the Employment Standard, the effect of IR Act s 23(2a) is that the Commission does not have jurisdiction to enquire into or deal with any matter in respect of which a procedure for employees to obtain relief in respect of the breaching of the Employment Standard is prescribed under the PSM Act.

32 The *Public Sector Management (Breaches of Public Sector Standards) Regulations 2005* (WA) (Breaches of Standards Regulations) made under the authority of the PSM Act, prescribes a procedure for dealing with claims for relief for breach of reviewable decisions.

33 Regulation 6 of the Breach of Standards Regulations provides that if a person considers that, in making a 'reviewable decision', a relevant employing authority (which includes the Director General) of a public sector body has breached the Public Sector standard and the person is adversely affected by the breach, the person may make a claim for relief to the public sector body. A 'reviewable decision' means a decision made by the employing authority as the result of the completion of a process to which a Public Sector standard applies. See reg 3(1).

34 Therefore, the jurisdiction of the Commission to enquire into and deal with the matter set out in the Memorandum that was referred to it on 12 March 2018 for hearing and determination pursuant to IR Act s 44(9) is excluded by IR Act s 23(2a), if that matter is a matter in respect of a decision made by the Director General as a result of the completion of a

process to which the Employment Standard applies and hence is a matter in respect of which a procedure referred to in IR Act s 97(1)(a) has been prescribed under the PSM Act.

35 That analysis is consistent with the decision of this court in *Director General Department of Justice v Civil Service Association of Western Australia Inc*,² on which the Director General relies.

36 The Director General submits that the matter referred for hearing and determination by the Commission is a matter in respect of which the Employment Standard applies and hence is a matter in respect of which a procedure referred to in IR Act s 97(1)(a) has been prescribed under the PSM Act and therefore the jurisdiction of the Commission to enquire into and deal with that matter is excluded by IR Act s 23(2a).

The Employment Standard

37 It is critical whether the matter before the Commission was a matter to which the Employment Standard applies. It is therefore necessary to refer to the Employment Standard in some detail.

38 The Employment Standard states that it applies:

When filling a vacancy (by way of recruitment, selection, appointment, secondment, transfer and temporary deployment (acting) in the Western Australian Public Sector.

Vacancy is defined as:

A vacant post, office or position within the public sector. A vacancy can result from the creation of a new office, post or position or by the temporary or permanent movement of another employee. For redeployment purposes a vacancy is defined as all offices, posts or positions, newly created, recently vacated or to be filled on a temporary basis in excess of six months.

39 The Employment Standard requires four principles to be complied with when filling a vacancy. The first is the Merit Principle which is stated in these terms:

The Western Australia public sector makes employment decisions based on merit. Merit usually involves the establishment of a competitive field. In applying the merit principle a proper assessment must take into account -

- (a) the extent to which the person has the skills, knowledge and abilities relevant to the work related requirements and outcomes sought by the public sector body; and
- (b) if relevant, the way in which the person carried out any previous employment or occupational duties.

Competitive field is defined as:

A field which includes more than one person who meets the requirements of the vacant position; competitive fields are generally achieved through the advertising of a vacancy.

Employment decision is defined as:

A decision to recruit, select, appoint, transfer, second or act [as] an employee.

Recruitment is defined as:

The process used by an agency to attract, assess and select applicants to fill a vacancy.

40 The fourth principle is the Transparency Principle which is that decisions are to be transparent and capable of review.

Ground 1 - Full Bench reasons

41 Commissioners Emmanuel and Walkington agreed with the Chief Commissioner's reasons in relation to ground 1.

42 The Chief Commissioner found that the circumstances of the case do not meet the circumstances which are dealt with in the Employment Standard and therefore the Commission's jurisdiction is not excluded and ground 1 of the appeal was not made out.

43 After referring to IR Act s 23(2a); PSM Act s 97(1)(a); the Breaches of Standards Regulations; the decision of this court in *Director General Department of Justice v Civil Service Association of Western Australia Inc*;³ evidence before the Senior Commissioner; and the contentions of the Director General, the Chief Commissioner said that the question that arises is whether the current circumstances require or relate to the filling of a vacancy as covered by the Employment Standard.

44 Having posed the question whether the Commission's jurisdiction is excluded by the existence of the Employment Standard and the provision for review under the Breaches of Standards Regulations, the Chief Commissioner said:

What is sought in the matter referred for hearing and determination is that the Director General re-employ Mr Buttery. The Standard and CI 2 are specified as dealing with the filling of a vacancy. They appear to cover all possible options relating to filling a vacancy. However, they do not say that a person cannot be employed without there being a vacant position.

² *Director General, Department of Justice v Civil Service Association of Western Australia Inc* (2005) 149 IR 160.

³ *Director General, Department of Justice v Civil Service Association of Western Australia Inc* (2005) 149 IR 160.

Ms Barnard's evidence demonstrates that when positions are abolished, some teachers remain employed, that is, in a contract of service with the Director General, until they can be formally allocated to a position, whether that position be vacant due to the incumbent, for example, acting up, taking leave or being on secondment. Alternatively, there may be a vacant position into which they can be transferred at level.

In this case, the Commission was asked to order the Director General to re-employ Mr Buttery in his former position. However, the Commission is not bound to the limits of the remedy sought (s 26(2) of the IR Act). In this case, the [Union] made clear that while it sought re-employment in Mr Buttery's former position at Greenfields Primary School, another position in the area would be acceptable.

In the circumstances, then, what was sought was the re-establishment of the employment relationship. It might mean that Mr Buttery would be supernumerary until he could be placed in a particular position. The re-employment, that is, the re-establishment of the employment relationship, would be a step prior to the filling of a vacancy, or the other steps dealt with in the Standard. The Standard would come into play after the re-establishment of the employment relationship, if Mr Buttery is to be placed in a vacant position.

In this way, the learned Senior Commissioner did not err. The matter excluded by s 23(2a) relates to procedures prescribed for the filling of a vacancy. It is to be distinguished from the creation or re-establishment of the employment relationship. The filling of the vacancy is the next step. It is the next step which is the matter excluded due to the prescribed procedure.

Therefore, where the ground of appeal alleges error in two ways, firstly regarding the Commission's jurisdiction being excluded by s 23(2a) and secondly, that the Director General could not accede to a request to re-employ because of the Standard, I would dismiss this ground.⁴

The matter heard and determined by the Commission

45 IR Act s 44 provides for the Commission to conduct a compulsory conference. IR Act s 44(9) provides that where at the conclusion of a conference any question, dispute or disagreement in relation to an industrial matter has not been settled, the Commission may hear and determine that question, dispute or disagreement and may make an order binding the parties to that question, dispute or disagreement.

46 The question, dispute or disagreement heard and determined by the Senior Commissioner is set out in the Memorandum. The Memorandum is a lengthy eight page document. The Memorandum sets out in some detail the circumstances leading to, and subsequent to, the termination of Mr Buttery's employment; the various applications and hearings before the Commission; and the submissions and contentions of the parties.

47 The Memorandum states that the Union seeks the following orders:

1. the Director General reinstate or re-employ Mr Buttery on terms and conditions that are no less favourable than his previous position with the Department; and
2. the Director General pay Mr Buttery the amount that reflects the income (including superannuation) he would have earned for the period from 21 February 2017 to date; or
3. in the event Mr Buttery is found to have engaged in misconduct sufficient to justify termination of his employment, the Director General pay Mr Buttery an amount that reflects the income and superannuation he would have earned from 21 February 2017 to 2 October 2017.

Error alleged by Director General

48 The Director General submits that it is clear from the Memorandum that the subject matter of the dispute before the Commission was the Director General's refusal to employ Mr Buttery in a teaching position at Greenfields Primary School. The Director General also submitted that the Union's written opening submissions at first instance make it clear that what was sought was an order that the Director General reinstate or re-employ Mr Buttery to a teaching position at Greenfields Primary School, and further that Mr Buttery accepted under cross-examination that the requests made by the Union for him to be employed were requests that he be employed in his former position at Greenfields Primary School. In those circumstances, the Director General submitted that the whole subject matter of the dispute referred for hearing and determination was the issue of the Director General's refusal to employ Mr Buttery to a teaching position at Greenfields Primary School, or at least some position, on the same terms and conditions upon which he was previously employed.

49 The Director General submits that the Chief Commissioner erred in construing s 23(2a) of the IR Act in that the Chief Commissioner considered that because the Commission had the power to 'deal with' the 'matter' by ordering that the employment relationship be established rather than ordering that the Director General appoint Mr Buttery to a position, the 'matter' was not excluded.

50 The Director General submits that IR Act s 23(2a) provides that the Commission does not have jurisdiction 'to enquire into and deal with' any matter in respect of which a relevant procedure is prescribed. Therefore, the Director General submits the Commission is prevented from embarking on any inquiry into the 'matter' of public sector appointments to vacancies, which includes both a position and the creation of a new position. The whole subject matter of the dispute, the Director General submitted, was the Union's dissatisfaction with the Director General's refusal to employ Mr Buttery in a position as a teacher at Greenfields Primary School or a teacher with the same terms and

⁴ *Director General, Department of Education v State School Teachers' Union of WA* [2019] WAIRC 00754 [233] - [238].

conditions of his previous position. Such a 'matter' is a matter excluded from the jurisdiction of the Commission and the Full Bench erred in holding that the Senior Commissioner did not err in deciding otherwise.

Evaluation of ground 1

51 We do not agree with the Director General's submission. The matter referred to the Commission was the question, dispute or disagreement in relation to an industrial matter contained in the Memorandum. The 'matter' is the controversy between the Director General and the Union comprised of the substratum of facts and claims representing or amounting to the question, dispute or disagreement between them. It is not the specific claim for relief by the Union. It is the whole controversy referred to the Commission in respect of which it was the function of the Commission to enquire into and deal with. It included at least the Union's claim that the Director General had refused to employ Mr Buttery and her refusal was unfair and the Union's claim that the Director General employ Mr Buttery. The Chief Commissioner found in effect that the Director General's decision not to employ Mr Buttery was not a decision as the result of the completion of a process to which the Employment Standard applies.

52 We agree with the Union that establishing an employment relationship is different from filling a vacancy under the Employment Standard. It may be that, ordinarily within the public service, persons are only employed to fill a vacancy. However, the Full Bench found, in effect, that the Director General may employ (including re-employ) a person without filling a vacancy, that is, without appointing the person to a vacant post, office or position. The Full Bench made a finding of fact that there are a substantial number of persons employed by the Department who do not occupy any office, post or position.

53 The Director General, in her grounds of appeal, said that the Full Bench erred in that it considered that s 23(2a) of the IR Act only limits the relief that can be granted by the Commission and does not prevent the Commission from enquiring into and dealing with a 'matter' referred to in that subsection. We do not agree that the Full Bench so erred.

54 At [235] the Chief Commissioner said:

In this case, the Commission was asked to order the Director General to re-employ Mr Buttery in his former position. However, the Commission is not bound to the limits of the remedy sought (s 26(2) of the IR Act). In this case, the [Union] made clear that while it sought re-employment in Mr Buttery's former position at Greenfield Primary School, another position in the area would be acceptable.⁵

55 The Chief Commissioner was there dealing only with the relief that the Commission was being asked to grant. The Chief Commissioner was not there defining the 'matter' before the Commission. The 'matter' is not confined to any specific relief sought by the Union. The Chief Commissioner found, correctly, that the 'matter' was the controversy between the Director General and the Union. The controversy was the Director General's refusal to employ Mr Buttery in the circumstances set out in the Memorandum. That is apparent from the following paragraphs of the Chief Commissioner's reasons.

56 At [211] the Chief Commissioner found that the Commission's jurisdiction was not excluded because 'the circumstances of the case do not meet the circumstances which are dealt with in the Standard'.⁶

57 At [233] the Chief Commissioner said:

What is sought in the matter referred for hearing and determination is that the Director General re-employ Mr Buttery. The Standard in clause 2 as specified is dealing with the filling of a vacancy. They appear to cover all possible options relating to filling a vacancy. However, they do not say that a person cannot be employed without there being a vacant position.⁷

58 At [236] the Chief Commissioner said:

What was sought was the re-establishment of the employment relationship. It might mean that Mr Buttery would be supernumerary until he could be placed in a particular position. The re-employment, that is, the re-establishment of the employment relationship, would be a step prior to the filling of a vacancy, or the other steps dealt with in the Standard. The Standard would come into play after the re-establishment of the employment relationship, if Mr Buttery is to be placed in a vacant position.⁸

59 The Chief Commissioner found therefore that the Employment Standard did not apply to the Director General's refusal to employ Mr Buttery. Even if the Chief Commissioner erred in making that finding, it is not an error in the construction or interpretation of any Act, regulation, award, industrial agreement or order in the course of making her decision, within s 90(1)(b) of the IR Act and hence an appeal does not lie to this court from the decision, because the Employment Standard is not an Act, regulation, award, industrial agreement or order. See, generally, s 21 of the PSM Act in relation to the status of the Employment Standard.

60 In any event, we are not satisfied that the Chief Commissioner erred in making that finding. The Employment Standard applies to filling a vacancy. There was no vacancy to fill. The matter referred to the Commission for hearing and determination was not confined to the Union demanding that Mr Buttery be appointed to the position at Greenfields Primary School which he had previously held. That position was held by another person and was not vacant. The

⁵ *Director General, Department of Education v State School Teachers' Union of WA* [2019] WAIRC 00754.

⁶ *Director General, Department of Education v State School Teachers' Union of WA* [2019] WAIRC 00754.

⁷ *Director General, Department of Education v State School Teachers' Union of WA* [2019] WAIRC 00754.

⁸ *Director General, Department of Education v State School Teachers' Union of WA* [2019] WAIRC 00754.

Union's claim was more broadly that the Director General had unfairly refused to employ Mr Buttery and should employ him. The claim was not limited to the assertion that he be appointed to fill a particular vacancy.

61 The Full Bench made no error in construing s 23(2a) of the IR Act or in finding that s 23(2a) did not apply to exclude the jurisdiction of the Commission to hear and determine the matter referred to it as set out in the Memorandum. Ground 1 of the appeal is not made out.

Appeal ground 2

62 Appeal ground 2 is:

- 2) The majority erred in law in concluding that section 23 when read with section 44(9) of the *Industrial Relations Act 1979* (WA) conferred upon the Commission an implied power to award compensation for the unfairness for the refusal to employ Mr Buttery from 2 October 2017.

PARTICULARS

- (a) Neither section, nor when read together, either expressly or by implication confers a power to award compensation or the unfairness of a decision.
- (b) The award had no connection with the order made that Mr Buttery be employed from the date he presented himself for employment.
- (c) No order was made pursuant to section 39(3), as it could have, that Mr Buttery be employed from 2 October 2017, in the event that there were special circumstances that made it fair and right to do so.

63 The question raised by this ground is whether IR Act s 23(1) empowers the Commission to order an employer to pay money to a worker as compensation for the salary and benefits lost by the worker as a result of the employer unfairly refusing to employ the worker, where the Commission orders the employer to employ the worker. That is a question of the proper construction of s 23(1) of the IR Act.

The IR Act

64 The IR Act is an Act to consolidate and amend the law relating to the prevention and resolution of conflict in respect of industrial matters, the mutual rights and duties of employers and employees, the rights and duties of organisations of employers and employees and for related purposes.⁹

65 Subject to the Act, the Commission has the cognisance and authority, that is jurisdiction and power, to enquire into and deal with any industrial matter.¹⁰

66 The term 'industrial matter' is broadly defined in IR Act s 7 to mean any matter affecting or relating or pertaining to the work, privileges, rights, or duties of employers or employees in any industry or of any employer or employee therein. Furthermore, the refusal to employ any person in any industry is expressly included. An industrial matter also includes, excluding matters not presently relevant, any matter of an industrial nature the subject of an industrial dispute or the subject of a situation that may give rise to an industrial dispute. The controversy between the Director General and the Union, including the refusal of the Director General to employ Mr Buttery, is an industrial matter.

67 The general powers of the Commission are set out in s 23 of the IR Act. The Commission has authority to 'enquire into and deal with' any industrial matter. The power to 'deal with' an industrial matter is a very wide power. The usual meaning of 'deal with' is to take action in order to achieve something or in order to solve a problem. The power in s 23(1) is confined by the scope and purpose of the Act as well as the express restrictions stipulated. In general, the power is a power to make orders reasonably appropriate and adapted to preventing or resolving conflict in respect of industrial matters.

68 The Director General submits that the Commission has no power to award compensation for the unfairness of the refusal to employ a person. The Director General's argument is based upon the *Pepler* line of cases to which we will now turn.¹¹

Authorities before Pepler

69 A number of cases under the IR Act and its predecessor, the *Industrial Arbitration Act 1912* (WA), confirmed the jurisdiction of the Commission to order the reinstatement or re-employment of dismissed employees and compensation for wages lost during the cessation of employment.

70 In *Kwinana Construction Group Pty Ltd v Electrical Trades Union (Kwinana Construction)*,¹² the Court of Arbitration considered whether the Conciliation Commissioner, acting under delegated power from the Court, had power to order re-employment under the *Industrial Arbitration Act* which conferred on the court jurisdiction and power 'to settle and determine ... all industrial matters and disputes'. The President, Justice Jackson, with whom Member Davies agreed, held:

⁹ *Industrial Relations Act 1979* (WA) (IR Act), Long Title.

¹⁰ IR Act s 23(1).

¹¹ *Robe River Iron Associates v Association of Draughting Supervisory and Technical Employees of Western Australia* (1988) 68 WAIG 11 is commonly known as *Pepler's* case.

¹² *Kwinana Construction Group Pty Ltd v Electrical Trades Union of Workers (WA Branch)* (1954) 34 WAIG 51, 51.

... in determining a dispute consequent on a dismissal the Court has power to make an order for reinstatement and such other incidental matters, including payment of wages from the time of dismissal, as the Court considers just and equitable. To hold otherwise would be to imply some restriction on the Court's powers of settling and determining a dispute for which there was no warrant in the Act.¹³

71 In 1975 this court confirmed the power of the Commission, under the *Industrial Arbitration Act*, to order an employer to employ a worker it had unfairly refused to employ, and to pay a sum of money representing lost wages during the period the employer had refused to employ the worker.

72 In *Board of Management, Princess Margaret Hospital for Children v Hospital Salaried Officers Association of Western Australia (Union and Workers)*¹⁴ (the *Princess Margaret Hospital* case), the hospital agreed to employ one Brown as a senior radiographer. Before he commenced work Brown was advised that his services would not be needed. The hospital objected that there was no jurisdiction as it was not an industrial matter because, at least following the hospital's decision, there was no contract of employment and therefore no employer and employee relationship. Justice Burt, with whom Wickham and Wallace JJ agreed, said that there had been a refusal to employ. They also said that the refusal was an industrial matter and that an order to employ Brown was an order within power, being an order made 'determining the industrial matter in dispute'. Further, the court held that the Commission had jurisdiction to make an order requiring the employer to employ the worker if he presented himself for work, and to order the payment by it of a money sum representing the amount lost by the worker between the date of the employer's refusal to employ him and the date on which he accepted employment.

73 In *Metropolitan (Perth) Passenger Transport Trust v Gersdorf*,¹⁵ this court had to decide whether the Commission had jurisdiction under the IR Act to order re-employment of the worker who had been dismissed and to make an order in the nature of damages in favour of the employee. Justice Brinsden observed that in a series of decisions the right of the Commission to order re-employment was clearly recognised. His Honour observed that both in the *Kwinana* case and in the *Princess Margaret Hospital* case, the right of the Commission to make a supplementary order, not only ordering re-employment but also that the employer compensate the employee for lost wages between the date of cessation of the employment and the re-employment, was recognised. His Honour added:

The present Act [ie the IR Act] is silent as to what orders the Commission may make if it finds that an employee had been unfairly dismissed but it seems that it may make an order for an amount to be paid to the employee representing the wages lost during the period of unemployment less whatever the employee may have earned from employment with another employer during the same period, by reason of the definition of 'industrial matter' in the Act. Such an order may be likened to an order in the nature of damages.¹⁶

74 It can be seen that prior to the decision of this court in the *Pepler* case, to which we will shortly turn, it was well established that the Commission had power to order that an employer compensate a dismissed employee for lost wages between the date of cessation of his employment and his re-employment. Similarly, in the case of an unfair refusal to employ it was established that the Commission had power to order that an employer employ the worker and compensate the worker for loss resulting from the unfair refusal to employ them represented by the wages they would have earned between the date of the refusal to employ and the commencement of employment pursuant to the order of the Commission.

The Pepler cases

75 Until 1988 the Commission awarded compensation in unfair termination cases where the applicant was not seeking reinstatement or re-employment.¹⁷

76 In 1986 the Association of Drafting Supervisory and Technical Employees sought a conference pursuant to IR Act s 44 upon the ground that it disputed the dismissal of three members of the salaried staff of Robe River, including Mr Pepler. The dispute could not be settled by agreement and the Commissioner determined the matter by arbitration.

77 The Commissioner found that Mr Pepler and the two other employees were unfairly dismissed. It found that the relationship between Mr Pepler and the respondent had broken down irretrievably and so awarded Mr Pepler compensation but did not reinstate him. An appeal by Robe River to the Full Bench was unsuccessful. On appeal to this court, the court allowed the appeal and set aside the order awarding compensation.¹⁸

78 Justice Kennedy posed the question whether, if in the exercise of its discretion, the Commission declines to order an employer to re-employ a dismissed employee 'it has the jurisdiction to make an order that the employer compensate the employee, and in particular, that the employer compensate the employee beyond any amount which the employee could

¹³ *Kwinana Construction Group Pty Ltd v Electrical Trades Union of Workers (WA Branch)* (1954) 34 WAIG 51, 51.

¹⁴ *Board of Management, Princess Margaret Hospital for Children v Hospital Salaried Officers Association of Western Australia (Union and Workers)* (1975) 55 WAIG 543.

¹⁵ *Metropolitan (Perth) Passenger Transport Trust v Gersdorf* (1981) 61 WAIG 611.

¹⁶ *Metropolitan (Perth) Passenger Transport Trust v Gersdorf* (1981) 61 WAIG 611, 614.

¹⁷ Eg *Cliffs WA Mining Co Pty Ltd v The Association of Architects, Engineers, Surveyors and Draughtsmen of Australia* (1978) 58 WAIG 1067.

¹⁸ *Robe River Iron Associates v Association of Draughting Supervisory and Technical Employees of Western Australia* (1988) 68 WAIG 11, 17, commonly known as *Pepler's* case.

reasonably have recovered at common law'. His Honour answered the question negatively, holding that the Commission did not have power to order compensation without ordering re-employment.

79 Justice Olney observed that in the *Kwinana Construction* case Jackson J took the view that the power of the court to order payment of wages from the time of dismissal was a power incidental to the power to make an order for reinstatement. Justice Olney said:

There is nothing in the Act to justify the exercise of a jurisdiction to award a dismissed employee compensation or any other money payment except as an incident to an order for reinstatement or re-employment.¹⁹

80 Justice Rowland held in effect that the power to award compensation depended upon the existence or reactivation of an employment relationship:

... the order for reinstatement or re-employment retains or reactivates the industrial basis for the dispute ie the relationship of employer and employee. There is no such nexus involved with relief that does not retain that relationship. Where the dispute, like the present, is resolved solely on the issues in the dispute between the particular former employer with the particular ex-employee, there is no charter to make orders that are not part of a reactivated industrial relationship.²⁰

81 It is clear that in *Pepler's* case the court did not doubt the jurisdiction of the Commission to order compensation where the Commission ordered an employer to re-employ a dismissed employee or to employ a worker unfairly refused employment.

82 In *Kounis Metal Industries Pty Ltd v Transport Workers Union of Australia*,²¹ the Commission awarded a redundancy payment to a truck driver who had been dismissed in accordance with the provisions of the award. The court held that the Commission did not have power to do so. Justice Owen, with whom the other members of the court agreed, adopted the 'employment relationship' approach of Rowland J in *Pepler's* case. Justice Owen said, in a statement which has been often repeated:

The judgments in *Pepler* suggest that the decision rests upon a point of principle, namely, that jurisdiction depends on the present or future existence of the employer/employee relationship. Unless, at the time when the application is made, the relationship actually exists, or is expected to come into existence in the future, or did exist and is to be restored, the key element of an 'industrial matter' is missing. The very language of the judgments carries this implication.²²

83 It is clear that in *Kounis*, the court did not doubt the jurisdiction of the Commission to order compensation where the Commission ordered an employer to re-employ a dismissed employee or to employ a worker unfairly refused employment.

84 In *Federated Miscellaneous Workers Union of Australia WA Branch v Nappy Happy Hire Pty Ltd t/a Nappy Happy Service*,²³ the appellant union asked the court to overrule its decision in *Pepler's* case. The respondent dismissed four employees. Shortly after the dismissals the respondent disposed of its business to an unrelated company. The Commission found the dismissals were harsh and unfair. Re-employment was not possible as the respondent had gone out of business. The Commission ordered the respondent to pay monetary compensation to the unfairly dismissed employees.

85 On appeal, this court found that there was a cogent argument for overruling *Pepler's* case. Justice Anderson, with whom Kennedy and Franklyn JJ agreed, said:

The doctrine laid down in *Pepler's* case is not that the authority of the Commission ceases with the cessation of the employment, but that there is a limitation on the powers of the Commission in such circumstances, in the particular way the Commission may thereafter 'deal' with the matter.²⁴

Justice Anderson held that the continuation of the contract of service is not a jurisdictional fact. His Honour continued:

As long as the jurisdiction of the Commission continues in respect to a matter on the ground that it is an industrial matter there is much to be said for the view that the Commission has full authority to 'deal' with it. As to how it may be dealt with, by reference to the scope and objects of the Act it is apparent that in the case of an industrial matter in the form of an industrial dispute over dismissals the Commission may deal with it by settling it. It has long been accepted that an appropriate method of settlement or resolution may be to order re-employment, and payment of compensation to those who accept re-employment. It is not readily apparent why it should be regarded as always beyond power to make orders for compensation to those who are not re-employed. Arguably each case should be treated on its merits, and the question whether compensation should be ordered in a particular case should not depend on whether the person is

¹⁹ *Pepler's* case, 20.

²⁰ *Pepler's* case, 22.

²¹ *Kounis Metal Industries Pty Ltd v Transport Workers Union of Australia* (1992) 45 IR 392.

²² *Kounis*, 402 - 403.

²³ *Federated Miscellaneous Workers Union of Australia, WA Branch v Nappy Happy Hire Pty Ltd t/a Nappy Happy Service* (1994) 56 IR 62.

²⁴ *Federated Miscellaneous Workers Union of Australia, WA Branch v Nappy Happy Hire Pty Ltd t/a Nappy Happy Service* (1994) 56 IR 62, 66.

or is not re-employed but only on whether compensation is truly ordered for the purpose of resolving a matter that is truly an industrial matter, and whether, in the particular case, a compensation payment (both of itself and as to its amount) is appropriate to the industrial matter and has a natural tendency to dispose of the dispute comprising the industrial matter.²⁵

Justice Anderson recognised that there may be cases in which the claim by, or on behalf of, a dismissed employee for compensation has an insufficient industrial character. Justice Anderson continued:

In this case there is no doubt the matter began as an industrial matter in the form of a dispute about conditions of employment and job security. It was properly before the Commission as a matter within jurisdiction. After jurisdiction had been invoked by the s 44 application the employer dismissed the union members concerned. That certainly did not resolve the dispute although it necessarily altered the way in which the Commission could 'deal' with it. For a time reinstatement was available as a means of resolving the matter. By the time of remedy, however, by reason of the actions of the employer in the restructuring of its operations, that was not possible. On those facts I do not find it easy to see why, in point of principle, the Commission should be stopped on jurisdictional grounds from settling the dispute by ordering payment of a money sum to the affected persons. The salutary and remedial nature of such a determination might go beyond the particular workers and affect the employer's attitude to the employer/employee relationship generally, and the employer's future industrial behaviour, to the benefit of its other employees.²⁶

86 However, the court declined to overrule *Pepler's* case. Justice Anderson explained:

Having said that, however, I think it is now too late for us to hold that the Commission does have authority to make orders for compensation to dismissed workers who are not also re-employed. *Pepler's* case is of comparatively long standing, and was decided after careful consideration and a thorough examination of the question. In this area of law there is as much need for certainty and continuity as in any other. Even if we were to conclude that a conclusion different from the conclusion reached in *Pepler's* case is to be preferred that would not be a sufficient ground to overrule *Pepler's* case. The question is by no means free from doubt and it cannot be said that *Pepler's* case is obviously or manifestly wrong, or that the principle established by it goes against principles established elsewhere in Australia as regards the jurisdictional limits of industrial courts and tribunals. And there has been ample opportunity for Parliament to change the law.²⁷

87 Subsequently, Parliament did change the law. Section 23A was introduced into the IR Act in 2002. Section 23A(6) provides that if the Commission considers reinstatement or re-employment would be impracticable, the Commission may order the employer to pay to the employee an amount of compensation for loss or injury caused by the dismissal.

88 The *Pepler* line of cases was considered by this court in *RGC Mineral Sands Ltd v Construction, Mining, Energy, Timberyards, Sawmills, Woodworkers Union of Australia (WA Branch)*.²⁸ The case was concerned with the insertion into an award of a 'freedom of choice' clause to allow future employees to decide whether they would be employed under the *Workplace Agreements Act* or on a contract of employment to which the award applied. In considering the power of the Commission to insert such a clause, Parker J, with whom Kennedy J agreed, referred to some decisions preceding *Pepler's* case. His Honour noted that:

These decisions correctly focus attention on the terms of the definition of industrial matter and illustrate something of the breadth of the true scope of the general introductory words.²⁹

89 Justice Parker then considered the *Pepler* line of decisions. His Honour regarded Owen J's statement of the 'employment relationship' doctrine in *Kounis* as qualified by the unanimous decision in the *Nappy Happy* case and noted:

Once again, in the *Nappy Happy* case, the attention of the members of the court focused directly on the express words of the definition, to which effect was given.³⁰

90 Justice Parker focused on the sufficiency of the relationship or remoteness of the order made to the relevant jurisdictional fact enlivening the Commission's jurisdiction:

²⁵ *Federated Miscellaneous Workers Union of Australia, WA Branch v Nappy Happy Hire Pty Ltd t/a Nappy Happy Service* (1994) 56 IR 62, 66 - 67.

²⁶ *Federated Miscellaneous Workers Union of Australia, WA Branch v Nappy Happy Hire Pty Ltd t/a Nappy Happy Service* (1994) 56 IR 62, 67.

²⁷ *Federated Miscellaneous Workers Union of Australia, WA Branch v Nappy Happy Hire Pty Ltd t/a Nappy Happy Service* (1994) 56 IR 62, 67 - 68.

²⁸ *RGC Mineral Sands Ltd v Construction, Mining, Energy, Timberyards, Sawmills, Woodworkers Union of Australia (WA Branch)* (2000) 80 WAIG 2437.

²⁹ *RGC Mineral Sands Ltd v Construction, Mining, Energy, Timberyards, Sawmills, Woodworkers Union of Australia (WA Branch)* (2000) 80 WAIG 2437 [69].

³⁰ *RGC Mineral Sands Ltd v Construction, Mining, Energy, Timberyards, Sawmills, Woodworkers Union of Australia (WA Branch)* (2000) 80 WAIG 2437 [76].

... The point of the Pepler line of cases may, therefore, be a concern to draw the line between those matters such as reinstatement which are to be accepted as sufficiently directly related to a dismissal so as to be within the jurisdiction of the Commission, and those other matters which are insufficiently closely related to the jurisdictional fact of dismissal so that they are beyond the power of the Commission to deal with them. Necessarily, questions such as this involve fine and difficult distinctions. Views may differ as to their appropriate resolution as is evident from the discussion of this issue in the reasons in the *Nappy Happy Hire* case. In the Pepler decision that line may be seen to have been drawn to exclude a claim for compensation for loss of income for a period following a dismissal in circumstances where it was the decision of the Commission that the employment should not be reinstated ...³¹

91 Justice Parker held that the application raised an industrial matter and in finding that it did not the Commission had fallen into error by the view it took of the effect of the *Pepler* line of cases:

... the matter sought to be raised is the policy of WSL, which was confirmed in evidence before the Commission, that in filling its existing vacancies in the industry, vacancies which at the time of the application it was actively seeking to fill by offering employment to prospective employees, it would only employ persons who agree to enter into a workplace agreement. By committing itself to this policy WSL refuses, and has indicated it will continue to refuse, to employ in the vacancies it is offering persons who comprise an identifiable class, ie those who wish to be employed pursuant to the award that would apply if no workplace agreement is entered into. There is no existing contract of employment between WSL and any of the prospective employees who have been offered employment, but employment was clearly in immediate contemplation. Given the terms of the application to the Commission and the evidence that has been led at first instance, if the position remains in essence as it was at the time of the application and hearing, it seems to me that it would be open to the Commission to conclude that the application raised a matter within the definition of an 'industrial matter' being, or relating to, a refusal by WSL to employ in the industry that class of persons. The Commission was persuaded against this essentially because of the view it took of the effect of the Pepler line of cases. For the reasons given earlier, in my respectful view the Commission fell into error of law in so doing.³²

92 Justice Parker found that whether or not the proposed amendment to the award was within power, depended on whether there was a sufficient relationship between the order, in that case the proposed amendment to the award, and the refusal of the employer to employ a class of persons.³³

93 Similarly, in *BHP Billiton Iron Ore Pty Ltd v Construction, Forestry, Mining*³⁴ Le Miere J held, with the concurrence of Wheeler and Pullin JJ:

A refusal by an employer in an industry to employ a person may be an industrial matter even though that person is not employed by the employer and had never been employed by that employer in the past. Further, an employer may be obliged when seeking to employ a person in a vacancy to make an offer of employment to a particular person: *RGC Mineral Sands v Construction, Mining, Energy, Timberyards, Sawmills, Woodworkers Union of Australia WA Branch* (2000) 80 WAIG 2438 at 2445 per Parker J. The effect of s 23(1) of the Act is that the commission has power to 'deal with' the industrial matter constituted by the refusal to employ a person. Once the jurisdiction of the Commission is enlivened it has the power to make an order to 'deal with' the industrial matter. Any order made by the Commission must be sufficiently related to the jurisdictional fact enlivening the Commission's jurisdiction, that is the refusal of the employer to employ the person: see *RGC Mineral Sands v CFMEU* (supra) per Parker J. An order to employ a person is sufficiently related to the industrial matter constituted by a refusal to employ that person so as to be within the power of the Commission to deal with that industrial matter.³⁵

94 The principle of the *Pepler* cases, as explained and qualified in *RGC Mineral Sands* and the *Brandis* case is that any order made by the Commission must be sufficiently related to the jurisdictional fact enlivening the Commission's jurisdiction, in this case the refusal of the Director General to employ Mr Buttery.

95 An order to pay compensation is sufficiently related to the refusal of the employer to employ the person if it 'deals with' the refusal to employ the person by ordering the employer to employ the person and, upon the person becoming employed, pay to the person an amount representing the loss to the person arising from the employer's refusal to employ them.

96 That conclusion is consistent with all of the authorities to which we have referred. Indeed, it is supported by *Pepler's* case. In *Pepler's* case, the court did not doubt the power of the Commission to order compensation incidentally to an order for re-employment of a dismissed employee, and therefore to order compensation incidentally to an order for

³¹ *RGC Mineral Sands Ltd v Construction, Mining, Energy, Timberyards, Sawmills, Woodworkers Union of Australia (WA Branch)* (2000) 80 WAIG 2437 [77].

³² *RGC Mineral Sands Ltd v Construction, Mining, Energy, Timberyards, Sawmills, Woodworkers Union of Australia (WA Branch)* (2000) 80 WAIG 2437 [80].

³³ *RGC Mineral Sands Ltd v Construction, Mining, Energy, Timberyards, Sawmills, Woodworkers Union of Australia (WA Branch)* (2000) 80 WAIG 2437 [83].

³⁴ *BHP Billiton Iron Ore Pty Ltd v Construction, Forestry, Mining & Energy Union* (2006) 86 WAIG 1193 [78] commonly known as *Brandis* case.

³⁵ *BHP Billiton Iron Ore Pty Ltd v Construction, Forestry, Mining & Energy Union* (2006) 86 WAIG 1193 [78].

employment of a worker unfairly refused employment. The point of the case was that the Commission did not have power to order compensation to a dismissed employee when the Commission did not order re-employment of the dismissed employee.

97 In the circumstances of this case, there is a sufficient relationship between the compensation order and the refusal of the Director General to employ Mr Buttery so that the compensation order is within the power of the Commission to 'deal with' the relevant industrial matter - the refusal of the Director General to employ Mr Buttery.

98 Ground 2 of the appeal is not made out.

Conclusion

99 The appeal should be dismissed.

I certify that the preceding paragraph(s) comprise the reasons for decision of the Western Australian Industrial Appeal Court.

TW

Associate to the Honourable Justice Buss

29 JANUARY 2021

2021 WAIRC 00024

APPEAL AGAINST THE DECISION OF THE FULL BENCH IN FBA 15 OF 2018 GIVEN ON 17 OCTOBER 2019

WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT

PARTIES

DIRECTOR GENERAL, DEPARTMENT OF EDUCATION

APPELLANT

-v-

THE STATE SCHOOL TEACHERS' UNION OF WA (INCORPORATED)

RESPONDENT

CORAM

BUSS J
MURPHY J
LE MIERE J

DATE

TUESDAY, 2 FEBRUARY 2021

FILE NO/S

IAC 2 OF 2019

CITATION NO.

2021 WAIRC 00024

Result

Order Issued

Representation

Appellant

Mr R J Andretich (of counsel)

Respondent

No Appearance

Order

It is ordered that:

1. The appeal is dismissed.

[L.S.]

(Sgd.) S KEMP,
Clerk of Court.

FULL BENCH—Unions—Cancellation of registration—

2021 WAIRC 00014

APPLICATION TO CANCEL THE REGISTRATION OF THE PRINTING AND ALLIED TRADES EMPLOYERS'
ASSOCIATION OF WESTERN AUSTRALIA (UNION OF EMPLOYERS)

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

CITATION	:	2021 WAIRC 00014
CORAM	:	CHIEF COMMISSIONER P E SCOTT COMMISSIONER D J MATTHEWS COMMISSIONER T B WALKINGTON
HEARD	:	MONDAY, 18 JANUARY 2021
DELIVERED	:	TUESDAY, 19 JANUARY 2021
FILE NO.	:	APPL 61 OF 2020
BETWEEN	:	THE REGISTRAR, WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
		Applicant
		AND
		THE PRINTING AND ALLIED TRADES EMPLOYERS' ASSOCIATION OF WESTERN AUSTRALIA (UNION OF EMPLOYERS)
		Respondent

CatchWords	:	Industrial law (WA) – Application by the Registrar to cancel the registration of an organisation on grounds the organisation is defunct
Legislation	:	<i>Industrial Relations Act 1979</i> (WA), s 27(1)(d), s 63, s 71, s 71(5), s 73(12) <i>Industrial Relations Commission Regulations 2005</i> (WA), reg 37, reg 76(3)
Result	:	Order made
Representation:		
Applicant	:	Mr J Carroll, of counsel on behalf of the applicant
Respondent	:	No appearance

Case(s) referred to in reasons:

The Registrar v Master Hairdressers' Association of WA, Industrial Union of Employers [2004] WAIRC 11936; (2004) 84 WAIG 2190

Reasons for Decision

- 1 This is an application by the Registrar of the Western Australian Industrial Relations Commission (Commission) for the cancellation of the registration of The Printing and Allied Trades Employers' Association of Western Australia (Union of Employers) (PATEA) on the ground that the organisation is defunct.
- 2 The matter has been brought to the Commission in Court Session in accordance with s 73(12) of the *Industrial Relations Act 1979* (WA) (the Act). That section requires that:

The Commission in Court Session must cancel the registration of an organisation if it is satisfied on the application of the Registrar that –

 - (a) the number of members of the organisation or, the number of employees of the members of the organisation would not entitle it to registration under section 53 or section 54, as the case may be; or
 - (b) the organisation is defunct; or
 - (c) the organisation has, in the manner prescribed, requested that its registration be cancelled.
- 3 Regulation 76 (3) of the *Industrial Relations Commission Regulations 2005* (WA) requires that '[t]he application is to be served on the organisation or association the registration of which is sought to be cancelled'. In this case, for the reasons set out below, there appears to be no person or organisation, and difficulty in identifying the address of the organisation, for the purpose of service. An organisation formerly associated with the PATEA has not responded to a request to act on its behalf. Therefore, the requirement for service is waived in accordance with reg 37 and provisions for public notices have been made in lieu of service.
- 4 Notice of the application and of the hearing of this matter were published on the Commission's website on 8 December 2020 and in the Western Australian Industrial Gazette of 23 December 2020. The notices invited anyone wishing to object to the application to appear before the Commission in Court Session at the hearing. No one has sought to appear nor has any objection been filed or notified to the Registrar.

- 5 In the circumstances, it is appropriate that the Commission proceeds to deal with the matter in the absence of the PATEA, in accordance with s 27(1)(d) of the Act. In support of the application, Susan Ivey Bastian, the Registrar, made a statutory declaration on 30 November 2020 in which she recorded that the PATEA:
- (1) Has not submitted financial returns or officers and membership returns for at least 10 years;
 - (2) May have been subsumed by or merged with its national affiliated organisation, the Printing Industries Association of Australia (PIAA) some years ago;
 - (3) Has not conducted elections for membership of its Executive Committee for around 10 years; and
 - (4) Has no funds.
- 6 In the absence of being able to identify and contact any person directly involved with the PATEA, officers of the Commission, including the Registrar, have contacted the PIAA a number of times over the last 10 years to attempt to clarify and resolve issues associated with the registration of the PATEA.
- 7 Most recently, in 2019, the PIAA advised that it was not prepared to act as a respondent or accept service on behalf of the PATEA in relation to any application that the Registrar might make to deregister the PATEA. However, the PIAA indicated, in an email dated 15 May 2019, its support for the cancellation of the registration.

Consideration

- 8 Where the Commission in Court Session is satisfied that an organisation is defunct, in accordance with s 73(12) of the Act, it is required to cancel the registration of the organisation. The provision is not discretionary but is mandatory where the circumstances set out in that section are met (*The Registrar v Master Hairdressers' Association of WA, Industrial Union of Employers* [2004] WAIRC 11936; (2004) 84 WAIG 2190). An organisation is 'defunct' within the meaning of s 73(12)(b) if it is 'no longer operative' (see the Macquarie Dictionary, 3rd Edition).
- 9 Taking account of all the information provided by the Registrar including that the PATEA has not lodged returns required for its registration pursuant to the Act, has not conducted elections for membership of its Executive Committee for many years and has no funds, it is clear that the PATEA has not been operational for some years and is defunct.
- 10 In those circumstances, the Commission in Court Session is required to cancel the PATEA's registration. An order will issue accordingly.

2021 WAIRC 00015

APPLICATION TO CANCEL THE REGISTRATION OF THE PRINTING AND ALLIED TRADES EMPLOYERS' ASSOCIATION OF WESTERN AUSTRALIA (UNION OF EMPLOYERS)

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THE REGISTRAR, WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

APPLICANT

-and-

THE PRINTING AND ALLIED TRADES EMPLOYERS' ASSOCIATION OF WESTERN AUSTRALIA (UNION OF EMPLOYERS)

RESPONDENT

CORAM

COMMISSION IN COURT SESSION
CHIEF COMMISSIONER P E SCOTT
COMMISSIONER D J MATTHEWS
COMMISSIONER T B WALKINGTON

DATE

TUESDAY, 19 JANUARY 2021

FILE NO/S

APPL 61 OF 2020

CITATION NO.

2021 WAIRC 00015

Result

Order made

Appearances

Applicant

Mr J Carroll, of counsel on behalf of the applicant

Respondent

No appearance

Order

This matter having come on for hearing before the Commission in Court Session on 18 January 2021, and having heard Mr J Carroll, of counsel on behalf of the applicant, the Commission in Court Session, pursuant to the powers conferred on it under the *Industrial Relations Act 1979* (WA), hereby orders —

THAT the registration of The Printing and Allied Trades Employers' Association of Western Australia (Union of Employers) be and is hereby cancelled on and from 19 January 2021.

(Sgd.) P E SCOTT,
Chief Commissioner,

[L.S.]

For and On behalf of the Commission In Court Session.

2021 WAIRC 00012

APPLICATION TO CANCEL THE REGISTRATION OF SEAMEN'S UNION OF AUSTRALIA, WEST AUSTRALIA
BRANCH

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

CITATION : 2021 WAIRC 00012
CORAM : CHIEF COMMISSIONER P E SCOTT
 COMMISSIONER D J MATTHEWS
 COMMISSIONER T B WALKINGTON
HEARD : MONDAY, 18 JANUARY 2021
DELIVERED : TUESDAY, 19 JANUARY 2021
FILE NO. : APPL 60 OF 2020
BETWEEN : THE REGISTRAR, WESTERN AUSTRALIAN INDUSTRIAL RELATIONS
 COMMISSION
 Applicant
 AND
 SEAMEN'S UNION OF AUSTRALIA, WEST AUSTRALIA BRANCH
 Respondent

CatchWords : Industrial law (WA) – Application by the Registrar to cancel the registration of an organisation on grounds the organisation is defunct
 Legislation : *Industrial Relations Act 1979* (WA), s 27(1)(d), s 63, s 71, s 71(5), s 73(12)
Industrial Relations Commission Regulations 2005 (WA), reg 37, reg 76(3)
 Result : Order made
Representation:
 Applicant : Mr J Carroll, of counsel on behalf of the applicant
 Respondent : No appearance

Case(s) referred to in reasons:

The Registrar v Master Hairdressers' Association of WA, Industrial Union of Employers [2004] WAIRC 11936; (2004) 84 WAIG 2190

Reasons for Decision

- 1 This is an application by the Registrar of the Western Australian Industrial Relations Commission (Commission) for the cancellation of the registration of the Seamen's Union of Australia, West Australia Branch (SUA) on the ground that the organisation is defunct.
- 2 The matter has been brought to the Commission in Court Session in accordance with s 73(12) of the *Industrial Relations Act 1979* (WA) (the Act). That section requires that:

The Commission in Court Session must cancel the registration of an organisation if it is satisfied on the application of the Registrar that –

 - (a) the number of members of the organisation or, the number of employees of the members of the organisation would not entitle it to registration under section 53 or section 54, as the case may be; or
 - (b) the organisation is defunct; or
 - (c) the organisation has, in the manner prescribed, requested that its registration be cancelled.
- 3 Regulation 76 (3) of the *Industrial Relations Commission Regulations 2005* (WA) requires that '[t]he application is to be served on the organisation or association the registration of which is sought to be cancelled'. In this case, for the reasons set out below, there appears to be no person or organisation, and difficulty in identifying the address of the organisation, for the purpose of service. An organisation formerly associated with the SUA has not responded to a request to act on its behalf. Therefore, the requirement for service is waived in accordance with reg 37 and provisions for public notices have been made in lieu of service.

- 4 Notice of the application and of the hearing of this matter were published on the Commission's website on 8 December 2020 and in the Western Australian Industrial Gazette of 23 December 2020. The notices invited anyone wishing to object to the application to appear before the Commission in Court Session at the hearing. No one has sought to appear nor has any objection been filed or notified to the Registrar.
- 5 The circumstances also make it appropriate that the Commission proceeds to deal with the matter in the absence of the SUA, in accordance with s 27(1)(d) of the Act.
- 6 In support of the application, Susan Ivey Bastian, the Registrar, made a statutory declaration and a supplementary statutory declaration in which she recorded that officers of the Commission including herself have had contact with the SUA and with associated organisations over a number of years regarding:
 - (1) The SUA's amalgamation at a national level;
 - (2) The status of the SUA and the officer, membership and financial returns required by the Act for the purpose of maintaining its registration; and
 - (3) The validity of the certificate issued pursuant to s 71 of the Act in 1987.
- 7 The documents attached to Ms Bastian's statutory declarations indicate that the SUA was registered pursuant to the Act in 1986. In 1987, a certificate pursuant to s 71(5) of the Act was issued, identifying the counterpart federal body as the 'Seamen's Union of Australia'.
- 8 According to a statutory declaration made by Will Tracey, Assistant State Secretary of the Maritime Union of Australia, Western Australian Branch on 25 October 2011, in 1993, the Seamen's Union of Australia amalgamated with the Waterside Workers' Federation (WWF) at a national level. However, the s 71 certificate referred to above appears to have lapsed because no equivalent change has been made to the rules of the SUA, there now being no counterpart federal body to the new, amalgamated organisation.
- 9 The SUA submitted its last financial return in 1999, and an amount of \$450,047.22 was recorded in that return as being 'contributions received', and the same amount was recorded as a payment to 'National office remittances'. The return identified no other assets held by the SUA.
- 10 In his statutory declaration, referred to above, Mr Tracey stated that the 'SUA amalgamated with the WWF in 1993 therefore all membership returns for 2010 and 2011 will be registered under the banner of the Maritime Union of Australia'. No membership or officer returns have been filed with the Registrar, as required by s 63 of the Act, since then.
- 11 Over subsequent years, the Registrar and officers of the Commission continued to attempt to communicate with a number of people from organisations associated with the SUA with the view to resolving the lack of returns. This included correspondence indicating that in the absence of resolution of the issues, there was the prospect that the Registrar would be obliged to apply for the SUA's deregistration.
- 12 By letter dated 14 April 2014, the WA Branch Secretary of The Maritime Union of Australia Western Australian Branch, Mr Christy Cain, wrote to the Registrar confirming that neither the SUA nor the MUA had the intention of maintaining the SUA's registration in Western Australia and that it would not seek to appear in any proceedings before the Commission to maintain the SUA's registration.
- 13 On 11 April 2019, an officer of the Commission emailed the Secretary of The Maritime Union of Australia Western Australian Branch and advised of the Registrar's intention to file this application, and requested support, including asking if the MUA would act as the respondent on behalf of the SUA. No response has been received.

Consideration

- 14 Where the Commission in Court Session is satisfied that an organisation is defunct, in accordance with s 73(12) of the Act, it is required to cancel the registration of the organisation. The provision is not discretionary but is mandatory where the circumstances set out in that section are met (*The Registrar v Master Hairdressers' Association of WA, Industrial Union of Employers* [2004] WAIRC 11936; (2004) 84 WAIG 2190). An organisation is 'defunct' within the meaning of s 73(12)(b) if it is 'no longer operative' (see the Macquarie Dictionary, 3rd Edition).
 - 15 In this case, the SUA has no funds or assets, and it appears to have no members as they were seemingly part of the membership to be 'registered under the banner of the Maritime Union of Australia' (MUA) from 2010.
 - 16 We have taken account of the correspondence from the MUA referred to in paragraph [12] in particular along with the lack of any opposition to the application and in view of the background provided by the Registrar and contained within the correspondence, we conclude that the SUA has not been operational for some years and is defunct.
 - 17 In those circumstances, the Commission in Court Session is required to cancel the SUA's registration. An order will issue accordingly.
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2021 WAIRC 00013

**APPLICATION TO CANCEL THE REGISTRATION OF SEAMEN'S UNION OF AUSTRALIA, WEST AUSTRALIA
BRANCH**

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION THE REGISTRAR, WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	APPLICANT
	-and-	
	SEAMEN'S UNION OF AUSTRALIA, WEST AUSTRALIA BRANCH	RESPONDENT
CORAM	COMMISSION IN COURT SESSION CHIEF COMMISSIONER P E SCOTT COMMISSIONER D J MATTHEWS COMMISSIONER T B WALKINGTON	
DATE	TUESDAY, 19 JANUARY 2021	
FILE NO/S	APPL 60 OF 2020	
CITATION NO.	2021 WAIRC 00013	

Result	Order made
Appearances	
Applicant	Mr J Carroll, of counsel on behalf of the applicant
Respondent	No appearance

Order

This matter having come on for hearing before the Commission in Court Session on 18 January 2021, and having heard Mr J Carroll, of counsel on behalf of the applicant, the Commission in Court Session, pursuant to the powers conferred on it under the *Industrial Relations Act 1979* (WA), hereby orders —

THAT the registration of the Seamen's Union of Australia, West Australia Branch be and is hereby cancelled on and from 19 January 2021.

(Sgd.) P E SCOTT,
Chief Commissioner,

[L.S.]

For and On behalf of the Commission In Court Session.

2021 WAIRC 00016

**APPLICATION TO CANCEL THE REGISTRATION OF THE WESTERN AUSTRALIAN BRANCH OF THE
COMMONWEALTH STEAMSHIP OWNERS' ASSOCIATION, INDUSTRIAL UNION OF EMPLOYERS (FREMANTLE)**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

CITATION	:	2021 WAIRC 00016
CORAM	:	CHIEF COMMISSIONER P E SCOTT COMMISSIONER D J MATTHEWS COMMISSIONER T B WALKINGTON
HEARD	:	MONDAY, 18 JANUARY 2021
DELIVERED	:	TUESDAY, 19 JANUARY 2021
FILE NO.	:	APPL 62 OF 2020
BETWEEN	:	THE REGISTRAR, WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
		Applicant
		AND
		THE WESTERN AUSTRALIAN BRANCH OF THE COMMONWEALTH STEAMSHIP OWNERS' ASSOCIATION, INDUSTRIAL UNION OF EMPLOYERS (FREMANTLE)
		Respondent

CatchWords	:	Industrial law (WA) – Application by the Registrar to cancel the registration of an organisation on grounds the organisation is defunct
Legislation	:	<i>Industrial Relations Act 1979</i> (WA), s 27(1)(d), s 63, s 71, s 71(5) s 73(12) <i>Industrial Relations Commission Regulations 2005</i> (WA), reg 37, reg 76(3)
Result	:	Order made
Representation:		
Applicant	:	Mr J Carroll, of counsel on behalf of the applicant
Respondent	:	No appearance

Case(s) referred to in reasons:

The Registrar v Master Hairdressers' Association of WA, Industrial Union of Employers [2004] WAIRC 11936; (2004) 84 WAIG 2190

Reasons for Decision

- This is an application by the Registrar of the Western Australian Industrial Relations Commission (Commission) for the cancellation of the registration of The Western Australian Branch of the Commonwealth Steamship Owners' Association, Industrial Union of Employers (Fremantle) (CSOA) on the ground that the organisation is defunct.
- The matter has been brought to the Commission in Court Session in accordance with s 73(12) of the *Industrial Relations Act 1979* (WA) (the Act). That section requires that:

The Commission in Court Session must cancel the registration of an organisation if it is satisfied on the application of the Registrar that –

 - the number of members of the organisation or, the number of employees of the members of the organisation would not entitle it to registration under section 53 or section 54, as the case may be; or
 - the organisation is defunct; or
 - the organisation has, in the manner prescribed, requested that its registration be cancelled.
- Regulation 76 (3) of the *Industrial Relations Commission Regulations 2005* (WA) requires that '[t]he application is to be served on the organisation or association the registration of which is sought to be cancelled'. In this case, for the reasons set out below, there appears to be no person or organisation, and difficulty in identifying the address of the organisation, for the purpose of service. Therefore, the requirement for service is waived in accordance with reg 37 and provisions for public notices have been made in lieu of service.
- Notice of the application and of the hearing of this matter were published on the Commission's website on 8 December 2020 and in the Western Australian Industrial Gazette of 23 December 2020. The notices invited anyone wishing to object to the application to appear before the Commission in Court Session at the hearing. No person has sought to appear at the hearing nor has the Registrar or the Commission been advised of any objections.
- In support of the application, Susan Ivey Bastian, the Registrar, made a statutory declaration on 4 December 2020 in which she recorded information regarding contact between the Registrar and officers of the Commission with the CSOA and associated organisations.
- That information indicates that the CSOA has not lodged annual officer and membership returns and financial returns required by the Act for a number of years.
- As a consequence of the returns not being lodged, the Registrar and officers of the Commission have regularly sought information about the CSOA with a view to ascertaining if it is still operating. The last financial return indicated that the CSOA had total assets valued at less than \$20.00. The information indicates that the CSOA no longer operates from the premises at the address in the Commission's records.
- Information provided by the Australian Shipowners Industrial Association Limited indicates that the related national body of the CSOA was voluntarily deregistered by the Australian Industrial Relations Commission in 1994.

Consideration

- Where the Commission in Court Session is satisfied that an organisation is defunct, in accordance with s 73(12) of the Act, it is required to cancel the registration of the organisation. The provision is not discretionary but is mandatory where the circumstances set out in that section are met (*The Registrar v Master Hairdressers' Association of WA, Industrial Union of Employers* [2004] WAIRC 11936; (2004) 84 WAIG 2190). An organisation is 'defunct' within the meaning of s 73(12)(b) if it is 'no longer operative' (see the Macquarie Dictionary, 3rd Edition).
 - Having considered the information provided by Ms Bastian in her statutory declaration and the attached documents, it is clear that the CSOA ceased operating some years ago and is defunct. In those circumstances, the Commission in Court Session is required to cancel the CSOA's registration. An order will issue accordingly.
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2021 WAIRC 00017

**APPLICATION TO CANCEL THE REGISTRATION OF THE WESTERN AUSTRALIAN BRANCH OF THE
COMMONWEALTH STEAMSHIP OWNERS' ASSOCIATION, INDUSTRIAL UNION OF EMPLOYERS
(FREMANTLE)**

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION THE REGISTRAR, WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	APPLICANT
	-and-	
	THE WESTERN AUSTRALIAN BRANCH OF THE COMMONWEALTH STEAMSHIP OWNERS' ASSOCIATION, INDUSTRIAL UNION OF EMPLOYERS (FREMANTLE)	RESPONDENT
CORAM	COMMISSION IN COURT SESSION CHIEF COMMISSIONER P E SCOTT COMMISSIONER D J MATTHEWS COMMISSIONER T B WALKINGTON	
DATE	TUESDAY, 19 JANUARY 2021	
FILE NO/S	APPL 62 OF 2020	
CITATION NO.	2021 WAIRC 00017	

Result	Order made
Appearances	
Applicant	Mr J Carroll, of counsel on behalf of the applicant
Respondent	No appearance

Order

This matter having come on for hearing before the Commission in Court Session on 18 January 2021, and having heard Mr J Carroll, of counsel on behalf of the applicant, the Commission in Court Session, pursuant to the powers conferred on it under the *Industrial Relations Act 1979* (WA), hereby orders —

THAT the registration of The Western Australian Branch of the Commonwealth Steamship Owners' Association, Industrial Union of Employers (Fremantle) be and is hereby cancelled on and from 19 January 2021.

(Sgd.) P E SCOTT,
Chief Commissioner,

[L.S.]

For and On behalf of the Commission In Court Session.

CEREMONIAL ADDRESSES—

2021 WAIRC 00034

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BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

CEREMONIAL SITTING

CEREMONIAL SITTING TO FAREWELL
CHIEF COMMISSIONER P E SCOTT

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON THURSDAY, 21 JANUARY 2021, AT 3.30 PM

CHIEF COMMISSIONER P E SCOTT

SENIOR COMMISSIONER S J KENNER

COMMISSIONER T EMMANUEL

COMMISSIONER D J MATTHEWS

COMMISSIONER T B WALKINGTON

MR P COOKE appeared for the Australian Mines and Metals Association

MR P MOSS appeared for the Chamber of Commerce and Industry of Western Australia

MR O WHITTLE appeared for UnionsWA

THE HON W J JOHNSTON MLA appeared for the Minister for Industrial Relations

MR S HARBEN appeared for the Industrial Relations' Society of Western Australia

MR T HAMMOND appeared for the Western Australian Bar Association

CAV M SARACENI appeared for the Law Society of Western Australia

KENNER SC: Welcome to the ceremonial sitting of the Commission to mark the retirement of Chief Commissioner Pamela Scott, who retires at midnight next Tuesday, 26 January 2021. On behalf of the Commission, I especially welcome members of the Chief Commissioner's family. Her husband Steve, her brother Paul and his wife Om, her nephew Edward, and her niece Melinda. I also welcome the Chief Commissioner's friends who are with us today.

I acknowledge and welcome those at the Bar table, including the Honourable Bill Johnston MLA, Minister for Industrial Relations, Mr Owen Whittle on behalf of UnionsWA, Mr Paul Moss on behalf of the Chamber of Commerce and Industry, Mr Peter Cook on behalf of the Australian Mines and Metals Association, Ms Maria Saraceni on behalf of the Law Society, Mr Tim Hammond on behalf of the Bar Association, and Mr Saul Harben on behalf of the Industrial Relations Society.

I'm also delighted to welcome their Honours Peter Quinlan CJ, Graeme Murphy J, and Rene Le Miere J. I'm also very pleased to welcome former members of the Commission who are attending today, including former Acting President and Senior Commissioner her Honour Jennifer Smith J, former Acting President and Senior Commissioner the Honourable Gavin Fielding AM, Former Acting President Mark Ritter SC, former Chief Commissioners Bill Coleman AM and Tony Beech, former Senior Commissioner Jack Gregor, and former Commissioners Sally Cawley, Bob George, Rodney Gifford and Stephanie Mayman.

And I also note the presence of Deputy Presidents Melanie Binet and Abbey Beaumont and Commissioner Bruce Williams of the Fair Work Commission and Industrial Magistrate her Honour Jennifer Hawkins. Welcome to you all. One apology has been received from his Honour Kenneth Martin J who is unable to attend this afternoon.

It's a mark of the Chief Commissioner's modesty that she was quite reluctant to have a farewell sitting today. It took some persuasion from various quarters who will remain unnamed, one of whom may be here today, to change her mind. And it's very pleasing that she has, in fact, done so.

The Chief Commissioner was appointed a Commissioner in December 1994 and she was welcomed to this Bench in January 1995. On 17 October 2009, the Chief Commissioner was appointed the Acting Senior Commissioner and the Chief Commissioner on 27 June 2016. At just over 26 years of service this makes the Chief Commissioner the second longest serving member of the Commission. A special achievement in and of itself on a tribunal whose predecessor the Arbitration Court of Western Australia was first established under the Industrial Conciliation and Arbitration Act of 1900.

One might be forgiven for thinking that the Chief Commissioner's appointment to the Commission was her first appointment. However, to an extent the Chief Commissioner's career had come full circle on her appointment as a Commissioner. At the tender age of 22 her interest in industrial relations having already been kindled the Chief Commissioner was appointed as a research officer at the Commission. She also served a short period as Acting Clerk to former Commissioner, Senior Commissioner and Chief Commissioner the late Bruce Collier AM, an opportunity that she relished.

From those early days the Chief Commissioner's career quickly progressed when she was appointed as an industrial advocate at the then Confederation of WA Industry in October 1980. Qualified with degrees in Arts and later Law she was a very able and effective advocate for employers in this State and became the Confederation's Manager of Industrial Relations and concurrently head of the Retail Traders Association of Western Australia. Juggling those two jobs obviously prepared the Chief Commissioner well for her later appointment to the Commission.

Since her appointment, the Chief Commissioner has presided over industrial disputes and industrial matters in a broad spectrum of industry portfolios in both the private and public sectors and most of the Commission's constituent authorities. Of note is the Public Service Arbitrator jurisdiction, which the Chief Commissioner has held from her first appointment to that office in June 1998 and almost continuously to date.

In this area, which now comprises a substantial body of the Commission's work, the Chief Commissioner has conciliated and arbitrated many significant cases. These have included salary ranges and career progression for specified callings in the major public service awards. She has also dealt with many important work value cases especially in the health sector, an area of the Chief Commissioner's speciality.

A substantial increase in responsibility and workload of the Chief Commissioner and to a lesser extent the Senior Commissioner followed the abolition of the President's position in December 2018. This has been an additional heavy burden on the Chief Commissioner. However, in all of what she has done the Chief Commissioner has displayed good grace, impeccable fairness to all concerned, a sense of humour, and unfailing courtesy.

On the administration side modernising and reforming has been a feature of the Chief Commissioner's time in office. She has been responsible for a range of initiatives to better meet the needs of those who appear before us. This has included consultative processes to seek the views of representatives and major parties about practices and procedures of the Commission.

To help parties who are unrepresented, a challenge for all Courts and tribunals, the Chief Commissioner instigated information sessions at the Employment Law Centre. She has also been keen to promote greater professional development amongst Commissioners. All in all, the Chief Commissioner's contribution to industrial relations in this State has been longstanding and significant. She has been a large part of the institution of the Commission itself for over a quarter of a century.

Outside of the Commission the Chief Commissioner has, as some of you may know, developed in more recent times a great fondness for life in the country. I know this because the Chief Commissioner and I have had many enjoyable conversations about such weighty and important matters as water tanks and fencing. I also know that the Chief Commissioner delights in observing kangaroos some with joeys as they forage and bound about their property in the early evenings.

Perhaps as an indication of the impending retirement of the Chief Commissioner she placed a special item on her wish list for Christmas just passed, a chainsaw. I can report to you all that she is now the proud owner of one. Many enjoyable years lay ahead for the Chief Commissioner and Steve in these country pursuits.

Pam, through your stewardship you leave the Commission in good stead. Whilst today as a celebration of your service your loss will be felt. Your warm laughter in the level 19 kitchen and in the morning tearoom will be missed. On behalf of myself and my fellow Commissioners thank you for being a colleague over these past years and for your friendship. We wish you a long happy and healthy retirement.

Minister.

JOHNSTON, MR: I come here on behalf of the Government of Western Australia today to pay tribute to the retiring Chief Commissioner. It's interesting that, of course, we actually first met when the Chief Commissioner was at the Retail Traders Association and the Chamber of Commerce and Industry and I was a newly minted industrial officer for the Shop Distributive and Allied Employees Association. What that means is that we were representing opposite parties in matters back then.

But it's a tribute to Pam Scott that she's able to bring a clear mind and a sharp understanding of the law to her role at the Chamber of Commerce on behalf of the members that she represented and was able to often better the newly struck industrial officer of the SDA. But she brought that mind to the Commission and for all these years, 26 years, has contributed her capacity to Australia's unique system of compulsory arbitration. And the community has benefited greatly from Commissioner Scott's ability and capacity that she's brought here to the Commission.

As a practitioner in industrial relations, I often said to people that if you're looking for justice you had to wait for the afterlife because here we're dealing with the law and sometimes the law doesn't provide justice. But the good news for the system that we use in Australia is we are aiming to provide fairness. Fairness I mean to both sides of the employment relationship, so that there's a fair outcome for disputes that occur and fair conditions of employment that are both fair and reasonable for both sides of the employment contract. And I know from experience that Commissioner Scott was able to bring a very sharp mind to the processes here at the Commission.

It would have been, you know, as Minister I sadly have only really in the industrial relations area have one achievement, which is the process of abolishing the position of President, and I wasn't able to bring other reforms through that would have allowed Commissioner Scott to continue in office beyond this year.

And, you know, for continuing my inadequate representation from the SDA to my role as Minister I apologise to you, Commissioner, and to all other people that we weren't able to achieve those necessary reforms. But can I say that nonetheless we're still deeply committed to those reforms and if we're lucky enough to form a Government after the March election we hope to bring those necessary reforms back to the Parliament and hope that we can be more successful in negotiating those through the Parliament because there are many reforms that are needed.

And I want to congratulate Commissioner Scott for her role in modernising the practices of the Commission to make them more accessible and more relevant to modern society. And the fact that, you know, that work is continuing until now is a credit to Commissioner Scott.

Now, this is an unusual situation because Commissioner Scott is clearly retiring from the Bench but I don't imagine that she's retiring from active life. And I'm sure that many opportunities that will be presented to Commissioner Scott in the future by Western Australian industry because I think it would be tragic to lose her capacity and ability from the benefit of Western Australia and Western Australian industry. So, I hope that if there - you know, for those that are watching the proceedings today they take note that I think that Commissioner Scott has a strong ability to work for the benefit of the community in the future in whatever capacity she believes is best suited to her.

The Commission is privileged to have many people of talent that come here and serve. They choose this pathway rather than another one because they see this as an opportunity to be of service to the community. And I want to on behalf of the Government and on my own behalf thank Pam Scott for that 26 years of service to the people of Western Australia.

KENNER SC: Thank you, Minister.

Mr Whittle.

WHITTLE, MR: Thank you, Senior Commissioner.

It is a great honour to rise on behalf of UnionsWA and the working people of this State to congratulate the Chief Commissioner on her retirement today. And I'm pleased to have this unique opportunity to express our thanks on behalf of UnionsWA, our executive council, and all our affiliated unions to your contribution to this very important institution and more broadly to the State of Western Australia.

You've clearly had a long and distinguished service in the field of industrial relations and it's hard to underestimate the changes that have occurred in the field since you began your career let alone your time as Commissioner in 1994. I reflect that it's changed quite significantly in my time in the union movement and I think I was in primary school at the time you were first appointed to the Commission, so I certainly feel somewhat inadequate in expressing the changes from my perspective where they must be much greater from yours.

But in acknowledging your time as a Chief Commissioner, as the Minister mentioned, it's probably come up sooner than many of us would have hoped but obviously that doesn't - and even though you had some reluctance in holding this ceremony, according to the Senior Commissioner, that's not going to stop I suppose myself and many of the stakeholders in embarrassing you in front of everyone else in terms of your career and the good work that's been done in this institution.

First and foremost, I think it's worth reflecting that your appointment made you the - it was a ground-breaking appointment and that made you the first woman to be appointed Chief Commissioner. And I think that's important to acknowledge because industrial relations has long had a history of being male dominated. But it is also a field where much work has been done and still needs to be done for working women and it's important to break those stereotypes in this field.

And I think all of us who work in or around industrial relations have found the last 12 months to be a difficult period. And I can only imagine from the perspective of the Commission that that has been the case as well. From a union perspective as Chief Commissioner you've managed the Commission's response to a difficult period of time very well. It was certainly a challenging period for us when you closed your premises and you had staff working remotely. There were no doubt more challenging matters presenting to unions and to the Commission in terms of your workload.

But in responding and the general order issued in May 2020 that was a vital general order to ensure that workers in the State system had access to the Jobkeeper scheme and if it wasn't for the Commission's swift response during the pandemic many workers would have been left worse off, if it wasn't for the swift actions of this Commission and that's appreciated by us.

Additionally, the general order in April 2020 to allow all private sector State system employees to take unpaid pandemic leave, annual leave on half pay and annual leave in advance during the pandemic was also a vital mechanism, which assisted workers at a very difficult period, and we express our appreciation for the Commission's work on that.

Aside from the more immediate kind of year of chaos that's been upon us I think we can look back at your more substantial achievements during your time on the Commission as well. Moving in 2018 on the Commission's own motion to establish a new principle for equal remuneration for men and women for work of equal or comparable value was an important move and one that now forms an important part of the State wage fixing principles. Also, by the reform that again one that is well appreciated by the union movement and our affiliated unions.

The move to introduce a consultation group, I think it was referenced earlier, I think is a very important forum and one that will prove to smooth out matters in the Commission on behalf of the stakeholders and we hope that that continues and that that important work bears fruit. Also, we appreciate that you've been very generous with your time. You've attended union conferences, shared your perspectives on the Commission's operations to unions, our industrial officers and lawyers, and your time to do that has been well appreciated by ourselves and the general union movement.

We also appreciate the emphasis you placed on access to justice, a very important issue. There are a lot of unrepresented individual employees and small business owners who are unfamiliar with tribunals and the somehow occasionally complex ways that they operate. Initiatives such as the Commission's pro bono scheme are important for vulnerable employees and employers as are the roles of the Employment Law Centre and the John Curtin Law Clinic. We hope that your successes continue the support you've shown for them but also the general principle around those clinics.

We thank yourself and other members of the Commission and appreciate both your Associates and Registry staff for the contribution you all make to this important institution. And may I say again on behalf of UnionsWA and our affiliated unions and working people of this State I wish you all the very best in your well deserved a successful retirement from the Commission.

KENNER SC: Thank you, Mr Whittle.

Mr Moss.

MOSS, MR: Thank you, Senior Commissioner.

I'm honoured to appear on behalf CCIWA in thanking Chief Commissioner Scott for your service and recognising the contribution that you have made to the community as a whole both as a member of the Commission and most recently as Chief Commissioner.

I'd also like to recognise the service that the Chief Commissioner has provided to the business community during your tenure with CCIWA and prior to that the Confederation of WA Industry prior to your appointment to the Commission in '94. And also, in particular the work that you have done in representing the predominantly small businesses which, of course, now make up the majority of the private sector entities represented by the State system. That also formed part of the then Retail Traders Association during your tenure or your assistance with them.

From the perspective of CCI your appointment to the Commission was clearly well deserved. And in appointing Commission members there isn't often a focus on the person's background and the need to maintain balance within the Commission. And whilst this is an important factor ultimately the measure of the individual's success in their role lies with their ability to gain respect of all the relevant parties and impartially fulfil their duties of the role preferably whilst retaining a sense of humour. And I think from the comments in the room today it is very, very clear that, Chief Commissioner, you've achieved that goal.

Whilst it's generally the nature of the Commission matters that at least one, if not all, of the parties may not like the outcome of an individual decision we all have great confidence that whenever we've entered into your hearing rooms we know that we're going to receive a fair hearing and a decision that takes into account both the legislative and the human elements of the matter at hand and for that we thank you.

You joined the Commission at a very tumultuous period in the industrial relations landscape. You joined shortly after the Court Government commenced a series of significant industrial relations reform that dramatically changed the options for regulating employment relationship, not in just Western Australia but also provided a catalyst for further reform in the Federal IR system as well.

And since then, the regulation of the industrial relations system has been through a multitude of change both at the State and the Federal level, which for good or bad depending on who you're asking, has required the Commission to continue to adapt to a changing landscape. The Commission has consistently risen to meet this challenge, which is a testament not only to the quality of its members but also the associates and the Registry staff as well.

Chief Commissioner, during your stewardship the last 12 months has probably provided the most significant test for the Commission's ability to adapt and respond to periods of substantial upheaval. Not only for the Commission itself but the employees and the employers that it ultimately serves.

The capacity for the Commission to adapt quickly to its rapidly changing environment was notable at a time when many other institutions struggled to do so. I particularly reflect on the two general orders issued by the Commission in response to the COVID-19 pandemic. And it highlighted the commitment of both yourself and the Commission to facilitating cooperation between the parties at a time where there was a very strong mutual focus on preserving jobs.

The decision to initiate on its own motion a general order that provides for unpaid pandemic leave and greater flexibility in the taking of annual leave reinforced the proactive nature of this Commission. And, you know, furthermore, the Jobkeeper flexibility general order demonstrated the capacity for the Commission and in particular yourself, Chief Commissioner, to be innovative and develop novel solutions to problems in crafting an order which would work within the restraints of the State IR system. And I would add without that contribution the ability to have that order just simply wouldn't exist and both from an employer perspective and clearly from the employee perspective. These changes were necessary to deal with something that was quite significant and still is.

All of this has reinforced your underlying commitment to both the employees and the employers who are central to the industrial relations system. So, on behalf of CCI I would like to wish you all the best as you embark on the next chapter of your life. Thank you, Chief Commissioner.

KENNER SC: Thank you very much, Mr Moss.

Mr Cook.

COOK, MR: Thank you, Senior Commissioner.

On behalf of the Australian Mines and Metals Association we would like to thank the Commission for providing us with the opportunity of recognising the significant and the outstanding contribution that the Chief Commissioner has made to industrial relations and workplace relations in this State during the course of her career.

We would note that there is much one can say about the contribution of the Chief Commissioner over the course of her career, much, much more than the time available permits. On a personal level I would note that I first met the Chief Commissioner in the early 1980s when I was undertaking an arts degree, probably the first or second year of an arts degree at UWA. I was doing this rigorous course of study on a fulltime basis and that was about six or eight contact hours a week.

Chief Commissioner Scott by contrast was providing industrial relations advice, guidance and representation to a large portfolio of industries as her daytime job and then undertaking much the same course of tertiary study on a part-time basis as her workload permitted. Looking back on this point of comparison perhaps it indicates why one of us ended up as a Chief Commissioner and the other one didn't. As I subsequently found out when I became a colleague of the Chief Commissioner and I was employed by the then Confederation of Western Australian Industry, the Chief Commissioner set the benchmark or the standard in the manner in which she undertook her role as an industrial advocate and later as a manager of industrial relations at the CCIWA as it later became.

One of the accountabilities the Confederation put upon its more senior industrial relations staff was to mentor and assist the more junior members of staff and I was certainly one of those. I had the benefit on a number of occasions and the privilege of accompanying the now Chief Commissioner to this tribunal and to the Industrial Magistrates Court and to watch her represent Confederation members.

Watching the Chief Commissioner as an advocate what one saw were well researched cases, intellectually strong and rigorous arguments that were always presented in a cordial and polite manner. And the employers got the very best of representation, there is no question about that. I would note on behalf of the resources sector that since the advent of the work choices legislation and all constitutional corporations moving into the Federal system our members have had less exposure to the State industrial relations system and perhaps that's a matter of regret but these are issues beyond our control.

We do note that from time to time in all jurisdictions there will be perhaps some controversy between the industrial parties over appointments to industrial tribunals. However, we would say that there has never been that same level of controversy over the appointment of the heads of industrial tribunals. We would say that any fair-minded observer would agree that the Western Australian Industrial Relations Commission has been very well served by the appointments the State Governments from both sides have made in the calibre and capacity of people to lead this tribunal.

We would like to close by submitting the last four years have proved that in 2016 the Barnett Government made an excellent appointment in their choice of Chief Commissioner of the Western Australian Industrial Relations Commission. Chief Commissioner, we wish you and Steve all the best for your retirement. I don't have a mental image of you sitting down at the bowls club enjoying an afternoon tea. I am sure you will continue to make an impressive contribution but nonetheless we thank you for your - we note your retirement, we wish you well on your retirement and we thank you for your outstanding service to this State.

KENNER SC: Thank you very much, Mr Cook.

Ms Saraceni.

SARACENI, MS: May it please the Commission.

First, I'd like to acknowledge the Traditional Custodians of the land on which we meet the Whadjuk people of the Noongar Nation and pay my respects to their Elders past and present.

It is my privilege to appear today on behalf of the Law Society of WA and the legal profession generally as we farewell you, Chief Commissioner Pam Scott. I acknowledge and welcome your family members and friends and colleagues who are present today as well as distinguished guests and members of the Commission and the judiciary. As we've heard and I won't repeat, Chief Commissioner Scott, you've enjoyed a long and distinguished career. Your university qualifications include a Bachelor of Arts from UWA and later a Bachelor of Law from the University of Notre Dame.

You were admitted to practice in 2013. Your standing as a then Senior Commissioner of the Commission meant I believe amongst other things that you were exempted from doing any articles of clerkship or anything of that sort. Like most lawyers you joined the Law Society that same year and you remain a highly valued member of the society.

Some of the ground-breaking firsts that you've achieved have been pioneering and that is partly and obviously because of your gender. And I don't want to go through them in detail but some have been moved or discussed very briefly and that includes your illustrious career in industrial relations since about October 1980 when you were one of the first industrial advocates at what is now CCI and you were the first female in that space and I understand that that created a few issues at the time but you alleviated the concerns that any people had.

I'm also reliably informed that you were the first female advisor of what was then the Confederation of WA Industry. Your promotion then as a team leader, again a first for a woman. And then when you were appointed to industrial relations manager and then also secretary of the Retail Traders Association all as a woman and you were the first in that space.

You worked across various industries, construction, mining, retail and health and your breadth of experience with what was happening at the coalface put you in good stead for your elevation to the Bench. You were appointed a Commissioner some 26 years ago and again whilst at the Commission you've been the first female in lots of spaces. I was standing outside with a few of the retired Commissioners and looking at the black and white photographs and you were the first female Commissioner on the Commission and the photographs evidence that. Again, the first female Senior Commissioner, the first female Chief Commissioner.

You're a commensurate professional, quiet achiever and modest with your achievements. You are also a trained mediator having undertaken mediation training at Harvard Law School. You've conducted various mediations through the employment disputes resolution provisions that work in conjunction with the Commission. And then you've been a public service arbitrator, as has been said, since June 2001 and in that role you have conciliated and arbitrated employment disputes in the public sector. I understand that perhaps and the Commissioner's even - - - spell check that is required or that you imposed to make sure public read public in all the documents that were issued.

Your role at the Commission has always focused on dispute resolution in all different types of issues, both workplace relations and industrial relations. There was some concern going back to 2009 with the introduction of the Fair Work Act as to the Commonwealth grab for power and what it might mean for the purposes of the Industrial Relations Commission of the State.

What would happen to the jurisdiction constitutional corporations and not constitutional corporations but I'm pleased to say that the Commission has found that it still retains jurisdiction through denied contractual benefits claims even for constitutional corporations all through the Industrial Magistrates Court.

And then there's always the Occupational Safety and Health Tribunal which continues as part of this jurisdiction and with the new Act that the Minister put through back in November this year, the Work Health Safety Act, the role that the tribunal will continue. At the time that you were appointed the first female Chief Commissioner the then Attorney General Michael Mischin said that you were highly regarded within the labour relations community for performing duties in a fair and impartial manner.

You've chaired and served on many complex Commission matters, including Full Bench appeals, the annual State wage case. The abolition of the Presidency of the Commission meant that the responsibility for the Full Bench fell to you as Chief Commissioner. I'm not sure whether that entitled you to a higher duties allowance but we won't go into that. The annual State wage cases have over time become more complex and more onerous. As has been mentioned COVID-19 last year was an added complication but under your stewardship the Commission rose to the occasion evidenced by the general orders.

In performing your duties, Chief Commissioner, you've always performed them with the greatest integrity, skill and impartiality. You've built and nurtured important relationships with those that appear in this Commission and this has created more effective communication, consultation and cooperation amongst all stakeholders in workplace relations in this State.

As a member of the Law Society, you've contributed to the Law Society's program of continuing professional development, playing an important role in passing on knowledge and expertise to WA practitioners. And on behalf of the Law Society, I thank you for your valuable contribution.

There are some matters that you were and remain passionate about in industrial relations in this State and your annual reports have reported on them. One of the issues that you have spoken about is the registered industrial agents and questioned the quality, depth, the professional ethics and lack of oversight of some of them and the impact that some disbarred lawyers have had when they have appeared in this Commission as industrial agents and that is something that is still to be put to bed.

There is also then your view of the utmost importance of relationship building resulting in more effective communications, consultation and cooperation and that is consistent with the objects of the Industrial Relations Act, particularly promoting goodwill in industry and enterprises. Again, when ensuring agreements are there that they provide fair terms and conditions of employment.

Fairness is throughout most of those objects but one of the important objects under the Act and dear to your personal philosophy is to encourage persons, organisations and authorities involved in or performing functions with respect to the conduct of industrial relations under the laws of the State to communicate, consult and cooperate with persons, organisations and authorities involved in or performing functions with respect to the conduct or regulation of IR under the laws of the Commonwealth.

Now, just a few memorable matters, cases that I've been told reliably that perhaps are noteworthy. There was a distant wages dispute in the childcare industry many years ago, Chief Commissioner, when you worked at CCI. It involved the Miscellaneous Workers Union. It appears that all parties had agreed orders and yet when there was an appearance before the Commissioner at the time there was the consent case was lost and apparently a question was asked by you in relation to whether - or a comment made by you that only you and the Commissioner at the time were not members of the Miscellaneous Workers Union.

But in any event the consent case was lost and in reminiscing the storyteller mused to me that the win on the day was because of your keen eye for strategy, well crafted submissions and convincing oral submissions was part of it. There's also an unfair dismissal case involving a disgruntled ex-farm manager. And again, the Senior Commissioner has mentioned your love for the south west. That farm I understand was in the south west and he'd been sacked by his brother, a fellow farmer.

As an unrepresented litigant the relief he sought included requiring you as the presiding member to dig up the farm to find the missing cattle and to also supervise that digging. Now, although that was well outside the parameters of your statutory relief that you could afford given your love for the south west and the fact that you do have a house in the south west and at the time I think your father was also in the south west, you could have actually supervised the digging up of the property because you were not far away and kept bumping into them.

Chief Commissioner Scott, after a long and distinguished career most recent as head of the tribunal I hope your retirement will leave time for more relaxing pursuits with Steve as you embark on the next exciting new chapter in your life. On a personal note, I would have told some stories about your obsession about prints aligning in the corridors of this Commission but the Society has told me not to press that, so I won't go any further.

On behalf of the Law Society of WA and the legal profession we sincerely thank you for your exemplary service and leadership over the years and wish you well in your future.

Thank you, Senior Commissioner.

KENNER SC: Thank you very much, Ms Saraceni.

Mr Hammond.

HAMMOND, MR: Thank you, Senior Commissioner.

I join with Ms Saraceni in acknowledging Traditional Owners of the land that we meet upon and also join her in acknowledging the judicial officers in the room, other dignitaries, and the Chief Commissioner's friends and family.

Chief Commissioner, I'm delighted to be able to deliver these remarks on behalf of the West Australian Bar Association. Mr Cuerden also sends his personal apologies for not being able to be here today.

Chief Commissioner, the Commission has already heard numerous examples of the dedicated service that you've offered to this Commission over the last 26 years, including four years as Chief Commissioner. We have heard from Senior Commissioner and others, notable cases upon which you have presided over in your tenure at the Commission, any number of countless reforms that you ushered through for the benefit of litigants and stakeholders alike in the Commission. And over the course of that 26 years have seen off more than a few governments of either political persuasion and their attempts at reform that they bring through this place all to your utter credit.

Having regards to all of those matters and having regards to the qualities that we have already heard today, including but certainly not limited to your formidable intellect, your work ethic, and the universal respect that you've commanded from those who you sit with and stakeholders alike.

I was reflecting on the role that the Bar Association plays in relation to appearing before the Chief Commissioner and I think it's true to say that perhaps this isn't a jurisdiction upon which counsel appears as often as perhaps some other jurisdictions and the like. And I suspect certainly when it comes to, Chief Commissioner, your role we are quite appropriately reminded and perhaps not reminded enough that as counsel perhaps the best service we can offer is not so much a passionate argument on behalf of our client but being of assistance to the Commission or to the court as the case might be.

And I think simply the reality is, Chief Commissioner, is that having regards to the unique skill set that you have brought to decision making over the course of the last 26 years. Even with, Chief Commissioner, your formidable memory I think it's fair to say that what little you might have forgotten is almost more than most of us already know on this side of the Bar table. And I'm not quite sure how much assistance we can possibly give you having regards to all of those things.

I suspect it is far from us and certainly far from me at this side to make any assumptions or guesses in relation to having regards to that formidable work ethic, Chief Commissioner, what you may go on to do in the course of your retirement. But I can say from a personal perspective having regards to your professional demeanour sitting deciding matters it didn't matter what submission was brought either from myself or my opponent.

Master Sanderson you might recall in the recent eulogy of such to the Bell litigation observed leading counsel at the time John Vaughan SC as his Honour Vaughan J then was as presiding over proceedings with a sphinx-like visage in relation to any submissions that was put.

I think that comment is appropriate of you, Chief Commissioner. It was almost impossible to ascertain whether one was on the right side or the wrong side of the argument because of that impeccable sphinx-like demeanour that you brought to every single case regardless of the quality of the submission that was being put to you. Again, far be it for me to suggest but, Chief Commissioner, if you were deciding to venture into say competitive poker playing I would not want to be betting against you.

Chief Commissioner, the observations that have been made before the speakers prior to me today we join in offering from the Bar Association. The reality is the contribution that you have made to the Commission and to the administration of justice in the industrial relations space is so valuable I think it's probably incapable of measurement. All I can say on behalf of the Bar Association to join those remarks is to thank you immeasurably for your service to public life and to decision making in this space.

Thank you.

KENNER SC: Thank you very much, Mr Hammond.

Mr Harben.

HARBEN, MR: Thank you, Senior Commissioner.

It is a great pleasure to be here today to address the Commission this afternoon on behalf of the Industrial Relations Society of Western Australia on the occasion of the retirement of the Chief Commissioner. In doing so I note, Chief Commissioner, that you have been a member of the Industrial Relations Society of Western Australia for 42 years and spent five years as a member of the committee of the society and I thank you for your membership and your service.

Advocates appearing before your Honour have always been treated fairly and respectfully and allowed to make out their arguments as best as their cases would allow them to. This has greatly assisted us in performing our roles and we thank you for that. It was and still is a great regret of many industrial relations practitioners that the introduction of the Workplace Relations Amendment Work Choices Act in 2005 significantly limited the ability of trading corporations to participate in the Western Australian industrial relations system.

However, there remains opportunity for IR practitioners to be engaged in matters before the Commission, including importantly in pro bono matters. Your Honour has demonstrated an unwavering support to the development of a pro bono function within the Commission and in doing so has ensured access to justice for a significant number of employers and employees. The impact of access to justice for someone who is impecunious or does not have English as a first language cannot be underestimated.

Chief Commissioner, you should rightly be proud of the positive impact the Commission's pro bono scheme has had on those who could not otherwise afford representation. I can say from firsthand experience that it has simply changed people's lives by being connected by the Commission's pro bono scheme with a lawyer or advocate who has been able to help them find a voice and put their case forward.

On behalf of the Industrial Relations Society of Western Australia we thank you for your service and wish you all the very best for the challenges that lay ahead.

KENNER SC: Thank you very much, Mr Harben.

Chief Commissioner?

SCOTT CC: Thank you all for doing me the great honour of coming along today to help me mark the end of my time at the Commission. I'm greatly honoured in particular by the presence of their Honours Quinlan CJ, Le Miere and Murphy JJ and our former colleague Smith J. I also see Industrial Magistrate Jennifer Hawkins here too. Thank you all for your attendance.

I'm very pleased to see here too former colleagues' members of this Commission Mark Ritter SC former Acting President, former Chief Commissioners Bill Coleman and Tony Beech, former Senior Commissioners Gavin Fielding and Jack Gregor, former Commissioners Bob George, Sally Cawley, Rod Gifford and Stephanie Mayman. And to my colleagues from the Fair Work Commission thank you too for being here.

To those of you at the Bar table your comments have been very kind and generous even if some of them have been embellishments or alternative facts but it does remind me of a funeral where no one speaks ill of the dead.

And I'm humbled by the presence here of so many people who I've had the pleasure of getting to know and deal with over so many years. Minister Johnston, in my time as Chief Commissioner I have enjoyed the benefit of having a Minister who is knowledgeable of and interested in industrial relations and in the role of the Commission and I have to say that that's not necessarily been a given.

I know it's disappointing to you as it was to me that the bill did not get through before Parliament rose and it has meant that some very positive changes for the industrial parties and for the Commission's jurisdiction have not come to pass. And it's true to say that I would have enjoyed a role in implementing some of them.

Mr Whittle and Mr Moss, your organisations play a very important role in the Commission's deliberations, particularly in the State wage cases and in the general orders that we've issued. I thank you for your comments. But I must assure you that after I finish here and I intend to devote myself to supporting the retail industry I will not spend much time or thought on whether the consumer price index should be disaggregated. Whether the Gini co-efficient of income inequality is affected by my economic activity or how I fit in the HILDA Survey.

Mr Harben, the Industrial Relations Society has been part of my life for decades and I have benefited from the wonderful opportunities that it provides for people to cross the divide and to hear different views and experiences. And it's delightful to hear from you, Mr Cook, particularly given that we worked together when we were both very young and naive. Mr Hammond and Ms Saraceni, thank you both for your comments.

When I started at the Commission 26 years ago I was told that we were soon to be abolished. I'm very gratified that governments of various persuasions have seen the benefits of this institution to the community. The industrial environment in this country has indeed changed beyond recognition during my career. It has become a more professional activity. The legal profession takes a more significant role, not only in advocacy but also in strategy and negotiations.

The role of the Commission has also changed; it now deals with more individual matters than before. People have commented on the changes that have come from the Federal Government's use of the corporations power and that together with unions having had difficulty organising the State small business sector have resulted in the atrophy of State private sector awards and I hope that that will find a way to be resolved.

But the Commission's role has broadened in both the corporate and other sectors in a range of areas and, of course, its role in the public sector remains a cornerstone of equity and fairness. The Commission has changed also in a couple of significant aspects. When I commenced all but one of the Commissioners were so called lay people in that they were not lawyers. Now all but one are lawyers for better or worse. The role of the President, as people have noted, has been abolished after decades of that change being on the agenda.

I have been blessed to have enjoyed a long career in an area of work that I have found both fascinating and rewarding. If you'll permit some indulgence on my part it is traditional on these occasions to acknowledge the sacrifice that one's parents have made but in my case it was the most significant aspect of enabling me to make the most of the opportunities that have come my way.

I'm the proud daughter of 10 Pound Poms. They migrated here with nothing but a couple of suitcases and their first two of four children. They left London, a place still ravaged and in the deprivations of rationing after the war. My mother was never able to return to her homeland as they simply could not afford it in spite of coming to the land of milk and honey. They came here with strong beliefs in socialism and in education as a way to improve life.

My father Ted worked in the motor vehicle industry, coal mines and in the timber industry taking on all the overtime he could to support his family. My eldest brother dearly wanted to continue at school but being the eldest he had to go to work at 15 because there wasn't enough money to support him. As the youngest I've received the benefit.

In our small town the opportunities for women to work were very limited. My mother Mary worked as a meat packer in an abattoir to ensure that I could finish school. I pay tribute to them for their sacrifice. They raised me to believe that I could do anything I set my mind to if I worked hard enough and took the opportunities that came my way. Due to their dedication and by the skin of my teeth I escaped the fate of many young women without choices and education. Young women who often faced the very real prospect of leaving school at 15 or younger and being married or alone with a couple of children by the age of 20.

The mother of one of my school friends had six children and they were in real poverty. That woman became the first woman in our town to be employed as a timber stacker in a timber mill. Is that the sort of female first we're proud to celebrate? And it needs to be acknowledged that those circumstances and limited choices still face some women in our society today.

My parents' views of education have affected my view of life, including how I've seen my role as Chief Commissioner. I have aimed to build on the lead of my predecessors to make the Commission more open to communication with people and bodies who are affected by our work and to learning from each other and I think I need to acknowledge that the pro bono scheme that the Commission established was established before I took on the role of Chief Commissioner. I'm grateful to all of those who have worked with the Commission to enhance our understanding and theirs.

I've been very fortunate to be in the right place at the right time throughout my life but it hasn't always been easy. My first encounter with resistance was when I applied for a job as a research officer at this Commission in 1978. At that point there had never been a female Commissioner or a female Commissioner's clerk. In my interview the Deputy Registrar asked me about my aspirations. I said I'd like to be a Commissioner's clerk. Up until then in accordance with my parents' indoctrination I believed that every door was open, every opportunity was available to me. I got that job.

When I started I had to take some documents to the then Chief Commissioner Bernie O'Sullivan. I can tell you it was a very long walk for a 22-year-old from the Chief Commissioner's office door to his desk. As I took that walk he launched a verbal rocket telling me that while he was Chief Commissioner there would not be a female Commissioner's clerk and that I should get that into my head. It had never registered with me that my gender could be an impediment to pursuing a career and but for the help of many people it may have been so.

And I want to acknowledge the people who have helped me along the way and you'll note that they have been almost exclusively men but that was a function of the times. Commissioner Bruce Collier gave me the wonderful opportunity to accompany him on an inspection tour of power stations as his acting clerk.

Bill Brown at the Confederation of Western Australian Industry took a chance on me as their first female industrial officer and I know that he did so against the wishes of some there.

I'm pleased to acknowledge former Senior Commissioner Jack Gregor who was one of those at the Confederation who welcomed me and has encouraged me ever since. It was a time when the Confederation was the main player on the employer's side. Many of my colleagues took a very adversarial approach and saw themselves as industrial warriors. One of my colleagues had many colourful sayings, one of which was that "We were industrial panel beaters and what we needed were bigger and better smashers". Winning was what counted.

One matter I dealt with I reported to Bob Gregg. He took a very strategic view and he taught me one of the most important lessons that I have ever learned in industrial relations. I came back from the Industrial Magistrates Court one day full of myself. I had won. His response completely deflated me, he said "But did you fix the problem?" And I had not.

My two predecessors as Chief Commissioner have been very significant to me. Bill Coleman who's been a friend since we worked together at the Public Service Board when I was 19 years old. I still rely on Bill for advice. One of the things he impressed on me was the great privilege it is to be a member of this Commission mainly because we're trusted to do work that affects important aspects of people's lives in their employment and in their businesses.

Tony Beech my immediate predecessor was firstly my friendly adversary in our days before the Commission. When I started here he was very welcoming and full of helpful advice when I needed it and still is. I also acknowledge the guidance, patience and generosity of our former Acting President now her Honour Jennifer Smith J.

After many years I've learned an enormous amount, however, it's lucky that I'm going now because many of you obviously haven't woken up to all my deficiencies. While the rest of you who have been mercifully quiet and I thank you for that. So, it's nearly time to go. My future is still a little uncertain but those of you who follow the science of astrology will have noted that this week some Aquarians will change jobs or careers. The fortune cookie I got in late November said that the best times of my life had not yet been lived.

I'd like to record a few final thank yous. Firstly, to my fellow Commissioners for the cooperation and willingness they have shown me. To Senior Commissioner Kenner who has given me every possible support, assistance and cooperation and who has been a wise counsel. I need to note here that I can't take credit for our response to the COVID-19 closedown. Senior Commissioner Kenner was in charge while I was in New Zealand and then under self-isolation and he took that role.

Our registrar Susan Bastian is an absolute dynamo and she's contributed greatly to any successes I've managed to achieve as head of this tribunal. I'm very proud of this institution and the staff who serve the people of this State. I will miss them and I thank them all. I've enjoyed working with several personal staff over the years, people of great willingness, skill and hard work. These people have made my work look better than it would have done without them.

I want to acknowledge my very first associate Joy Brown who is here and my first admin support officer Cathie Rose. I would also like to thank my most recent associates and executive officers Jeanene Rodrigues-Smith, Thomas Klaassen, Elizabeth Roberts and Acting Associate Melissa Crosthwaite, research officers Brodie Skalko and Chantal Kong, and admin support officer Jeanette Richardson who has turned many sow's ears, if not into silk purses, then at least into cotton ones.

Thank you to my family and friends for your unstinting support and encouragement especially Rae Freeman my wonderful friend who often gives me advice that I don't want to hear. Finally, my husband Steve who has shared the ups and downs, believed in me and picked me up and put me back on my feet in the most challenging times. Thank you all.

KENNER SC: Thank you, Chief Commissioner.

Thank you for attending this afternoon, we'll now adjourn.

AT 4.30 PM THE MATTER WAS ADJOURNED ACCORDINGLY

NOTICES—Award/Agreement matters—

2021 WAIRC 00033

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Application No. AG 2 OF 2021

APPLICATION FOR A NEW AGREEMENT TITLED

“GOVERNOR'S ESTABLISHMENT STAFF GENERAL AGREEMENT 2020”

NOTICE is given that an application has been made to the Commission by the *The Governor's Establishment* and *United Workers Union And Another* under the *Industrial Relations Act 1979* for the registration of the above Agreement.

As far as relevant, those parts of the proposed Agreement which relate to area of operation and scope are published hereunder.

1. TITLE

1.1 This is a collective Agreement which shall be known as the Governor's Establishment Staff General Agreement 2020, which cancels and replaces the Governor's Establishment Staff General Agreement 2017, the Governor's Establishment Garden Staff General Agreement 2006 and the Governor's Establishment Gardening Staff Enterprise Agreement 1995.

4. APPLICATION AND PARTIES BOUND

4.1 The named parties to this Agreement are:

- a) The Employer;
- b) The Civil Service Association of Western Australia Incorporated; and
- c) United Workers Union (WA).

4.2 All pre-existing entitlements accrued by Employees prior to this Agreement and under agreements at clause 1.1 will be carried forward into this Agreement.

4.3 This Agreement shall apply to all Employees employed by the Employer who are members of, or are eligible to be members of the Unions.

4.4 This Agreement is not transferable to other agencies. For the purpose of this clause, Schedule 2 constitutes part of this Agreement.

4.5 As at the date of registration the approximate number of Employees bound by this Agreement is thirty four (34).

4.6 All parties to this Agreement will receive a copy of the Agreement.

4.7 This Agreement shall not apply to Employees whose remuneration is determined or recommended pursuant to the *Salaries and Allowances Act 1975*.

A copy of the proposed Agreement may be inspected at my office at 111 St. Georges Terrace, Perth.

[L.S.]

29 January 2021

(Sgd.) S BASTIAN,
Registrar.

PROCEDURAL DIRECTIONS AND ORDERS—

2021 WAIRC 00019

APPEAL AGAINST THE DECISION OF THE FULL BENCH IN FBA 2 OF 2019 GIVEN ON 13 DECEMBER 2019

WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT

PARTIES

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

APPELLANT

-v-

SAMUEL GANCE (ABN 50 577 312 446) T/AS CHEMIST WAREHOUSE PERTH, THE PHARMACY GUILD OF WESTERN AUSTRALIA, THE MINISTER FOR COMMERCE AND INDUSTRIAL RELATIONS

RESPONDENT**CORAM**

BUSS J, MURPHY J, KENNETH MARTIN J

DATE

TUESDAY, 19 JANUARY 2021

FILE NO/S

IAC 3 OF 2019

CITATION NO.

2021 WAIRC 00019

Result

Order Issued

Representation**Appellant**

Mr H J Dixon SC (of counsel) and Mr D Rafferty (of counsel)

Respondent

Mr R Andretich (of counsel)

Mr N Tindley (of counsel)

Mr T J Dixon (of counsel) and Mr H Pararajasingham (of counsel)

Order

HAVING HEARD Mr H J Dixon SC and Mr D Rafferty of counsel, for the Shop, Distributive and Allied Employees' Association of Western Australia, Mr R Andretich of counsel, for the Minister for Commerce and Industrial Relations, Mr N Tindley of counsel, for Samuel Gance t/as Chemist Warehouse Perth and Mr T J Dixon of counsel and Mr H Pararajasingham of counsel for the Pharmacy Guild of Western Australia Organisation of Employers, IT IS ORDERED THAT:

1. By 4pm on 25 January 2021 each appellant may file and serve supplementary written submissions in relation to Melrose Farm Pty Ltd t/as Milesaway Tours v Milward [2008] WASCA 175.
2. Judgment is reserved.

[L.S.]

(Sgd.) S BASTIAN,
Clerk of Court.

2021 WAIRC 00021

APPEAL AGAINST THE DECISION OF THE FULL BENCH IN FBA 2 OF 2019

WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT

PARTIES

THE MINISTER FOR COMMERCE AND INDUSTRIAL RELATIONS

APPELLANT

-v-

SAMUEL GANCE (ABN 50 577 312 446) T/AS CHEMIST WAREHOUSE PERTH, THE PHARMACY GUILD OF WESTERN AUSTRALIA, THE SHOP, DISTRIBUTIVE AND ALLIED EMPLOYEES' ASSOCIATION OF WESTERN AUSTRALIA

RESPONDENT**CORAM**

BUSS J, MURPHY J, KENNETH MARTIN J.

DATE

TUESDAY, 19 JANUARY 2021

FILE NO/S

IAC 1 OF 2020

CITATION NO.

2021 WAIRC 00021

Result	Order Issued
Representation	
Appellant	Mr H J Dixon SC (of counsel) & Mr D Rafferty (of counsel)
Respondent	Mr R Andretich (of counsel)
	Mr N Tindley (of counsel)
	Mr T J Dixon (of counsel)
	Mr H Pararajasingham (of counsel)

Order

HAVING HEARD Mr H J Dixon SC and Mr D Rafferty of counsel, for the Shop, Distributive and Allied Employees' Association of Western Australia, Mr R Andretich of counsel, for the Minister for Commerce and Industrial Relations, Mr N Tindley of counsel, for Samuel Glance t/as Chemist Warehouse Perth and Mr T J Dixon of counsel and Mr H Pararajasingham of counsel for the Pharmacy Guild of Western Australia Organisation of Employers, IT IS ORDERED THAT:

1. By 4pm on 25 January 2021 each appellant may file and serve supplementary written submissions in relation to Melrose Farm Pty Ltd t/as Milesaway Tours v Milward [2008] WASCA 175.
2. Judgment is reserved.

[L.S.]

(Sgd.) S BASTIAN,
Clerk of Court.

2021 WAIRC 00006

APPEAL AGAINST THE DECISION OF THE CHIEF COMMISSIONER IN PRES 5/2020

WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT

PARTIES	ANNE LORNA BEST	APPELLANT
	-v-	
	THE AUSTRALIAN NURSING FEDERATION, INDUSTRIAL UNION OF WORKERS PERTH	RESPONDENT
CORAM	BUSS J	
DATE	THURSDAY, 14 JANUARY 2021	
FILE NO/S	IAC 1 OF 2021	
CITATION NO.	2021 WAIRC 00006	

Result	Programming Orders Issued
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Order

1. The appellant in IAC 1/2021 to file one electronic copy of submissions and a list of legal authorities and provide three physical copies of submissions and a list of legal authorities and serve a copy on the respondent by 4pm on 5 February 2021.
2. The respondent in IAC 1/2021 to file one electronic copy of submissions and a list of legal authorities and provide three physical copies of submissions and a list of legal authorities and serve a copy on the appellant by 4pm on 26 February 2021.
3. The appellant in IAC 1/2021 to file one electronic copy of the appeal book and provide three physical copies of the appeal book and serve a copy on the respondent by 4pm on 19 March 2021.

[L.S.]

(Sgd.) S BASTIAN,
Clerk of Court.

2021 WAIRC 00031

APPEAL AGAINST THE DECISION OF THE CHIEF COMMISSIONER IN PRES 5/2020

WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT

PARTIES

ANNE LORNA BEST

APPELLANT**-v-**

THE AUSTRALIAN NURSING FEDERATION, INDUSTRIAL UNION OF WORKERS PERTH

RESPONDENT**CORAM**

BUSS J

DATE

TUESDAY, 9 FEBRUARY 2021

FILE NO/S

IAC 1 OF 2021

CITATION NO.

2021 WAIRC 00031

Result

Order Issued

Order

The application for an extension of time within which to comply with Order 1 of the Programming Orders of 14 January 2021 is granted:

1. The appellant in IAC 1/2021 to file one electronic copy of submissions and a list of legal authorities and provide three physical copies of submissions and a list of legal authorities and serve a copy on the respondent by 4pm on **12 February 2021**.
2. The time within which the respondent must comply with Order 2 of those orders is extended to 4 pm on **2 March 2021**.

(Sgd.) S KEMP,
Clerk of Court.

[L.S.]

2021 WAIRC 00022

APPEAL AGAINST THE DECISION TO TAKE IMPROVEMENT ACTION ON 21 JULY 2020

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

ALESSANDRA GRANITTO

APPELLANT**-v-**

THE DEPARTMENT OF EDUCATION WESTERN AUSTRALIA

RESPONDENT**CORAM**

COMMISSIONER T EMMANUEL

DATE

THURSDAY, 21 JANUARY 2021

FILE NO.

PSAB 23 OF 2020

CITATION NO.

2021 WAIRC 00022

Result

Directions issued

Representation**Appellant**

Ms J Dilena (of counsel)

Respondent

Mr D Anderson (of counsel)

Direction

HAVING heard from Ms J Dilena of counsel on behalf of the appellant and Mr D Anderson of counsel on behalf of the respondent, the Public Service Appeal Board, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), directs –

1. THAT the parties file a statement of agreed facts and bundle of agreed documents by 27 January 2021;
2. THAT the appellant file a written outline of submissions by 27 January 2021;
3. THAT the respondent file a written outline of submissions by 10 February 2021;

4. THAT discovery be informal; and
5. THAT this matter be listed for a half-day hearing.

[L.S.]

(Sgd.) T EMMANUEL,
Commissioner,
Public Service Appeal Board.

2021 WAIRC 00029

APPEAL AGAINST THE DECISION TO TERMINATE EMPLOYMENT ON 14 SEPTEMBER 2020

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

NICHOLAS CHURCHILL

APPELLANT

-v-

PUBLIC TRANSPORT AUTHORITY OF WESTERN AUSTRALIA

RESPONDENT**CORAM**

COMMISSIONER T EMMANUEL

DATE

MONDAY, 8 FEBRUARY 2021

FILE NO.

PSAB 28 OF 2020

CITATION NO.

2021 WAIRC 00029

Result

Directions issued

Representation**Appellant**

Ms M Saraceni (of counsel)

Respondent

Mr T Pontre (of counsel)

Direction

HAVING heard from Ms M Saraceni of counsel on behalf of the appellant and Mr T Pontre of counsel on behalf of the respondent, the Public Service Appeal Board, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), directs –

1. THAT discovery by both parties be informal;
2. THAT the parties file a statement of agreed facts and bundle of agreed documents by 12 February 2021;
3. THAT the appellant file outlines of evidence and documents, other than the agreed documents, on which he intends to rely by 19 February 2021;
4. THAT the respondent file outlines of evidence and documents, other than the agreed documents, on which it intends to rely by 19 March 2021;
5. THAT the appellant has leave to file any outline of evidence of any witness to be called in response to the respondent's filed outlines of evidence by 26 March 2021;
6. THAT the respondent has leave to file any outline of evidence of any witness to be called in response to the appellant's responsive outlines of evidence by 5 April 2021;
7. THAT the appellant file a written outline of his submissions by 12 April 2021;
8. THAT the respondent file a written outline of its submissions by 30 April 2021;
9. THAT the matter be listed for a 4-day hearing not before 7 May 2021; and
10. THAT the parties have liberty to apply at short notice.

[L.S.]

(Sgd.) T EMMANUEL,
Commissioner,
Public Service Appeal Board.

2021 WAIRC 00030

APPEAL AGAINST THE DECISION NOT TO PAY EMPLOYEE ENTITLEMENTS

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

MICHAEL COE

APPELLANT

-v-

DEPARTMENT OF EDUCATION

RESPONDENT**CORAM**

COMMISSIONER T EMMANUEL

DATE

TUESDAY, 9 FEBRUARY 2021

FILE NO.

PSAB 37 OF 2020

CITATION NO.

2021 WAIRC 00030

Result

Directions issued

Representation**Appellant**

In person

Respondent

Ms S Young (as agent)

Direction

Having heard from the appellant on his own behalf and from Ms S Young as agent on behalf of the respondent about programming the jurisdictional question of whether the Public Service Appeal Board can hear and determine this application, the Public Service Appeal Board, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), directs –

1. THAT the jurisdictional question be heard and determined on the papers;
2. THAT the parties file a statement of agreed facts and bundle of agreed documents by 9 March 2021;
3. THAT the respondent file written submissions by 23 March 2021;
4. THAT the appellant file written submissions by 8 April 2021;
5. THAT the respondent file any written submissions in reply by 22 April 2021; and
5. THAT the parties have liberty to apply.

(Sgd.) T EMMANUEL,
Commissioner,
Public Service Appeal Board.

[L.S.]

2021 WAIRC 00023

REFERENCE OF DISPUTE - S 28(2) - OSH ACT 1984

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES

MELISSA ANNE RASMUSSEN

APPLICANT

-v-

DEPARTMENT OF EDUCATION

RESPONDENT**CORAM**

COMMISSIONER T B WALKINGTON

DATE

FRIDAY, 29 JANUARY 2021

FILE NO/S

OSHT 2 OF 2020

CITATION NO.

2021 WAIRC 00023

Result

Order issued

Representation**Applicant**

Ms M Rasmussen

Respondent

Mr J Carroll (of counsel)

Order

WHEREAS on 7 December 2020 the Tribunal listed this matter for a directions hearing for 29 January 2021;

AND WHEREAS on 28 January 2021 at 8:57PM the applicant Ms Rasmussen emailed the Tribunal informing that she will be unable to attend the directions hearing;

AND WHEREAS on 29 January 2021, Mr J Carroll appeared on behalf of the Department of Education;

AND WHEREAS the Tribunal proceeded in the absence of the applicant Ms Rasmussen;

AND WHEREAS at the directions hearing Mr Carroll applied to the Tribunal for the matter to be dismissed pursuant to s 27(1)(a) of the *Industrial Relations Act 1979* (WA);

AND WHEREAS the Tribunal directed that a show cause hearing be listed for Ms Rasmussen to show cause why her application ought not be dismissed.

NOW THEREFORE the Tribunal, pursuant to the powers conferred under the *Occupational Safety and Health Act 1984* (WA) and the *Industrial Relations Act 1979* (WA), hereby Orders:

1. THAT the Department of Education file and serve written submissions on why this matter ought be dismissed, 14 days prior to the date of the show cause hearing;
2. THAT the show cause hearing be listed for 1 day on a date to be fixed; and
3. THAT the parties have liberty to apply 7 days prior to the show cause hearing.

(Sgd.) T B WALKINGTON,
Commissioner.

[L.S.]

2021 WAIRC 00026

REVIEW OF DECISION - S.61A - OSH ACT

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

GEOFFREY RAYMOND MORAN

APPLICANT

-v-

WORKSAFE WA COMMISSIONER

RESPONDENT

CORAM COMMISSIONER T B WALKINGTON

DATE THURSDAY, 4 FEBRUARY 2021

FILE NO. OSHT 7 OF 2020

CITATION NO. 2021 WAIRC 00026

Result Direction issued

Representation

Applicant Ms V Kafentzis (of counsel)

Respondent Ms T Hollaway (of counsel)

Direction

HAVING heard from Ms V Kafentzis (of counsel) on behalf of the applicant and Ms T Hollaway (of counsel) on behalf of the respondent, the Tribunal, pursuant to the powers conferred under the *Occupational Safety and Health Act 1984* (WA) and the *Industrial Relations Act 1979* (WA), hereby directs:

1. THAT evidence in chief in this matter be adduced by way of signed witness statements which will stand as evidence in chief;
2. THAT the applicant file and serve upon the respondent any witness statements upon which he intends to rely by no later than 19 February 2021;
3. THAT the respondent file and serve upon the applicant any witness statements upon which it intends to rely by no later than 12 March 2021;
4. THAT the parties provide any rebuttal statements by 26 March 2021;
5. THAT the applicant file and serve upon the respondent an outline of submissions by no later than 1 April 2021;
6. THAT the respondent file and serve upon the applicant an outline of submissions by no later than 9 April 2021;
7. THAT the parties shall give notice to each other of any witnesses required to attend the hearing for cross-examination at least 3 days prior to the hearing 16 April 2021;

8. THAT the matter is listed for 3 days on 21 April 2021, 22 April 2021 and 23 April 2021; and
 9. THAT the parties have liberty to apply on short notice.

(Sgd.) T B WALKINGTON,
 Commissioner.

[L.S.]

INDUSTRIAL AGREEMENTS—Notation of—

Agreement Name/Number	Date of Registration	Parties		Commissioner	Result
Education Assistants' (Government) General Agreement 2021 AG 25/2020	02/04/2021	Department of Education	United Workers Union (WA)	Commissioner D J Matthews	Agreement registered
Government Services (Miscellaneous) General Agreement 2021 AG 24/2020	02/04/2021	Botanic Gardens and Parks Authority, Central Regional TAFE, Department of Biodiversity, Conservation and Attractions and others	United Workers Union (WA)	Commissioner D J Matthews	Agreement registered
WA Health System - United Workers Union (WA) - Hospital Support Workers Industrial Agreement 2020 AG 23/2020	01/19/2021	North Metropolitan Health Service, Child and Adolescent Health Service, East Metropolitan Health Service and others	United Workers Union (WA)	Commissioner D J Matthews	Agreement registered