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CUMULATIVE CONTENTS AND DIGEST APPEAR AT THE END OF THIS PUBLICATION

GENERAL ORDERS—

2022 WAIRC 00121

COVID-19 GENERAL ORDER PURSUANT TO SECTION 50 OF THE ACT

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

CITATION	:	2022 WAIRC 00121
CORAM	:	CHIEF COMMISSIONER S J KENNER SENIOR COMMISSIONER R COSENTINO COMMISSIONER T EMMANUEL COMMISSIONER T B WALKINGTON
HEARD	:	ON THE PAPERS
DELIVERED	:	THURSDAY, 24 MARCH 2022
FILE NO.	:	CICS 3 OF 2022
BETWEEN	:	MINISTER FOR INDUSTRIAL RELATIONS
		Applicant
		AND
		UNIONSWA, CHAMBER OF COMMERCE AND INDUSTRY OF WESTERN AUSTRALIA, AUSTRALIAN MINES AND METALS ASSOCIATION, WESTERN AUSTRALIAN LOCAL GOVERNMENT ASSOCIATION
		Respondents
Catchwords	:	Industrial law (WA) - General Order under s 50 - COVID-19 pandemic - Unpaid pandemic leave - General Order issued
Legislation	:	<i>Industrial Relations Act 1979</i> (WA) s 6, s 26(1), s 50
Result	:	General Order issued
Representation:		
Applicant	:	Ms M Williams on behalf of the Hon. Minister for Industrial Relations
Respondents	:	Mr P Moss on behalf of the Chamber of Commerce and Industry of Western Australia (Inc) Dr T Dymond on behalf of UnionsWA Ms S Verity on behalf of the Australian Mines and Metals Association Ms V Cullen with Ms N Abend on behalf of the Western Australian Local Government Association

Case(s) referred to in reasons:

Commission's Own Motion v (not applicable) [2020] WAIRC 00203; (2020) 100 WAIG 231

Commission's Own Motion v (not applicable) [2020] WAIRC 00205; (2020) 100 WAIG 235

Commission's Own Motion v (not applicable) [2021] WAIRC 00088; (2020) 101 WAIG 372

*Reasons for Decision***Background**

- 1 On 14 April 2020, the Commission in Court Session issued the COVID-19 Flexible Leave Arrangements General Order ([2020] WAIRC 00205; (2020) 100 WAIG 235) under s 50 of the *Industrial Relations Act 1979* (WA), to provide for flexible leave arrangements in association with the COVID-19 pandemic. The 2020 General Order contained provisions for unpaid pandemic leave, as well as provisions for the taking of annual leave at half pay.
- 2 The Commission, acknowledging the uncertainty of the months ahead at that time, noted that many of the industries likely to be affected by the impact of COVID-19 were in the small business, non-incorporated sector within the scope of the State industrial relations system: *Commission's Own Motion v (not applicable)* :[2020] WAIRC 00203; (2020) 100 WAIG 231 at [4]. In issuing the 2020 General Order, the Commission aimed to 'assist businesses to continue to operate and to preserve employment and continuity of employment for the benefit of those businesses, their employees and the economy generally': at [5].
- 3 The 2020 General Order ceased to have effect on 31 March 2021: [2021] WAIRC 00088; (2020) 101 WAIG 372.

Application of the Minister

- 4 On 2 March 2022, the Hon Minister for Industrial Relations, made an application for a further General Order to apply to private sector employees, to reinstate the unpaid pandemic leave provisions contained in the 2020 General Order. The reinstatement of the flexible annual leave provisions in the 2020 General Order are not sought in the current application. In summary, the grounds for the Minister's application are:
 - (a) There currently exists a regulatory gap in that private sector State system employees who are required to isolate due to COVID-19, but who are not sick or caring for another person, may lack access to suitable leave entitlements, as sick and carer's leave entitlements do not apply in these circumstances;
 - (b) The current Omicron variant outbreak is expected to result in high COVID-19 case numbers, and it is anticipated that a significant number of Western Australians will be unable to attend work due to a requirement to self-isolate over coming months; and
 - (c) The reinstatement of an unpaid pandemic leave entitlement would support public health objectives, provide clarity for any employers who are unsure of how to respond to employees who are required to isolate, protect employee entitlements, and be consistent with the entitlement to unpaid pandemic leave for national system employees covered by certain modern awards.
- 5 The Minister submitted that the application supports the objects of the *Act* under s 6 and is consistent with the requirements of s 26(1) of the *Act*. The Minister proposed that the General Order operate until 30 September 2022.

Consideration

- 6 Following the filing of the application for the General Order, the Commission convened a conciliation conference between the parties under s 51BC of the *Act*. Arising from the conciliation conference, and the issues discussed, the Commission made orders to the effect that the Minister would provide the other parties with revisions to the draft General Order and, subject to further discussions between the parties, the Minister would file an amended proposed General Order by 18 March 2022.
- 7 A matter at issue between the parties was whether unpaid pandemic leave would, given the changed circumstances since the making of the 2020 General Order, not be limited to only one occasion on which unpaid pandemic leave can be taken, as specified at cl 2(7) of the Minister's proposed General Order in the initial application. The changed circumstances include a reduction in isolation periods from 14 to seven days; certain exclusions from isolation requirements for those classed as critical employees; and the increased likelihood that employees may have to isolate on multiple occasions during the term of the proposed General Order.
- 8 Following further discussions between the parties, and consideration of this issue by the Minister, the Minister filed an amended proposed draft General Order on 18 March 2022. The proposed order deletes reference to cl 2(7), thus, no longer limiting the ability of an employee to access unpaid pandemic leave to one occasion only. The effect of this amendment is to enable an employee to take up to two weeks' unpaid pandemic leave, as a cumulative entitlement, over more than one period, subject to the total period of unpaid pandemic leave taken not exceeding two weeks. Further, a minor amendment has been made by the Minister to cl 2(1), to make it clear that the leave available under the proposed General Order is 'unpaid pandemic leave'.
- 9 By way of responses filed on 22 March 2022, the respondents now do not oppose the Minister's amended application for a General Order. Whilst UnionsWA proposed a further variation to cl 2(7), to specify that an employee be able to take unpaid pandemic leave of up to two weeks 'each time' they are required to isolate, we are not persuaded to make that amendment. The entitlement will be a maximum of two weeks unpaid leave, which can be take over multiple periods. In a further written submission filed on 24 March 2022, the Minister informed the Commission that he and the other parties had conferred on 23 and 24 March 2022 and the lack of opposition to the Minister's amended draft of the General Order was confirmed.

- 10 We are satisfied that the proposed General Order is consistent with the requirements of the *Act*. It reflects the changed circumstances now in existence, as set out in the grounds to the Minister's application. We do not need to repeat the views expressed by the Commission in Court Session in its 2020 General Order reasons for decision. To the extent that those reasons dealt with the proposal for unpaid pandemic leave, we adopt and apply them for present purposes. In short, we are satisfied that the grounds of the application are made out and it is appropriate to exercise our powers under s 50 of the *Act*, to assist businesses to 'operate and to preserve employment and continuity of employment for the benefit of those businesses, their employees and the economy generally': [2020] General Order decision at [5].
- 11 The General Order will operate until 30 September 2022. To ensure that changes in circumstances between now and that time may be considered, the General Order may be extended on application by a party or at the Commission's initiative.
- 12 Finally, we thank the parties for their cooperative approach in dealing with the present application. This has enabled the matter to be dealt with expeditiously. Minutes of the proposed General Order now issue. Should any party wish to speak to the minutes of the proposed General Order, they should do so in writing before 3:30pm on Friday, 25 March 2022.

2022 WAIRC 00125

COVID-19 GENERAL ORDER PURSUANT TO SECTION 50 OF THE ACT

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
 MINISTER FOR INDUSTRIAL RELATIONS

PARTIES**APPLICANT**

-v-

UNIONSWA, CHAMBER OF COMMERCE AND INDUSTRY OF WESTERN AUSTRALIA,
 AUSTRALIAN MINES AND METALS ASSOCIATION, WESTERN AUSTRALIAN LOCAL
 GOVERNMENT ASSOCIATION

RESPONDENTS**CORAM**

COMMISSION IN COURT SESSION
 CHIEF COMMISSIONER S J KENNER
 SENIOR COMMISSIONER R COSENTINO
 COMMISSIONER T EMMANUEL
 COMMISSIONER T B WALKINGTON

DATE

FRIDAY, 25 MARCH 2022

FILE NO/S

CICS 3 OF 2022

CITATION NO.

2022 WAIRC 00125

Result

General Order issued

Representation**Applicant**

Ms M Williams on behalf of the Hon. Minister for Industrial Relations

Respondents

Mr P Moss on behalf of the Chamber of Commerce and Industry of Western Australia (Inc)

Dr T Dymond on behalf of UnionsWA

Ms S Verity on behalf of the Australian Mines and Metals Association

Ms V Cullen with Ms N Abend on behalf of the Western Australian Local Government Association

General Order

HAVING heard Ms M Williams on behalf of the Hon. Minister for Industrial Relations, Dr T Dymond on behalf of UnionsWA, Mr P Moss on behalf of the Chamber of Commerce and Industry WA, Ms S Verity on behalf of the Australian Mines and Metals Association, and Ms V Cullen with Ms N Abend on behalf of the Western Australian Local Government Association, the Commission in Court Session, pursuant to the powers conferred on it by section 50 of the *Industrial Relations Act 1979* (WA) hereby makes a General Order in the terms set out in the attached Schedule.

(Sgd.) S J KENNER,
 Chief Commissioner,

[L.S.]

On behalf of the Commission In Court Session.

SCHEDULE**PROVISIONS RELATING TO THE COVID-19 PANDEMIC**

1. - APPLICATION

- (1) This General Order applies to each employee as defined in subsection 7(1) of the *Industrial Relations Act 1979* throughout the State of Western Australia, except for employees of a public sector body within the meaning of the *Public Sector Management Act 1994* and police officers, police auxiliary officers and Aboriginal police liaison officers. These

employees are the subject of the Government Sector Labour Relations Circular 6/20 – *Leave arrangements for COVID-19*.

- (2) Where an award or industrial agreement contains a term provided for in this General Order that is more beneficial to an employee, then the more beneficial term shall apply. Otherwise, where there is conflict between the terms of an award or industrial agreement and this General Order, the terms of this General Order shall apply.
- (3) This General Order shall operate on and from the date this General Order issues until 30 September 2022, unless extended on application or at the initiative of the Commission.

2. - UNPAID PANDEMIC LEAVE

- (1) Subject to subclauses (2) and (3), an employee is entitled to take up to two weeks' unpaid pandemic leave if the employee is required, by government or medical authorities or acting on the advice of a medical practitioner, to self-isolate or is otherwise prevented from working by measures taken by government or medical authorities in response to the COVID-19 pandemic. An employer and employee may agree that the employee may take more than two weeks' unpaid pandemic leave.
- (2) The employee must give their employer notice of the taking of leave under subclause (1) and of the reason the employee requires the leave, as soon as practicable. This may be a time after the leave has started.
- (3) The employee who has given their employer notice of taking leave under subclause (1) must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for a reason given in subclause (1).
- (4) Leave taken under subclause (1) does not affect any other paid or unpaid leave entitlement of the employee and counts as service for the purposes of entitlements.
- (5) Such leave:
- (a) is available in full immediately rather than accruing progressively during any period of service;
 - (b) will be available until 30 September 2022 (unless extended by further variation depending on the duration of the COVID-19 pandemic);
 - (c) will be available to full time, part time and casual employees (it is not pro-rata); and
 - (d) must start before 30 September 2022, but may end after that date.
- (6) It is not necessary for employees to exhaust their paid leave entitlements before accessing unpaid pandemic leave.
- (7) Those caring for others who are compelled to self-isolate are not entitled to unpaid pandemic leave.

CONSTRUCTION INDUSTRY PORTABLE PAID LONG SERVICE LEAVE—Matters dealt with—

2022 WAIRC 00126

REVIEW OF DECISION OF THE CONSTRUCTION INDUSTRY LSL PAYMENTS BOARD

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

JOHN LLOYD WATERS

APPLICANT

-v-

MYLEAVE. CONSTRUCTION INDUSTRY PORTABLE PAID LONG SERVICE LEAVE
BOARD

RESPONDENT

CORAM SENIOR COMMISSIONER R COSENTINO
DATE FRIDAY, 25 MARCH 2022
FILE NO/S APPL 49 OF 2021
CITATION NO. 2022 WAIRC 00126

Result Order issued
Representation
Applicant Mr J Waters on his own behalf
Respondent Ms R Harding (of counsel), Ms L Jeffers and Mr S Cinquina

Order

HAVING heard from Mr J Waters on his own behalf and Ms R Harding of counsel, Ms L Jeffers and Mr S Cinquina on behalf of MyLeave, Construction Industry Long Service Leave Payments Board (the Board), the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), and by consent, hereby orders –

1. THAT in accordance with s 50(3)(c) of the *Construction Industry Portable Paid Long Service Leave Act 1985* (WA) (CIPPLSL Act):
 - (a) the decision of the Board as to Mr Waters' entitlement to long service leave for service with Titan Recruitment Pty Ltd in the period 19 November 2014 to 30 June 2017 be set aside; and
 - (b) the Board's decision will be substituted with a decision that Mr Waters' service with Titan Recruitment Pty Ltd in the period 19 November 2014 to 30 June 2017 will be recognised as service for the purposes for the purposes of the CIPPLSL Act.

(Sgd.) R COSENTINO,
Senior Commissioner.

[L.S.]

UNFAIR DISMISSAL/CONTRACTUAL ENTITLEMENTS—

2022 WAIRC 00128

UNFAIR DISMISSAL APPLICATION

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

INDAH PUSPITASARI

APPLICANT

-v-

DRAKE & CO PTY LTD

RESPONDENT

CORAM

SENIOR COMMISSIONER R COSENTINO

DATE

MONDAY, 28 MARCH 2022

FILE NO/S

U 38 OF 2022

CITATION NO.

2022 WAIRC 00128

Result

Application discontinued

Representation

Applicant

Ms I Puspitasari on her own behalf

Respondent

Ms N Brown

Order

HAVING heard from Ms I Puspitasari on her own behalf and Ms N Brown on behalf of the respondent, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), and by consent, hereby orders –

1. THAT this application be discontinued by consent of the parties.

(Sgd.) R COSENTINO,
Senior Commissioner.

[L.S.]

2022 WAIRC 00137

UNFAIR DISMISSAL APPLICATION

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

STEPHANIE AITKEN

APPLICANT

-v-

SOUTH METROPOLITAN HEALTH SERVICE

RESPONDENT

CORAM

SENIOR COMMISSIONER R COSENTINO

DATE

FRIDAY, 1 APRIL 2022

FILE NO/S

U 8 OF 2022

CITATION NO.

2022 WAIRC 00137

Result	Application dismissed
Representation	
Applicant	Ms S Aitken on her own behalf and Ms R Kent
Respondent	Mr R Andretich (of counsel)

Order

HAVING heard from Ms S Aitken on her own behalf and with her Ms R Kent and Mr R Andretich of counsel on behalf of the respondent, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979 (WA)*, hereby orders –

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

[L.S.]

(Sgd.) R COSENTINO,
Senior Commissioner.

CORRECTIONS—

2022 WAIRC 00141

APPEAL AGAINST A DECISION OF THE COMMISSION IN MATTER NUMBER B 167/2019 GIVEN ON 5 NOVEMBER 2021

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION ADRIAN DOYLE	APPELLANT
	-v-	
	ROMAN CATHOLIC BISHOP OF BUNBURY	RESPONDENT
CORAM	CHIEF COMMISSIONER S J KENNER SENIOR COMMISSIONER R COSENTINO COMMISSIONER T EMMANUEL	
DATE	(CORRIGENDUM MONDAY, 4 APRIL 2022)	
FILE NO/S	FBA 8 OF 2021	
CITATION NO.	2022 WAIRC 00141	

CORRIGENDUM

In line 2 of the heading of the Reasons for Decision dated 4 March 2022 ([2022] WAIRC 00097), delete “B 169/2019” and insert “B 167/2019” in lieu thereof.

[L.S.]

By the Full Bench

(Sgd.) S J KENNER,
Chief Commissioner.
Dated: 4 April 2022

PROCEDURAL DIRECTIONS AND ORDERS—

2022 WAIRC 00113

REVIEW OF DECISION OF THE CONSTRUCTION INDUSTRY LSL PAYMENTS BOARD

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION CONTRA-FLOW PTY LTD	APPLICANT
	-v-	
	THE CONSTRUCTION INDUSTRY LONG SERVICE LEAVE PAYMENTS BOARD	RESPONDENT
CORAM	SENIOR COMMISSIONER R COSENTINO	
DATE	TUESDAY, 15 MARCH 2022	
FILE NO/S	APPL 43 OF 2021	
CITATION NO.	2022 WAIRC 00113	

Result	Order issued
Representation	
Applicant	Mr R Lewis (of counsel)
Respondent	Mr S Kemp (of counsel)

Order

HAVING heard from Mr R Lewis, of counsel on behalf of the applicant and Mr S Kemp, of counsel on behalf of the respondent, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979 (WA)*, hereby orders –

1. THAT the evidence in chief in this matter be adduced by witness affidavits in accordance with paragraphs 6 to 8 of Practice Note 9 of 2021.
2. THAT the applicant file any witness affidavits on which it intends to rely at hearing by no later than 12 April 2022.
3. THAT the respondent file any responsive witness affidavits on which it intends to rely at hearing and its outline of submissions and list of authorities by no later than 29 April 2022.
4. THAT the applicant file its outline of submissions and list of authorities by no later than 13 May 2022.
5. THAT the parties advise each other and the Commission which witnesses they require to be available for cross examination at the hearing by no later than 18 May 2022.
6. THAT the matter be listed for hearing on Wednesday, 25 May 2022 at 10.30 am.
7. THAT there be liberty to apply.

[L.S.]

(Sgd.) R COSENTINO,
Senior Commissioner.

2022 WAIRC 00138

DISPUTE RE PAYMENT OF PUBLIC HOLIDAY ENTITLEMENTS TO UNION MEMBER

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

UNITED WORKERS UNION (WA)

APPLICANT

-v-

WESTERN AUSTRALIA COUNTRY HEALTH SERVICES

RESPONDENT

CORAM SENIOR COMMISSIONER R COSENTINO
DATE MONDAY, 4 APRIL 2022
FILE NO/S C 15 OF 2022
CITATION NO. 2022 WAIRC 00138

Result	Order issued
Representation	
Applicant	Ms Sumayyah Sayed
Respondent	Ms Eileen Hadrys with Mr Scott Fairclough

Order

HAVING heard from Ms S Sayed on behalf of the applicant and with her Ms K Jacoby, and Ms E Hadrys with Mr S Fairclough on behalf of the respondent, the Commission, pursuant to the powers conferred under section 44(6)(c) of the *Industrial Relations Act 1979 (WA)*, hereby orders –

1. THAT the Applicant file an Amended Application or Amended Grounds for Application by Tuesday, 5 April 2022.
2. THAT the Respondent file its Response by Thursday, 14 April 2022.
3. THAT the conciliation conference be adjourned to a date to be fixed after Thursday, 21 April 2022.

[L.S.]

(Sgd.) R COSENTINO,
Senior Commissioner.

2022 WAIRC 00148

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION ADRIAN DOYLE	APPELLANT
	-and-	
	THE ROMAN CATHOLIC BISHOP OF BUNBURY	RESPONDENT
CORAM	FULL BENCH CHIEF COMMISSIONER S J KENNER SENIOR COMMISSIONER R COSENTINO COMMISSIONER T EMMANUEL	
DATE	TUESDAY, 12 APRIL 2022	
FILE NO/S	FBA 2 OF 2022	
CITATION NO.	2022 WAIRC 00148	

Result	Order issued
Appearances	
Appellant	No appearance
Respondent	No appearance

Order

WHEREAS on 29 March 2022 the appellant filed a notice of appeal under s 49 of the *Industrial Relations Act 1979* against a decision of the Commission;

AND WHEREAS on 6 April 2022 the appellant applied to the Full Bench for an order extending the time for the filing of the appeal books in respect of this appeal;

AND WHEREAS the Full Bench has considered the application for an extension of time;

NOW THEREFORE the Full Bench, pursuant to the powers conferred on it under the *Industrial Relations Act 1979* hereby orders -
THAT the time for the appellant to file the appeal books be and is hereby extended to 19 April 2022.

By the Full Bench

(Sgd.) S J KENNER,
Chief Commissioner.

[L.S.]

2022 WAIRC 00127

ORDER PURSUANT TO S.66

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION GREGORY BUSSON	APPLICANT
	-v-	
	THE COAL MINERS' INDUSTRIAL UNION OF WORKERS OF WESTERN AUSTRALIA	RESPONDENT
CORAM	CHIEF COMMISSIONER S J KENNER	
DATE	FRIDAY, 25 MARCH 2022	
FILE NO.	PRES 1 OF 2022	
CITATION NO.	2022 WAIRC 00127	

Result	Direction issued
Representation	
Applicant	Mr C Fordham of counsel

Direction

HAVING heard Mr C Fordham of counsel on behalf of the applicant the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby directs –

- (1) THAT the applicant file and serve written submissions and any further evidence and proposed orders that are sought to be made in respect of the application by 5pm on 14 April 2022.

- (2) THAT the application filed 3 March 2022 be heard on the papers
 (3) THAT the parties have liberty to apply on short notice.

[L.S.]

(Sgd.) S J KENNER,
Chief Commissioner.

2022 WAIRC 00129

ORDER PURSUANT TO S.66WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
LEE COLLISON**PARTIES****APPLICANT****-v-**

AUSTRALIAN NURSING FEDERATION INDUSTRIAL UNION OF WORKERS PERTH

RESPONDENT

CORAM CHIEF COMMISSIONER S J KENNER
DATE TUESDAY, 29 MARCH 2022
FILE NO. PRES 2 OF 2022
CITATION NO. 2022 WAIRC 00129

Result Direction issued
Representation
Applicant In person
Respondent Ms B Burke of counsel and with her Ms J Lovett of counsel

Direction

HAVING heard the applicant on his own behalf and Ms B Burke of counsel and Ms J Lovett of counsel on behalf of the respondent the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby directs –

- (1) THAT the applicant file and serve an outline of submissions and any list of authorities upon which he intends to rely on by Friday, 12 April 2022.
- (2) THAT the respondent file and serve an outline of submissions and any list of authorities upon which it intends to rely on by Friday, 26 April 2022.
- (3) THAT the applicant and respondent file an agreed statement of facts (if any) no later than seven days prior to the date of hearing.
- (4) THAT the matter be listed for hearing on a date to be fixed not before Monday, 9 May 2022.
- (5) THAT there be liberty to apply on short notice.

[L.S.]

(Sgd.) S J KENNER,
Chief Commissioner.

2022 WAIRC 00133

ORDER PURSUANT TO S.66WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
LEE COLLISON**PARTIES****APPLICANT****-v-**

AUSTRALIAN NURSING FEDERATION INDUSTRIAL UNION OF WORKERS PERTH

RESPONDENT

CORAM CHIEF COMMISSIONER S J KENNER
DATE WEDNESDAY, 30 MARCH 2022
FILE NO. PRES 2 OF 2022
CITATION NO. 2022 WAIRC 00133

Result Amended direction issued
Representation
Applicant In person
Respondent Ms B Burke of counsel and with her Ms J Lovett of counsel

Direction

WHEREAS this is an application pursuant to s 66 of the *Industrial Relations Act 1979* (WA); and
 AND WHEREAS on 29 March 2022 the Commission issued a direction [2022 WAIRC 00129]; and
 NOW THEREFORE, having heard the applicant on his own behalf and Ms B Burke of counsel and Ms J Lovett of counsel on behalf of the respondent the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby directs –

THAT paragraphs (1) and (2) of the direction be deleted and in lieu thereof there be inserted:

- (1) THAT the applicant file and serve an outline of submissions and any list of authorities upon which he intends to rely on by Friday, 15 April 2022.
- (2) THAT the respondent file and serve an outline of submissions and any list of authorities upon which it intends to rely on by Friday, 29 April 2022.

(Sgd.) S J KENNER,
 Chief Commissioner.

[L.S.]

2022 WAIRC 00118

APPEAL AGAINST THE DECISION TO TERMINATE EMPLOYMENT ON 21 DECEMBER 2021

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

RANDALL BURRIDGE

APPELLANT

-v-

DIRECTOR GENERAL, THE DEPARTMENT OF COMMUNITIES

RESPONDENT

CORAM

COMMISSIONER T B WALKINGTON – CHAIR

MR B HAWKINS – BOARD MEMBER

MS M DI LELLO – BOARD MEMBER

DATE

FRIDAY, 18 MARCH 2022

FILE NO.

PSAB 7 OF 2022

CITATION NO.

2022 WAIRC 00118

Result	Direction Issued
Representation	
Applicant	Ms D Larson (of counsel)
Respondent	Mr S Pack (of counsel)

Direction

HAVING heard from Ms D Larson on behalf of the appellant, and Mr S Pack on behalf of the respondent, the Public Service Appeal Board, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), and by consent, hereby directs:

1. THAT discovery be informal;
2. THAT the parties file a statement of agreed facts by no later than three weeks from the date of this order;
3. THAT the parties file a bundle of agreed documents by no later than five weeks from the date of this order;
4. THAT the respondent file and serve upon the appellant any outlines of witness evidence and any documents upon which they intend to rely by no later than seven weeks from the date of this order;
5. THAT the appellant file and serve upon the respondent any outlines of witness evidence and any documents upon which they intend to rely by no later than nine weeks from the date of this order;
6. THAT the respondent may file and serve upon the appellant any further outlines of witness evidence and any further documents in reply by no later than eleven weeks from the date of this order;
7. THAT the respondent file and serve upon the appellant an outline of submissions by no later than thirteen weeks from the date of this order;
8. THAT the appellant file and serve upon the respondent an outline of submissions by no later than fifteen weeks from the date of this order;
9. THAT the matter be listed for hearing for 2 days on a date to be fixed; and
10. THAT the parties have liberty to apply at short notice.

(Sgd.) T B WALKINGTON,
 Commissioner,

On behalf of the Public Service Appeal Board.

[L.S.]

2022 WAIRC 00131

APPEAL AGAINST THE DECISION TAKEN BY THE EMPLOYER ON 20 JANUARY 2020

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	APPELLANT
	TERENCE REGINALD ROY	
	-v-	
	DEPARTMENT OF COMMUNITIES	RESPONDENT
CORAM	PUBLIC SERVICE APPEAL BOARD SENIOR COMMISSIONER R COSENTINO - CHAIRPERSON MR G BROWN - BOARD MEMBER MR S DANE - BOARD MEMBER	
DATE	WEDNESDAY, 30 MARCH 2022	
FILE NO	PSAB 14 OF 2021	
CITATION NO.	2022 WAIRC 00131	

Result	Order issued
Representation	
Appellant	Ms S Kemp (of counsel)
Respondent	Mr D Anderson (of counsel)

Order

HAVING heard from Ms S Kemp 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), hereby orders –

1. THAT the appellant's application seeking an extension of time to bring his appeal be listed for hearing on a date to be fixed after 17 July 2022.
2. THAT the parties have liberty to apply.

(Sgd.) R COSENTINO,
Senior Commissioner,

[L.S.]

On behalf of the Public Service Appeal Board.

2022 WAIRC 00112

APPEAL AGAINST THE DECISION TO TERMINATE EMPLOYMENT ON 15 OCTOBER 2020

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	APPELLANT
	SANJA SPASOJEVIC	
	-v-	
	SPEAKER OF THE LEGISLATIVE ASSEMBLY	RESPONDENT
CORAM	PUBLIC SERVICE APPEAL BOARD SENIOR COMMISSIONER R COSENTINO - CHAIRPERSON MR G SUTHERLAND - BOARD MEMBER MS M BUTLER - BOARD MEMBER	
DATE	TUESDAY, 15 MARCH 2022	
FILE NO	PSAB 31 OF 2020	
CITATION NO.	2022 WAIRC 00112	

Result	Order issued
Representation	
Appellant	Mr M Baldwin (of counsel)
Respondent	Ms K Ellson (of counsel)

Order

WHEREAS this is an appeal pursuant to s 80I(1)(d) of the *Industrial Relations Act 1979* (WA) (IR Act);

AND WHEREAS on 4 November 2021, a directions hearing was held before the Public Service Appeal Board (Board) and an Order ([2021] WAIRC 00563) issued to further vary the programming of the matter;

AND WHEREAS on 11 March 2022, the respondent's representative wrote to the Board advising that the parties have conferred and have reached an agreement on the further programming of the matter and provided a minute of proposed consent orders;

AND WHEREAS on 14 March 2022, the Board considered the correspondence;

NOW THEREFORE the Board, pursuant to the powers conferred under the IR Act, and by consent, hereby orders –

1. THAT the appellant file its submissions on the interlocutory matter of the respondent's objection to certain evidence by 16 March 2022.
2. THAT the respondent file its reply to the appellant's submissions on the interlocutory matter of the respondent's objection to certain evidence by 22 March 2022.
3. THAT Order 4 of ([2021] WAIRC 00563) be varied to read "THAT the appellant is granted leave to file any amended outline of submissions for the substantive hearing by 4 April 2022."
4. THAT Order 5 of ([2021] WAIRC 00563) be varied to read "THAT the respondent file outlines of evidence complying with Practice Note 9 of 2021 for each witness to be called and a book of documents on which it intends to rely that is bound, indexed and paginated by 11 April 2022."
5. THAT Order 6 ([2021] WAIRC 00563) be varied to read "THAT the respondent file a written outline of its submissions and list of authorities (of not more than 15 pages) by 26 April 2022."
6. THAT the parties have liberty to apply on short notice.

(Sgd.) R COSENTINO,
Senior Commissioner,

On behalf of the Public Service Appeal Board.

[L.S.]

2022 WAIRC 00136

APPEAL AGAINST THE DECISION TO TERMINATE EMPLOYMENT ON 24 NOVEMBER 2021

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

CHRISTOPHER SHANE MASEYK

APPELLANT

-v-

DEPARTMENT OF MINES, INDUSTRY REGULATION AND SAFETY

RESPONDENT

CORAM

COMMISSIONER T B WALKINGTON – CHAIR

MS L BROWN – BOARD MEMBER

MS P CHAUHAN – BOARD MEMBER

DATE

THURSDAY, 31 MARCH 2022

FILE NO.

PSAB 35 OF 2021

CITATION NO.

2022 WAIRC 00136

Result

Direction Issued

Representation

Applicant

Mr A Sutton (of counsel)

Respondent

Mr M McIlwaine (of counsel)

Direction

HAVING heard from Mr A Sutton on behalf of the appellant and Mr M McIlwaine on behalf of the respondent, the Public Service Appeal Board, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), hereby directs:

1. THAT the *Form 8B – Notice of Appeal* lodged by the appellant on 15 December 2021, but unable to be formally filed and actioned until 17 December 2021, be accepted out of time;
2. THAT discovery be informal;
3. THAT the parties file a joint statement of agreed facts and bundle of agreed documents by no later than 6 April 2022;

4. THAT the appellant file and serve upon the respondent any outlines of witness evidence and any documents upon which they intend to rely by no later than 20 April 2022;
5. THAT the respondent file and serve upon the appellant any outlines of witness evidence and any documents upon which they intend to rely by no later than 4 May 2022;
6. THAT the appellant file and serve upon the respondent an outline of submissions by no later than 18 May 2022;
7. THAT the respondent file and serve upon the appellant an outline of submissions by no later than 1 June 2022;
8. THAT the matter be listed for hearing for 2 days on a date to be fixed; and
9. THAT the parties have liberty to apply on short notice.

(Sgd.) T B WALKINGTON,
Commissioner,

[L.S.]

On behalf of the Public Service Appeal Board.

2022 WAIRC 00116

UNFAIR DISMISSAL APPLICATION

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

PAUL BERNARD BENSON

APPLICANT

-v-

ADVOCACY WESTERN AUSTRALIA INC

RESPONDENT

CORAM COMMISSIONER T B WALKINGTON

DATE FRIDAY, 18 MARCH 2022

FILE NO. U 4 OF 2022

CITATION NO. 2022 WAIRC 00116

Result Direction Issued

Representation

Applicant Mr P Benson

Respondent Mr L Allen (of counsel)

Direction

HAVING heard from Mr Benson on his own behalf and Mr Allen on behalf of the respondent, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby directs –

1. THAT the two preliminary issues of jurisdiction be heard and determined;
2. THAT the applicant file and serve upon the respondent any outlines of witness evidence or signed witness statements, including any documents upon which they intend to rely and an outline of written submissions with respect to the jurisdictional issue of whether the Commission ought to accept the application out of time, by no later than 31 March 2022;
3. THAT the respondent file and serve upon the applicant any outlines of witness evidence or signed witness statements, including any documents upon which they intend to rely and an outline of written submissions in reply to the jurisdictional issue of whether the Commission ought to accept the application out of time in, by no later than 14 April 2022;
4. THAT the respondent file and serve upon the applicant any outlines of witness evidence or signed witness statements, including any documents upon which they intend to rely and an outline of written submissions with respect to the jurisdictional issue of whether the applicant resigned or was dismissed, by no later than 31 March 2022;
5. THAT the applicant file and serve upon the respondent any outlines of witness evidence or signed witness statements, including any documents upon which they intend to rely and an outline of written submissions in reply to the jurisdictional issue of whether the employee resigned or was dismissed, by no later than 14 April 2022;
6. THAT the matter be listed for hearing on a date to be determined, and not before 21 April 2022; and
7. THAT the parties have liberty to apply on short notice.

(Sgd.) T B WALKINGTON,
Commissioner.

[L.S.]

2022 WAIRC 00144

UNFAIR DISMISSAL APPLICATION

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

TE ARAI TAWHA

APPLICANT

-v-

NULLAGINE COMMUNITY RESOURCE CENTRE ASSOCIATION

RESPONDENT

CORAM COMMISSIONER T B WALKINGTON
DATE FRIDAY, 8 APRIL 2022
FILE NO. U 34 OF 2021
CITATION NO. 2022 WAIRC 00144

Result Direction Issued
Representation
Applicant Ms G Tawha (as agent)
Respondent Mr J Payne

Direction

HAVING heard from Ms G Tawha on behalf of the applicant and Mr J Payne on behalf of the respondent, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), hereby directs:

1. THAT the respondent may file and serve any authorities that they seek to rely upon in addressing the respondent's authority to reduce the applicant's hours of work without a written variation to the employment contract, by no later than 13 April 2022; and
2. THAT the applicant may file and serve any authorities in reply that they seek to rely upon in addressing the respondent's authority to reduce the applicant's hours of work without a written variation to the employment contract, by no later than 20 April 2022.

(Sgd.) T B WALKINGTON,
 Commissioner.

[L.S.]

2022 WAIRC 00114

UNFAIR DISMISSAL APPLICATION

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

VERONA MARIE WAUCHOPE

APPLICANT

-v-

DEPARTMENT OF EDUCATION

RESPONDENT

CORAM COMMISSIONER T B WALKINGTON
DATE WEDNESDAY, 16 MARCH 2022
FILE NO. U 53 OF 2021
CITATION NO. 2022 WAIRC 00114

Result Direction issued
Representation
Applicant Ms V Wauchope
Respondent Mr S Pack (of counsel)

Direction

WHEREAS the Commission issued Direction [2022] WAIRC 00062 on 11 February 2022 to program the hearing and determination of this application;

AND WHEREAS on 25 February 2022 the respondent filed a *Form IA* in the Commission seeking a hearing for orders under s 27(1)(a) of the *Industrial Relations Act 1979* (WA);

AND WHEREAS on 2 March 2022 the Commission issued Direction [2022] WAIRC 00089 staying Direction [2022] WAIRC 00062 pending the determination of the respondent's application seeking orders under s 27(1)(a);

AND WHEREAS on 4 March 2022 the applicant filed a *Form IA* in the Commission requesting to amend her application;

AND WHEREAS on 16 March 2022 the Commission convened a Directions Hearing and heard from Ms Wauchope on her own behalf and Mr Pack on behalf of the respondent regarding their respective *Form IA* applications;

NOW THEREFORE, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), hereby directs:

1. THAT the applicant file and serve upon the respondent an amended *Form IA* addressing the remedy being sought by the applicant, by no later than 23 March 2022;
2. THAT the respondent's *Form IA* application seeking orders under s 27(1)(a) be heard and determined;
3. THAT the respondent file and serve upon the applicant any outlines of witness evidence, including any documents upon which they intend to rely and an outline of written submissions with respect to the application for orders under s 27(1)(a), by no later than 1 April 2022;
4. THAT the applicant file and serve upon the respondent any outlines of witness evidence, including any documents upon which they intend to rely and an outline of written submissions with respect to the application for orders under s 27(1)(a), by no later than 22 April 2022;
5. THAT the application for orders under s 27(1)(a) be listed for hearing on a date to be determined; and
6. THAT the parties have liberty to apply on short notice.

(Sgd.) T B WALKINGTON,
Commissioner.

[L.S.]

2022 WAIRC 00120

UNFAIR DISMISSAL APPLICATION

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

EMILY ELIZABETH MAE GIBSON

APPLICANT

-v-

SHIRE OF HALLS CREEK

RESPONDENT

CORAM COMMISSIONER T B WALKINGTON

DATE FRIDAY, 18 MARCH 2022

FILE NO. U 63 OF 2021

CITATION NO. 2022 WAIRC 00120

Result Direction Issued

Representation

Applicant Ms E Gibson

Respondent Mr A Sinanovic (of counsel)

Direction

WHEREAS on 18 March 2022 the Commission convened a Show Cause Hearing and heard from the applicant on her own behalf and Mr A Sinanovic on behalf of the respondent;

NOW THEREFORE the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), hereby directs:

1. THAT discovery be informal between the parties;
2. THAT the applicant file and serve any outlines of witness evidence and any documents, for each witness, upon which she intends to rely by no later than 8 April 2022;

- 3 THAT the respondent file and serve any outlines of witness evidence and any documents, for each witness, upon which it intends to rely by no later than 6 May 2022;
- 4 THAT the applicant file and serve an outline of submissions and any list of authorities upon which she intends to rely by no later than 20 May 2022;
- 5 THAT the respondent file and serve an outline of submissions and any list of authorities upon which they intend to rely by no later than 3 June 2022;
- 6 THAT the matter be listed for hearing for 2 days on a date to be determined; and
- 7 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
City of Karratha Enterprise Agreement 2021 AG 21/2021	03/25/2022	Western Australian Municipal Administrative, Clerical and Services Union of Employees	City of Karratha	Commissioner T B Walkington	Agreement registered
Department of Communities (Family Support Officers) CSA Agreement 2021 PSAAG 6/2021	03/17/2022	Department of Communities	Civil Service Association of Western Australia Incorporated	Commissioner T B Walkington	Agreement registered
Shire of Harvey Enterprise Agreement 2021 AG 22/2021	04/06/2022	Western Australian Municipal, Administrative, Clerical and Services Union of Employees	Shire of Harvey	Commissioner T B Walkington	Agreement Registered

NOTICES—Appointments—

2022 WAIRC 00145

DESIGNATION

SECTION 16(2A) *INDUSTRIAL RELATIONS ACT 1979*

SCHEDULE 1 CLAUSE 27(1) *WORK HEALTH AND SAFETY ACT 2020*

I, the undersigned Chief Commissioner of The Western Australian Industrial Relations Commission, pursuant to s 16(2A) of the *Industrial Relations Act 1979* (the Act), hereby designate Commissioner T Emmanuel, being a Commissioner who holds office under s 8(2)(d) of the Act and who satisfies the additional requirements referred to in s 8(3A) of the Act, to exercise the jurisdiction conferred by the *Work Health and Safety Act 2020* Schedule 1 clause 27(1) from 1 April 2022. This designation ceases to have effect on 31 March 2023.

Dated the 31st day of March 2022.

(Sgd.) S J KENNER,
Chief Commissioner.

[L.S.]