



# Western Australian Industrial Gazette

PUBLISHED BY AUTHORITY

Sub-Part 5

WEDNESDAY 28 MAY, 2025

Vol. 105—Part 1

THE mode of citation of this volume of the Western Australian Industrial Gazette will be as follows:—

105 W.A.I.G.

CUMULATIVE CONTENTS AND DIGEST APPEAR AT THE END OF THIS PUBLICATION

## COMMISSION IN COURT SESSION—Unions—Cancellation of registration—

2025 WAIRC 00298

APPLICATION TO CANCEL THE REGISTRATION OF COMMUNITY EMPLOYERS WA

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

COMMISSION IN COURT SESSION

<b>CITATION</b>	:	2025 WAIRC 00298
<b>CORAM</b>	:	CHIEF COMMISSIONER S J KENNER COMMISSIONER T B WALKINGTON COMMISSIONER C TSANG
<b>HEARD</b>	:	FRIDAY, 9 MAY 2025
<b>DELIVERED</b>	:	WEDNESDAY, 14 MAY 2025
<b>FILE NO.</b>	:	CICS 6 OF 2025
<b>BETWEEN</b>	:	THE REGISTRAR, WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
		Applicant
		AND
		COMMUNITY EMPLOYERS WA
		Respondent

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Catchwords	:	Industrial Law (WA) – Application to cancel the registration of an organisation under s 73 of the <i>Industrial Relations Act 1979</i> – Requirements of the <i>Act</i> and Regulations satisfied – Order made cancelling registration
Legislation	:	<i>Industrial Relations Act 1979</i> (WA) s 54, s 73, s 73(12)
Result	:	Order issued
<b>Representation:</b>		
Counsel:		
Applicant	:	Mr M McIlwaine of counsel
Respondent	:	Mr T Grey-Smith as agent
Solicitors:		
Applicant	:	State Solicitor's Office

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**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

The Registrar, Western Australian Industrial Relations Commission v Construction Contractors Association of Western Australia [2016] WAIRC 00282; (2016) 96 WAIG 432

*Reasons for Decision*

**THE COMMISSION IN COURT SESSION:**

1 This is an application by the Registrar in accordance with s 73(12) of the *Industrial Relations Act 1979* (WA) to cancel the registration of Community Employers WA, an organisation registered under s 54 of the *Act*. The grounds of the application are as follows:

**Grounds**

5. Pursuant to sub section 73(12)(c), the Organisation has in the manner prescribed, requested that its registration be cancelled.
  - 5.1. Regulation 75 sets out the manner in which an Organisation may request to cancel its registration.
    - 5.1.1. Regulation 75(1) states that the request should be made to the Registrar in the approved form. At the time of making the application to the Registrar, the approved form was a Form 13.
    - 5.1.2. Regulation 75(2) requires the Organisation to clearly state the grounds on which its request is made and contain sufficient evidence to satisfy the Registrar that the cancellation has the consent of the majority of the total number of members in the Organisation.
  - 5.2. On the basis of the information provided within APPL 3/2025, the Registrar is of the view that there are sufficient grounds under section 73(12)(c) to cancel the registration of the Organisation. The evidence that supports this is set out in the **attached** statutory declaration.
- 2 The application was heard by the Commission in Court Session on 9 May 2025. The application was consented to by the respondent. At the conclusion of the hearing, the Commission in Court Session was satisfied that the statutory requirements were met, and for reasons to be published in due course, an order would be made, cancelling the registration of the respondent. These are our short reasons for so concluding.
- 3 Sections 73(12) and (12a) of the *Act* provide as follows:
  - (12) 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.
  - (12a) The Registrar must make an application under subsection (12) in every case where it appears to the Registrar that there are sufficient grounds for doing so.
- 4 In this case reg 75 of the *Industrial Relations Commission Regulations 2005* (WA) is also relevant. It is in the following terms:
  - 75. Request by organisation or association for cancellation of registration**
    - (1) Any request by an organisation or association to cancel its registration must be made to the Registrar in the approved form.
    - (2) The request must state clearly the grounds on which the request is made and contain sufficient evidence to satisfy the Registrar that the cancellation has the consent of a majority of the total number of members of the organisation or association.
- 5 Where the Commission in Court Session is satisfied that the Registrar has been requested, in the manner prescribed, by an organisation to have its registration cancelled, the Commission in Court Session has no discretion, and must, by s 73(12)(c) of the *Act*, cancel the organisation's registration: *The Registrar, Western Australian Industrial Relations Commission v Construction Contractors Association of Western Australia* [2016] WAIRC 00282; (2016) 96 WAIG 432 citing and applying *The Registrar v Master Hairdressers' Association of WA, Industrial Union of Employers* [2004] WAIRC 11936; (2004) 84 WAIG 2190.
- 6 The application is supported by a statutory declaration of Ms Sarah Jane Kemp, Deputy Registrar of the Commission made on 28 February 2025. In her declaration Ms Kemp relevantly declared as follows:

**Statutory Obligations: Organisation Records**

3. The records of the WAIRC indicate that statutory obligations as prescribed by the IR Act and the *Industrial Relations Commission Regulations 2005* (**the Regulations**) by way of annual financial returns and officers and membership returns have been consistently filed by Community Employers WA (**the Organisation**).

4. The Registrar delegates the responsibility for the review and assessment of registered organisation compliance matters to the Registered Organisation Compliance Lead (Ms Sophie Pontifex), including the statutory declarations lodged in accordance with section 63(2) of the IR Act referred to as an '**officers and membership return**' and section 65(b) of the IR Act referred to as a '**financial statements return**'.

#### **Annual Financial Statements Returns**

5. Rule 18 – FINANCE of the rules of the Organisation registered with WAIRC (**rules**) prescribes a financial year. Sub rule 18.1 states that the 'financial year for the Association shall end on 30 June in each year'. A copy of the registered rules of the Organisation is attached to this declaration and marked as **Attachment SK-1**.
6. The Organisation last submitted a financial statements return on 16 November 2023 for the 12 months ending 30 June 2023, which is attached to this declaration and marked as **Attachment SK-2**.

#### **Annual Officer and Membership Returns**

7. The Organisation most recently submitted an officers and membership return on 17 January 2024 (**Attachment SK-3**), which was later amended on 27 February 2024 (**Attachment SK-4**). In those returns it was reported that there were 169 members as at 1 January 2024.
8. On 21 February 2024, Ms Pontifex emailed the Organisation and asked that it file an amended officers and membership return to remedy some typographical defects identified within the statutory declaration that had been lodged on 17 January 2024. The organisation submitted an amended return on 27 February 2024 which rectified the issues identified by Ms Pontifex, however, changes to the office titles had been made that did not reflect the office titles identified within the rules. This change was queried with the organisation on 1 March 2024. A copy of that email thread is attached to this declaration and marked as **Attachment SK-5**.
9. On 5 March 2024, the Executive Director of the Organisation (Mr Tim Grey-Smith) responded to Ms Pontifex's email. Mr Grey-Smith identified that unregistered changes had been made to the rules. A copy of that email is attached to this declaration and marked as **Attachment SK-6**.

#### **PRES 14/2024**

10. On 13 May 2024, Mr Grey-Smith contacted Ms Pontifex and informed her that the Organisation's changes to rules made them incompatible with the IR Act and sought information on the deregistration process. A copy of that correspondence is attached and marked as **Attachment SK-7**.
11. On 26 September 2024 a member of the Organisation made an application pursuant to section 66 of the IR Act, which was accepted for filing by the Registry and identified as PRES 14/2024. A copy of that application is attached and marked as **Attachment SK-8**.
12. PRES 14/2024 was heard by Chief Commissioner S J Kenner, with reasons for decision and orders issued on 7 October 2024 (**Attachment SK-9**). The effect of those orders, which are operative until 30 March 2025, was to permit the Organisation to take the necessary steps towards cancelling its registration under the IR Act.

#### **APPL 3/2025**

13. A request to cancel the registration of the Organisation was made by the interim Secretary of the Organisation on the approved form on 6 February 2025 (**APPL 3/2025**). A copy of that application is attached and marked as **Attachment SK-10**.
14. On 19 February 2025, the interim Secretary of the Organisation provided a supplementary statutory declaration that stated that at the date the vote for dissolution and associated motions were put to members, there were 161 members of the organisation. A copy of that statutory declaration is attached and marked as **Attachment SK-11**.
15. In an annexure to the statutory declaration attached to APPL 3/2025, titled 'Minutes – Annual General Meeting', at Item 10, it identifies that 3 relevant motions were put forward at the Annual General Meeting of the Organisation held on 6 December 2024:
  - 15.1. "That CEWA members approve of deregistering the organisation registered pursuant to the Industrial Relations Act 1979 (WA)"
  - 15.2. "That members permit the interim board to take all necessary steps, make all required applications to the Registrar of WAIRC to deregister, and to represent the organisation in the subsequent application before the Commission in Court Session."
  - 15.3. "That members confirm the transfer of all funds and assets of the organisation registered in the WAIRC "Community Employers WA" to the entity registered under the Associations Incorporation Act 2015 (WA) "Community Employers WA Incorporated."
16. As identified in the abovementioned annexure, at the time of the vote for dissolution being taken, 82 members of 161 eligible members of the Organisation voted in favour of cancelling the registration of the organisation under the IR Act. This is in accordance with order 7 of 2024 WAIRC 00879.

#### **Conclusion**

17. APPL 3/2025 demonstrates that the Organisation has, in the manner prescribed, requested that its registration be cancelled.
- 17.1. In compliance with regulation 75(1), this request was made by the Organisation on the prescribed form that is, a *Form 13 - Application to Alter or Substitute the Rules of an Organisation or Association, Change its Name; or Suspend or Cancel its Registration (Form 13)*. A copy of the Form 13 is contained within Attachment SK-10.
- 17.2. In APPL 3/2025 the Organisation provided a Statutory Declaration which set out the grounds on which the request was being made, and as set out above in paragraphs 15 - 16, provided sufficient evidence to satisfy me that the cancellation of the registration had the consent of a majority of the total number of members of the organisation, in compliance with regulation 75(2).
18. It is on the basis of the information declared above that I make this application to the Commission in Court Session in accordance with section 73( 12a) of the IR Act and regulation 76 of the Regulations.
- 7 Having regard to the application and the evidence in support of it, the Commission in Court Session was satisfied that the requirements of the *Act* and the *Regulations* had been met. The Commission was satisfied that the motion for dissolution of the respondent was carried in accordance with r 22 of the respondent's Rules, as modified by the Commission's order in *Save the Children v Community Employers WA Inc* [2024] WAIRC 00879; (2024) 104 WAIG 2233. Furthermore, on 6 December 2024, at an Annual General Meeting of the respondent, the meeting minutes record that appropriate motions to cancel the registration of the respondent were put to a vote. On the basis that 82 of 161 eligible members of the respondent voted in favour of the motions, the motion was carried.
- 8 There are two minor matters arising under the Rules. First, under r 11.1 the Secretary is required to give at least 14 days' notice of a General Meeting to members. This notice was given by the Executive Director rather than the Secretary, by an email dated 6 October 2024. Second, in accordance with r 22.1, for the purposes of considering a motion for dissolution of the respondent, a General Meeting is required to be called. However, the motions were considered and passed at an Annual General Meeting.
- 9 Despite these irregularities, we are of the view that the Registrar, on the materials before her, could be satisfied that the cancellation of the respondent had the consent of a majority of the total number of members of the respondent. A similar issue of non-compliance with an organisation's rules in an application under s 73(12) of the *Act* arose in *Construction Contractors Association*. In that matter, at [19]-[21] Kenner C (as he then was) observed that:
- [19] One matter requires comment. During the course of the hearing before the Full Bench, it became apparent that the Association had served notices of a council meeting to be held on 15 April 2015 and the general meeting to be held on 20 May 2015, by email and not by personal service or by post as referred to in its rules. Despite this, in my view, and irrespective of any savings provision in the Association's rules, for the following brief reasons, such an omission would not invalidate the request to the Registrar. The Registrar had ample evidence before her for the purposes of reg 75(2), that a majority of the total number of members of the Association consented to the Association's cancellation.
- [20] Applications made by the Registrar under s 73(12) are distinguishable from others that may be brought by organisations themselves under Part II Division 4 of the Act, such as for their registration under ss 53 or 54 or, for the alteration of registered rules under s 62. In those types of applications it is clear that the statute prescribes particular procedural steps that must be followed by an organisation and strict compliance with them is necessary. For example, applications to alter registered rules under s 62 are required to be 'authorised in accordance with the rules of the organisation': s 62(3)(a) Act. Substantial compliance is not sufficient: *State School Teachers Union of WA (Inc)* (1997) 78 WAIG 1129; *The Electrical and Communications Association of Western Australia (Union of Employers)* (2007) 87 W AIG 2899. Whether a statutory scheme requires strict compliance or whether substantial compliance is sufficient, is to be ascertained from the language of the legislation concerned: *State School Teachers' Union of WA (Inc)* at 1129.
- [21] In contrast to ss 55 and 62 of the Act, in this case, neither s 73(12) nor regs 75 and 76, require the Registrar to be satisfied that there has been compliance with an organisation's rules, as a prerequisite to making an application to cancel its registration. All that is required is that there is 'sufficient evidence' that the proposed cancellation has the consent of a majority of the members. In this case there was ample such evidence upon which the Registrar could form that view. The Registrar, having formed that view and being satisfied there were sufficient grounds for making an application under s 73(12), was required to make such an application: s 73(12a) Act. In the circumstances of this matter, substantial compliance with the rules of the Association enabled the Registrar to reach the requisite view in circumstances where strict compliance with its rules is not a statutory requirement. In my view, the Full Bench can be satisfied that the Association has, in the manner prescribed, requested that its registration be cancelled and an order should be made accordingly.
- 10 For the foregoing reasons, the Commission in Court Session made orders cancelling the registration of the respondent with effect on and from 9 May 2025.
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2025 WAIRC 00281

**APPLICATION TO CANCEL THE REGISTRATION OF COMMUNITY EMPLOYERS WA**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

THE REGISTRAR, WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**APPLICANT**

-v-

COMMUNITY EMPLOYERS WA

**RESPONDENT****CORAM**

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER S J KENNER

COMMISSIONER T B WALKINGTON

COMMISSIONER C TSANG

**DATE**

MONDAY, 12 MAY 2025

**FILE NO/S**

CICS 6 OF 2025

**CITATION NO.**

2025 WAIRC 00281

**Result**

Order issued

**Representation****Applicant**

Mr M McIlwaine of counsel

**Respondent**

Mr T Grey-Smith as agent

*Order*

THIS MATTER having come on for hearing before the Commission in Court Session on the 9<sup>th</sup> day of May 2025 and having heard Mr M McIlwaine of counsel on behalf of the applicant and Mr T Grey-Smith as agent on behalf of the respondent, the Commission in Court Session orders that –

The registration of the Community Employers WA be and is hereby cancelled on and from the 9<sup>th</sup> day of May 2025.

By the Commission in Court Session

(Sgd.) S J KENNER,  
Chief Commissioner.

[L.S.]

**AWARDS/AGREEMENTS—Application for—**

2025 WAIRC 00265

**CITY OF CANNING INDUSTRIAL AGREEMENT 2025**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**CITATION**

: 2025 WAIRC 00265

**CORAM**

: COMMISSIONER T KUCERA

**HEARD**

: ON THE PAPERS

**DELIVERED**

: MONDAY, 5 MAY 2025

**FILE NO.**

: AG 9 OF 2025

**BETWEEN**

: CITY OF CANNING

Applicant

AND

WESTERN AUSTRALIAN MUNICIPAL, CLERICAL AND SERVICES UNION  
(WASU), THE LOCAL GOVERNMENT RACING CEMETRIES EMPLOYEES UNION  
(LGRCEU)

Respondent

**Catchwords**

: Industrial Law (WA) – Application to intervene in *City of Canning Industrial Agreement 2025* – Application for union to be named as a party to the proposed agreement – Principles

		to be applied in an intervention application – Requirements under ss 41 and 41A(2) of the <i>Industrial Relations Act 1979</i> (WA) – Application for leave to intervene granted
Legislation	:	<i>Industrial Relations Act 1979</i> (WA)
Result	:	Application for leave to intervene granted
<b>Representation:</b>		(on the papers)
<b>Applicant</b>		Mr C Beetham (of counsel)
<b>Respondents</b>		Mr R Knox on behalf of the Western Australian Municipal, Clerical and Services Union (WASU) Mr K Trainer on behalf of the Local Government Racing Cemeteries Employees Union (LGRCEU)
<b>Intervenor</b>		Mr T Meagher on behalf of the Construction, Forestry, Mining and Energy Union of Workers (CFMEUW)

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**Case(s) referred to in reasons:**

*Amalgamation of the Australian Workers' Union, West Australian Branch, Industrial Union of Workers and the Food Preservers' Union of Western Australia Australian Union of Workers* [2016] WAIRC 00966; (2017) 97 WAIG 148

*City of Cockburn v the Western Australian Municipal Administrative Clerical and Services Union of Employees* [2023] WAIRC 00787; 103 WAIG 1723

*Fisher Catering Services Pty Ltd v Federated Liquor and Allied Industries Employees Union of Australia, Western Australia Branch, Union of Workers and Others* (1994) 74 WAIG 2953

*R v Holmes; Ex parte Public Service Association (NSW)* (1977) 140 CLR 63

*Re Ludeke; Ex parte Customs Officers Association of Australia, Fourth Division* (1985) 155 CLR 513

*Reasons for Decision*

- 1 On 22 January 2025, the City of Canning (**COC**) made a *Form 1A Application (substantive application)* to register the *City of Canning Industrial Agreement 2025 (proposed agreement)*, under s 41 of the *Industrial Relations Act 1979 (IR Act)*.
- 2 The substantive application is supported by two unions, both of whom are named as parties to the proposed agreement: the Western Australian Municipal, Administrative, Clerical and Services Union (**WASU**) and the Local Government, Racing and Cemeteries Employees Union of Western Australia (**LGRCEU**).
- 3 Although the proposed agreement is the result of negotiations that also involved the Construction, Forestry, Mining and Energy Union of Workers (**CFMEUW**), it is neither a signatory to nor named as a party to the proposed agreement.
- 4 After the COC filed the substantive application, the CFMEUW on 30 January 2025, applied to the Commission under s 27(1)(k) of the IR Act to intervene in the hearing to register the proposed agreement (**intervention application**).
- 5 By its intervention application, the CFMEUW is seeking leave to intervene and be heard on the substantive application. This is so the CFMEUW may be afforded an opportunity to make submissions on:
  - i. whether the proposed agreement should be registered under s 41 of the IR Act; and
  - ii. if the proposed agreement is to be registered, whether the Commission should make an order under s 41(3) of the IR Act to include the CFMEUW as a party to the agreement.
- 6 The intervention application is opposed by the COC, the WASU and the LGRCEU. They each contend the intervention application should be dismissed and the Commission should proceed to hear the substantive application.
- 7 This decision deals with the intervention application.

**Background to the application**

- 8 On or around 5 April 2024, the COC commenced negotiations for an industrial agreement to replace the *City of Canning Enterprise Agreement 2021 (2021 Agreement)* which was made under the provisions of the *Fair Work Act 2009 (FW Act)*.
- 9 As a result of legislative changes that came into force on 1 January 2023, the local government industry transitioned from the National industrial relations system to the State industrial relations system. A full description of these legislative changes was provided in *City of Cockburn v the Western Australian Municipal Administrative Clerical and Services Union of Employees* [2023] WAIRC 00787; 103 WAIG 1723 at [1]-[4] (*City of Cockburn*).
- 10 Under s 80BB of the IR Act, pre-existing industrial agreements made under the FW Act would continue to apply as new State instruments, until they are renewed or replaced.
- 11 The 2021 Agreement is cast in terms that are very similar to the provisions of the proposed agreement. It covers all the employees who are engaged in the classifications that are described in the 2021 Agreement as well as the WASU and the LGRCEU.
- 12 The classifications that appear in Appendices 1 and 1.1 of the proposed agreement include employees who work 'inside' for the COC in administrative roles and COC employees who work 'outside', performing duties that include maintenance, horticultural, waste disposal and minor construction works.

- 13 The participants in the negotiations for the proposed agreement included representatives from the COC, the WASU, the LGRCEU and the CFMEUW (**negotiating parties**). The COC also allowed the CFMEUW to hold meetings with some of the employees who will be covered by the proposed agreement, even though the CFMEUW is not a party to the 2021 Agreement.
- 14 During the negotiations, the CFMEUW raised the issue of whether it would be joined as a union party to the proposed agreement (**representation issue**). Although raised, it is reasonable to say this matter was not resolved between the negotiating parties.
- 15 Despite their disagreement on the representation issue, the negotiating parties have reached agreement on all the other terms of the proposed agreement, including rates of pay, wage increases and classification structure.

#### **Section 72A proceedings**

- 16 At the same time as negotiations for the proposed agreement were occurring, the WASU, LGRCEU and CFMEUW were involved in proceedings before a Commission in Court Session (**CICS**) under s 72A of the IR Act (**72A proceedings**).
- 17 The 72A proceedings involve three separate applications that have been joined and are being heard together by the CICS. The first of these is CICS 5 of 2023 in which the WASU is seeking an order under s 72A(2)(a) of the IR Act, that confirms the WASU has the right, to the exclusion of the CFMEUW, to represent the industrial interests of the outside employees, who work at the City of Rockingham.
- 18 Alternatively, the WASU in CICS 5 of 2023 seeks an order under s 72A(2)(c) that the CFMEUW does not have the right under the IR Act to represent the industrial interests of the outside employees, who work at the City of Rockingham.
- 19 The second, CICS 8 of 2023 is a responsive application from the CFMEUW which seeks an order under s 72A(2)(b) of the IR Act, in the event the CICS makes or proposes to make a finding, the CFMEUW does not have the right to represent the industrial interests of the outside employees, who work at the City of Rockingham.
- 20 By its application in CICS 8 of 2023, the CFMEUW seeks an order that it has the right to represent the industrial interests of outside employees who work at the City of Rockingham, who are employed as carpenters, painters and plant operators.
- 21 The third application, CICS 9 of 2023 is an application by the WASU in which the relief sought in CICS 5 of 2023, is also being pursued in relation to a list of local councils that includes the COC.
- 22 The LGRCEU is supporting the WASU in CICS 5 and 9 of 2023. The LGRCEU is opposing the CFMEUW in CICS 8 of 2023.
- 23 If the CFMEUW is not successful in the 72A proceedings, then it may lose its right to be a party to industrial agreements in the local government industry.
- 24 Noting the COC has an interest in the 72A proceedings, particularly as it is a party to CICS 9 of 2023, the COC has formed the view, that the outcome of the 72A proceedings has the potential to decide the issue of whether any of its employees, who are bound by the proposed agreement are:
  - i. eligible to be members of the CFMEUW, thereby determining whether the CFMEUW has the right to become a party to the proposed agreement; or
  - ii. the WASU and LGRCEU should have the exclusive rights to represent the industrial interests of the outside employees who work for the COC.
- 25 It is on this basis, the COC says, that it is not at this stage, prepared to agree to the CFMEUW being a party to the proposed agreement, until after the 72A proceedings are determined.
- 26 For this reason, the COC has throughout the negotiations for the proposed agreement, maintained that its position on the representation issue is dependent upon what happens in the 72A proceedings, which are ongoing.

#### **Previous applications to the Commission**

- 27 During bargaining for the proposed agreement, two applications in which the representation issue was raised, were made to the Commission, under s 44 of the IR Act.
- 28 The first of these, C 25 of 2024 was made by the CFMEUW on 3 July 2024, while the negotiating parties were still bargaining for the proposed agreement (**first application**).
- 29 At the conclusion of a conciliation conference that was held on Monday 8 July 2024 in relation to the first application, Senior Commissioner Cosentino ordered:

THAT the conference be adjourned to a date to be fixed to consider the matter of the named parties to the replacement agreement, no earlier than the time that agreement on the balance of the terms of the replacement agreement are reached or the s 72A proceedings are determined.
- 30 The Senior Commissioner also made the following recommendation (**recommendation**):

THAT the parties continue to bargain with each other in good faith in relation to the terms and conditions of a replacement agreement, other than the question of who is to be named parties to such a replacement agreement.
- 31 Following the issuance of the recommendation, bargaining between the negotiating parties continued. On or around 19 December 2024, the negotiating parties reached agreement on the terms of the proposed agreement, save and except for an agreed position on the representation issue.
- 32 On 14 January 2025, the COC made an application to the Commission under s 44 of the IR Act: C 2 of 2025 (**second application**). The second application was also referred to Senior Commissioner Cosentino, who convened a conciliation conference that was held on 17 January 2025.

- 33 Each of the negotiating parties attended the conciliation conference. The representation issue was the only matter that was traversed during the conference.
- 34 I understand from an email that was sent to the negotiating parties following the conciliation conference that it was agreed the following would occur:
- i. The COC, WASU and LGRCEU would sign a copy of the proposed agreement as soon as reasonably practical;
  - ii. Once the proposed agreement was signed, the COC would prepare and lodge an application to the Commission to register the proposed agreement;
  - iii. The COC agreed that it would copy the CFMEUW into the application to register the proposed agreement to ensure the CFMEUW had notice of the fact the application for registration had been made;
  - iv. The CFMEUW agreed to make any application to intervene in the COC's application to register the proposed agreement within 7 days of the application being lodged; and
  - v. The first and second applications would be withdrawn.
- 35 Following the conciliation conference, the COC made the substantive application. Noting the context in which the first and second applications were withdrawn, it is reasonable to conclude the representation issue was not resolved between the negotiating parties during the conciliation conference and was in effect left for another day.

#### **The substantive application**

- 36 The substantive application seeks the registration of an industrial agreement, which:
- i. subject to a limited number of exceptions, binds all the employees, who work for the COC in the classifications that are described in Appendix 1 of the proposed agreement; and
  - ii. names the WASU and the LGRCEU as joint parties to the proposed agreement with the COC.
- 37 In dealing with the substantive application, the Commission must decide whether the proposed agreement, satisfies the relevant criteria for the making of an industrial agreement under ss 41 and 41A of the IR Act.
- 38 To this end, a copy of the proposed agreement was provided to the Commission in accordance with regulation 55(1) of the *Industrial Relations Commission Regulations 2005*, together with a table that describes the changes the parties have made to the 2021 Agreement that are reflected in the terms of the proposed agreement.

#### **Programming Orders**

- 39 The intervention application was listed for a preliminary hearing that was held on 26 February 2025. After hearing from the parties, I issued programming orders in the following terms (**programming orders**):
- (i) THAT the CFMEUW is to file a statement of the outcome it will seek in relation to the application for registration of the Agreement by 28 February 2025 (statement of outcome sought).
  - (ii) THAT the City, WASU and LGRCEU (parties) are to file a response to the CFMEUW's application to intervene (intervention application) and the statement of outcome sought, in the prescribed form by 5 March 2025.
  - (iii) THAT the CFMEUW is to file any written submissions and evidence in support of the intervention application by 7 March 2025.
  - (iv) THAT the parties are to file any written submissions and/or evidence, in response to the CFMEUW's submissions and/or evidence by 12 March 2025.
  - (v) THAT the CFMEUW is to file any written submissions in reply to the parties' submissions by 19 March 2025.
  - (vi) THAT the Commission will determine the intervention application on the papers.
  - (vii) THAT the parties and the CFMEUW have liberty to apply on short notice.

#### **Materials filed pursuant to the programming directions**

- 40 In accordance with the programming orders, the CFMEUW filed its Statement of Outcome on 28 February 2025 (**Statement of Outcome**). Following this, the CFMEUW provided its Submissions on Intervention (**CFMEUW's Submissions**), and a Witness Statement from Nathan Fisher (**First Fisher Statement**).
- 41 As required, the WASU filed its Submissions of the First Respondent on Intervention (**WASU's Submissions**), together with a brief witness statement, from Senior Industrial Organiser, Paul Cecchini (**Cecchini Statement**).
- 42 The COC and the LGRCEU each filed outlines of submissions in relation to the intervention application. The LGRCEU in its submissions provided a useful chronology with attachments, which I had regard to when preparing these reasons.
- 43 On 19 March 2025, the CFMEUW filed a further outline of submissions (**CFMEUW's Reply Submissions**), together with a supplementary witness statement from Mr Fisher (**Second Fisher Statement**).
- 44 After the Second Fisher Statement was filed, the WASU on 9 April 2025, made a *Form 1 Application* under s 27 of the IR Act, in which it was claimed the programming orders did not permit the CFMEUW to file any supplementary evidence (**WASU's Application**).
- 45 By its application, the WASU requested the Commission refrain from taking the Second Fisher Statement into account when deciding the intervention application or referring to those parts of the CFMEUW's Reply Submissions that relied upon this statement.

**CFMEUW's Statement of Outcome**

- 46 To provide context to the outcomes sought, the CFMEUW, in its Statement of Outcome, raised several claims and contentions that are contested by the COC, the WASU and the LGRCEU.
- 47 In providing this context the CFMEUW as a precursor, contended the IR Act must be read consistently with its overall objects, as set out in section 6, including:
- i. to promote goodwill in industry and enterprises within industry: s 6(a);
  - ii. to provide for rights and obligations in relation to good faith bargaining: s 6(aa);
  - iii. to promote the principles of freedom of association and the right to organise: s 6(ab);
  - iv. to promote collective bargaining and to establish primacy of collective agreements over individual agreements: s 6(ad);
  - v. to ensure all agreements registered under the Act provide for fair terms and conditions of employment: s 6(ae); and
  - vi. to encourage employers, employees, and organisations to reach agreements appropriate to the needs of enterprises within industry and the employees in those enterprises: s 6(ag).
- 48 The CFMEUW submitted the IR Act must also be read together with s 26, which requires the Commission to act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms, and to have regard to the interests of persons immediately concerned: Statement of Outcome paragraph 5.
- 49 It was contended the mandatory provision regarding the registration of agreements under s 41(2) of the Act, and the requirement for there to be a 'genuine' agreement, must be interpreted and applied in the pursuit and fulfilment of, the objects of the Act: Statement of Outcome paragraph 6.
- 50 The CFMEUW contended that when s 41(2) was drafted, it is unlikely the circumstances at issue in the present case were contemplated. More specifically, the CFMEUW claims the IR Act does not envisage employers inviting a union to participate in bargaining and allowing that union to participate in bargaining without, at any point, intending to register the agreement with that union as a party: Statement of Outcome paragraph 7.
- 51 The CFMEUW claims the IR Act contemplates unions and employers participating in bargaining and doing so with the expectation that if an in-principal agreement is reached, each of the unions would be a party to the agreement: Statement of Outcome paragraph 7.
- 52 In its Statement of Outcome, the CFMEUW in effect contended the COC had engaged in a course of conduct which misled the CFMEUW into believing that it would be joined as a party to the proposed agreement: Statement of Outcome paragraph 8.
- 53 The CFMEUW says that in the early stages of bargaining for the proposed agreement, the COC represented that if there were no orders preventing it from having coverage of employees in local government and there were employees who were or would be eligible for membership of the CFMEUW at the time the agreement was registered, the CFMEUW would be included as a named party to the agreement: Statement of Outcome paragraph 13.
- 54 The CFMEUW says that on this basis, the CFMEUW and its members who work for the COC did not take any industrial action and participated in the bargaining process in good faith. The CFMEUW contends that if this representation had not been made, the CFMEUW and its members would have likely embarked on different course of action and now be in a very different position (**alleged misrepresentation**): Statement of Outcome paragraph 14.
- 55 It was submitted the proposed agreement is vitiated by the alleged misrepresentation and the mandatory requirement to register an industrial agreement under s 41(2), has not come into effect because the statutory requirements and criteria, have not been complied with: Statement of Outcome paragraph 15.
- 56 The CFMEUW contended that in these circumstances, the Commission ought not register the proposed agreement because it is not a lawfully made, bona fide agreement, it is not 'genuine' and has not been made for a lawful purpose: Statement of Outcome paragraph 15.
- 57 It was contended that by registering the proposed agreement, the Commission would be condoning an approach that does not promote the objects of the IR Act and is contrary to the requirements of s 26. In addition, the CFMEUW claimed the registration of the proposed agreement has the potential to promote 'subterfuge and deceit': Statement of Outcome paragraph 8.
- 58 Having raised these matters, the CFMEUW in paragraph 16 of its Statement of Outcome said that it should be permitted to intervene in the substantive application to argue:
- a. The Commission should not register the proposed industrial agreement; or
  - b. before registering the proposed agreement, the Commission should require the parties to vary it, to include the CFMEUW as a party for the purpose of giving clear expression to the true intention of the parties as permitted under s 41(3) of the IR Act.

**The CFMEUW's submissions in support of the intervention application**

- 59 The CFMEUW submits that it should be permitted to intervene in the substantive application because it has members who work at the COC, whose interests will be directly affected by the proposed agreement: CFMEUW's Submissions paragraphs 6-9.

- 60 Referring to its rules, the CFMEUW submitted that it was entitled to represent the industrial interests of employees at the COC who are employed as carpenters, painters and plant operators. It was submitted the CFMEUW has members, who work at the COC, that are employed in these roles: CFMEUW's Submissions paragraph 7.
- 61 The CFMEUW submitted that if the Commission registers the proposed agreement, it will be prevented from exercising its rights under the IR Act to represent and protect the industrial interests of the COC's employees who are eligible to join the CFMEUW, including those employees who are already members: CFMEUW's Submissions paragraph 10.
- 62 The CFMEUW submitted that if the proposed agreement is registered to the exclusion of the CFMEUW, it will suffer a detriment because it will be prevented from representing its members, who are covered by the proposed agreement, in industrial matters before the Commission: CFMEUW's Submissions paragraph 10.
- 63 It was submitted that as the CFMEUW's members who work at the COC, have a direct interest in and will be affected by the registration of the proposed agreement, it follows the CFMEUW has a sufficient interest in the matter.
- 64 Referring to the decision of the High Court in *R v Holmes; Ex parte Public Service Association (NSW)* (1977) 140 CLR 63 at [78], the CFMEUW submitted that where a union has relevant coverage under its eligibility rule, there can be no doubt that it has a substantial interest sufficient to sustain its intervention: CFMEUW's Submissions paragraph 4.
- 65 It was submitted that a further consideration the Commission should have regard to is that the CFMEUW's members and delegates, were involved in bargaining for the proposed agreement. It was contended their involvement in the negotiations demonstrates the CFMEUW has a direct and sufficient interest that would support the CFMEUW being granted leave to intervene: CFMEUW's Submissions paragraph 12.
- 66 The CFMEUW submitted that despite a mandatory obligation under s 41(2) of the IR Act to register an industrial agreement, the Commission must still be satisfied the proposed agreement has been lawfully made, is a bona fide agreement, and has not been made for an unlawful purpose. To this end, the CFMEUW says it should be heard on this point: CFMEUW's Submissions paragraphs 28-29.
- 67 It was submitted the CFMEUW should also be given permission to intervene, to make submissions on its exclusion from the proposed agreement, despite the representations it says the COC made on the representation issue, which would allow the CFMEUW to become a party: CFMEUW's Reply Submissions paragraph 25.

#### **The First Fisher Statement**

- 68 In his first statement, Mr Fisher said that when bargaining for the proposed agreement commenced, he contacted the COC in an email dated 8 December 2023 and requested the CFMEUW be included in correspondence regarding negotiations, be invited to attend bargaining meetings and be given access to CFMEUW members for the purpose of drafting a log of claims: First Fisher Statement paragraph 4.
- 69 Mr Fisher stated that on 11 December 2023, he received a reply email from Scott Roffey (**Roffey**), who works for the COC in role of 'Service Lead People and Performance', which confirmed he would be allowed to hold discussions with COC employees who are members or 'potential members' of the CFMEUW, during a scheduled entry to the COC's Operations Depot on 19 December 2023: First Fisher Statement paragraph 5.
- 70 Mr Fisher says that on 23 January 2024, he wrote to Mr Roffey requesting a meeting with CFMEUW members and potential members to discuss the upcoming negotiations for the Agreement and to finalise the CFMEU's log of claims: First Fisher Statement paragraph 5.
- 71 Following this, Mr Fisher said that on 31 January 2024, Mr Roffey confirmed the COC would provide a space so he could meet with CFMEUW members and potential members on 6 February 2024. Mr Fisher said the meeting went ahead as planned: First Fisher Statement paragraphs 7-8.
- 72 Mr Fisher stated that following the meeting, he wrote to Mr Roffey on 7 February 2024, to confirm the CFMEUW's log of claims was close to being finalized and endorsed. Mr Fisher said he requested a further meeting to be held on 13 February 2024 for the final endorsement of the CFMEUW's log of claims: First Fisher Statement paragraph 9.
- 73 Mr Fisher said that on 8 February 2024, Mr Roffey confirmed that a meeting with CFMEUW members and potential members on 13 February 2024, would be allowed to proceed. Mr Fisher said the meeting went ahead as planned and the CFMEUW's log of claims was endorsed by the employees who attended the meeting. Mr Fisher said he sent the CFMEUW's log of claims to Mr Roffey, the same day: First Fisher Statement paragraph 10-11.
- 74 In his statement, Mr Fisher said that bargaining for the proposed agreement commenced on 5 April 2024. He said he attended every bargaining meeting except one that was held while he was on leave. Mr Fisher said that CFMEUW delegate, Eric Chee Lit Tan attended this meeting in his absence: First Fisher Statement paragraph 12.
- 75 Mr Fisher says that on 9 May 2023, he attended a bargaining meeting at the COC with Andrew Johnson from the LGRCEU and Mr Cecchini from the WASU. Mr Fisher said employee bargaining representatives who work for the COC were also present: First Fisher Statement paragraph 13.
- 76 He said it was agreed the three unions would maintain a unified position and hold meetings with employees in the week beginning 13 May 2024 to discuss the COC's response in bargaining: First Fisher Statement paragraph 13.
- 77 Mr Fisher stated the COC did not at stage take issue with the CFMEUW being a bargaining representative or a participant in bargaining, for the proposed agreement. He said this was subject to the CFMEUW continuing to have a right to represent the industrial interests of one or more of the COC's employees: First Fisher Statement paragraph 14.
- 78 In his statement, Mr Fisher described the categories of employees who work at the COC, which he claims the CFMEUW is entitled to represent. Mr Fisher attached images of COC buildings and facilities to his statement, which he suggested, are repaired and maintained by the carpenters and painters, who are employed by the COC.

**COC's Submissions**

- 79 In paragraph 5 of the City of Canning Submission in Response to CFMEUW Submissions on Intervention and Statement of Outcome Sought (**COC's Submissions**), the COC submitted the intervention application should be refused for three reasons:
- (a) First, the CFMEUW has not discharged its onus to prove that it has a sufficient interest in the application for the registration of the proposed agreement. It was submitted that when scrutinized, the intervention application dissolves to a series of assertions unsupported by the evidence.
  - (b) Second, the first alternative order sought by the CFMEUW in the Statement of Outcome, (that the proposed agreement should not be registered), is premised on scandalous, unparticularized allegations of fraud, deceit, subterfuge and misrepresentation, which should be withdrawn. It was submitted the relief sought should be summarily refused.
  - (c) Third, that the Commission does not have the power to grant the second alternative order sought by the CFMEUW; that the proposed agreement be varied to include the CFMEUW as a party.
- 80 The COC submitted that the intervention application is premised on two factual claims. The first is that the CFMEUW has members at the COC. The second is that the COC has employees who are eligible to become members of the CFMEUW: COC's Submission paragraph 6.
- 81 It was submitted that neither claim is supported by evidence. The COC contended the CFMEUW has led no evidence from any member, or from any employee said to be eligible to become a member. Rather, the CFMEUW has adopted the approach of making assertions regarding its membership that is supported by hearsay evidence: COC's Submission paragraph 7.
- 82 The COC submitted that when considering whether the CFMEUW has proved its case in the intervention application, the Commission should bear in mind that it was open to the CFMEUW to put on evidence as to its membership, but it chose not to do so: COC's Submission paragraph 9.
- 83 In paragraph 12 of the COC's Submissions, it was contended the CFMEUW had alleged the COC represented:
- ...that, should there be no orders preventing it from having coverage of employees in local government, and there were employees who were eligible for membership of the CFMEUW at the time of registration of the agreement, the CFMEUW would be included as a named party to the agreement.
- 84 The COC said the CFMEUW had alleged that the representation was made, that it was false, and that 'the proposed agreement is vitiated by this misrepresentation:' COC's Submissions paragraph 13.
- 85 The COC submitted that its position was and has always been, that the issue of whether the CFMEUW should be a party to the proposed agreement would be informed by the outcome of the s 72A proceedings: COC's Submissions paragraph 16.
- 86 In Appendix A of the COC's Submissions, the COC provided its responsive description of the assertions the COC said were made by the CFMEUW. More specifically, the COC:
- (a) stated on 27 June 2024, 1 July 2024, and 5 July 2024, that the CFMEUW's participation in bargaining was conditional on the 72A proceedings being resolved in the CFMEUW's favour and, to date, this has not occurred;
  - (b) stated on 27 June 2024, 1 July 2024, 5 July 2024, 14 January 2025, and 17 January 2025, that the CFMEUW could be named a party to the proposed agreement if the 72A proceedings are resolved in the CFMEUW's favour and, to date, this has not occurred;
  - (c) repeatedly outlined its position to the CFMEUW objecting to it being included as a named party to the proposed agreement, including by;
    - (i) responding to the first application on 5 July 2024; and
    - (ii) seeking a conciliation conference by making the second application on 14 January 2025.
  - (d) has not been a party to any previous industrial instrument where the CFMEUW (or its federal counterpart) was also a party. The "status quo" therefore is that the CFMEUW should not be a party to the proposed agreement; and
  - (e) has not been provided with any evidence from the CFMEUW to support its assertion that there are employees at the COC who will be bound by the proposed agreement upon registration, who are members of or who are eligible to be members, of the CFMEUW.

**WASU's Submissions**

- 87 In paragraph 11 of its outline of submissions, the WASU characterised the CFMEUW's principal contentions in support of its intervention application as:
- i. the CFMEUW has an indirect interest by dint of its purported constitutional coverage of certain employees who are employed by the COC, which the proposed agreement will extend to and bind and that it has enrolled these employees as members; and
  - ii. the application to register the proposed agreement would directly affect the CFMEUW's right to represent and protect the industrial interests of its members who work at the COC.
- 88 In relation to these contentions, the WASU submitted the CFMEUW had provided no evidence to show that it had any members who work at the COC. In short, the WASU submitted that without evidence the CFMEUW has members who work at the COC, the CFMEUW could not demonstrate it had a direct interest in the substantive application: WASU's Submissions paragraphs 12-13.

- 89 The WASU submitted that without evidence of membership, the CFMEUW could not demonstrate that it had a sufficient indirect interest that would be affected by the registration of the proposed agreement either: WASU's Submissions paragraph 21.
- 90 The WASU took issue with the level of involvement the CFMEUW claims it has in other local government industrial agreements, to the extent that it establishes an indirect interest with broader industry wide impacts, sufficient to grant the intervention application: WASU's Submissions paragraphs 19-20.
- 91 In its submissions, the WASU denied there was any substance to the CFMEUW's alleged misrepresentation claim. While the WASU does not cavil with the argument that an industrial agreement cannot be registered if it has been made by fraud or misrepresentation, the WASU denies that this had occurred: WASU's Submissions paragraph 24.
- 92 In relation to the representation issue the WASU submitted that it was agreed at the conciliation conference that was held on 17 January 2025, the named parties to the proposed agreement could apply to register the proposed agreement: WASU's Submissions paragraph 34.
- 93 It was also submitted the named parties would seek to add the CFMEUW as a named party if in the 72A proceedings, it is decided the CFMEUW can cover any local government employees in Western Australia: WASU's Submissions paragraph 34.
- 94 The WASU submitted the CFMEUW should not be permitted to intervene in the substantive application so the proposed agreement can be amended to join the CFMEUW as a party. It was argued that s 41(3) of the IR Act does not operate to allow the altering of the content of an industrial agreement to include a union as a party, which did not make the agreement: WASU's Submissions paragraph 40.
- 95 The WASU raised other concerns regarding the CFMEUW's intervention application, including that it was an abuse of process and that it would unduly delay the speedy and efficient determination of the substantive application.

#### **The Cecchini Statement**

- 96 Mr Cecchini stated that he recalls Mr Fisher attended bargaining meetings for the negotiation of the proposed agreement. He said he remembers Mr Fisher pressing a claim for the CFMEUW to be a named as a party to the proposed agreement on a few occasions during bargaining: Cecchini Statement paragraphs 4-5.
- 97 He said Mr Roffey had responded by saying the COC did not want the CFMEUW to be a party to the proposed agreement until the s 72A proceedings had been determined: Cecchini Statement paragraph 6.
- 98 Mr Cecchini said the position he took on behalf of the WASU was that if the COC did not oppose the CFMEUW being a named party to the proposed agreement, then the WASU would not hold up the finalisation of the proposed agreement over that one issue: Cecchini Statement paragraph 8.
- 99 He said that if the COC did not want the CFMEUW as a named party to the proposed agreement, the WASU would support this: Cecchini Statement paragraph 9.
- 100 Mr Cecchini said the WASU was not opposed to adding the CFMEUW as a party to the proposed agreement if the COC in the s 72A proceedings, determined the CFMEUW had coverage of local government employees. He said the WASU accepted this when it was proposed by Mr Roffey, during a meeting that was held on 30 May 2024: Cecchini Statement paragraph 10.
- 101 The balance of Mr Cecchini's statement, described matters that were discussed in the conciliation conference that Senior Commissioner Cosentino convened on 17 January 2025. I do not however consider that I can have regard to these parts of his statement because they describe communications that were made without prejudice in a conciliation conference.

#### **LGRCEU's response to the intervention application**

- 102 The outline of submissions on the intervention application, which the LGRCEU filed on 13 March 2025 (**LGRCEU's Submissions**), broadly followed and adopted the arguments that were made by the WASU and the COC.
- 103 While the LGRCEU did not agree with the description of what the CFMEUW said it had secured through its involvement in bargaining for the proposed agreement, the LGRCEU acknowledged in its submissions, that there were three unions involved in the negotiations for the proposed agreement and that all three regularly attended bargaining meetings: LGRCEU's Submissions paragraph 4.
- 104 The LGRCEU disputes there was any misrepresentation over the representation issue. Rather it says there was an absence of an agreement between the CFMEUW and the COC. It was submitted that once the CFMEUW's alleged misrepresentation is rejected, the Commission must register the proposed agreement.
- 105 The LGRCEU submitted that joining the CFMEUW as a party would fundamentally change the terms of the proposed agreement. It was submitted that adding the CFMEUW as a party is not a clarification, when there is evidence that shows the parties applying to register the proposed agreement did not intend the CFMEUW to be a party: LGRCEU's Submissions paragraphs 82-84.

#### **Principles to be applied when determining an intervention application**

- 106 The power to grant leave to intervene in a matter is set out in s 27(1)(k) of the Act, which relevantly provides:

##### **27. Powers of Commission**

- (1) Except as otherwise provided in this Act, the Commission may, in relation to any matter before it —
- ...
- (k) permit the intervention, on such terms as it thinks fit, of any person who, in the opinion of the Commission has a sufficient interest in the matter; ...

- 107 The principles to be applied when deciding if an intervention application should be granted are well settled. They were recently discussed and followed in *City of Cockburn* at [45]-[46].
- 108 The Full Bench in *City of Cockburn* noted that the leading High Court authority is *Re Ludeke; Ex parte Customs Officers Association of Australia, Fourth Division* (1985) 155 CLR 513 (*Re Ludeke*).
- 109 *Re Ludeke* was discussed along with other cases by a previous Full Bench of the Commission in *Amalgamation of the Australian Workers' Union, West Australian Branch, Industrial Union of Workers and the Food Preservers' Union of Western Australia Australian Union of Workers* [2016] WAIRC 00966; (2017) 97 WAIG 148 (*Re AWU*).
- 110 The Full Bench in *Re AWU* at [17] to [21] observed as follows:

17 The principles for the Commission to consider when determining whether to exercise its discretion to allow a person to intervene in proceedings pursuant to its power to do so under s 27(1)(k) of the IR Act, in particular the determination whether a person has, in the opinion of the Commission, a sufficient interest in a matter that that person should be heard, were considered by Sharkey P in *Gairns v The Royal Australian Nursing Federation Industrial Union of Workers, Perth* (1989) 69 WAIG 2343. In *Gairns* the substantive application was an application brought before the President's original jurisdiction under s 66 of the IR Act for an interpretation of union rules. The federal nursing union, the Australian Nursing Federation, sought intervention in the proceedings. So, too, did federal and state Academic Unions. President Sharkey found that the most helpful dissertation of principles relating to intervention was set out in *Re Ludeke; Ex parte Customs Officers' Association of Australia, Fourth Division* [1985] HCA 31; (1985) 155 CLR 513; (1985) 13 IR 86.

18 In *Ludeke*, the matter before the High Court was an application by the Customs Officers' Association of Australia, Fourth Division to make absolute an order nisi for a prerogative writ to quash an order made by Justice Ludeke that leave be granted to the Administrative and Clerical Officers' Association, Australian Government Employment (ACOA) to intervene in the matter subject to limitation on certain questions it raised in its submissions in a demarcation dispute between that union and the ACOA. Chief Justice Gibbs at (519) - (520), with whom Dawson J agreed, observed:

The critical question is whether the prosecutor will be denied natural justice if it is allowed to intervene in ACOA's application only to the limited extent allowed by Ludeke J. It may be said immediately that it is clear that notwithstanding the wide discretion in matters of procedure given to the Commission by s. 40(1) of the Act, the Commission is bound to observe the rules of natural justice: *Reg. v. Commonwealth Conciliation and Arbitration Commission; Ex parte Angliss Group* ((1969) 122 C.L.R. 546, at p. 552); *Reg. v. Moore; Ex parte Victoria* ((1977) 140 C.L.R. 92, at pp. 101-102); *Reg. v. Isaac; Ex parte State Electricity Commission (Vict.)* ((1978) 140 C.L.R. 615, at p. 620). That means that a person whose rights will be directly affected by an order made by the Commission must be given a full and fair opportunity to be heard before the order is made. That requirement will not necessarily be satisfied if the Commission relies only on the fact that the person concerned has been heard on the same question by the same member of the Commission on a previous occasion. In general, the rules of natural justice are not satisfied unless the opportunity to be heard is afforded in the proceeding in question, although the fact that there had been an earlier hearing would be relevant in determining what constituted a full opportunity to be heard. However, natural justice does not require that everyone who may suffer some detriment as an indirect result of an order of the Commission is entitled to be heard before the order is made. Orders made by the Commission may affect many members of the community who are not parties to the proceedings in question but that does not mean that any member of the community who will be indirectly affected by an order of the Commission has a right to be heard in those proceedings. It has been held that a person who is not a party to a dispute, but who may nevertheless be affected, indirectly and consequentially, by an order made in settlement of the dispute is not entitled to be heard before the matter is determined: *Reg. v. Moore; Ex parte Victoria; Reg. v. Isaac; Ex parte State Electricity Commission (Vict.)*.

- 19 From these observations of Gibbs CJ in *Ludeke*, the following principles emerge:
- (a) Every person whose rights will be directly affected by an order must be given a full and fair opportunity to be heard; and
  - (b) The principles of natural justice do not require that everyone who may suffer a detriment as an indirect result of an order or who is indirectly affected is entitled to be heard before the order is made.
- 20 Justice Mason in *Ludeke* made similar observations. He observed that an interest which in its nature is inadequate to support intervention in legal proceedings in a court may be sufficient to support intervention in a matter of industrial arbitration before the Commission (523). His Honour found that if an organisation has a substantial interest sufficient to sustain an application to the court for prohibition then, generally speaking, it is desirable that the Commission should recognise that interest, subject to discretionary considerations, as a basis for intervention (525). In making this observation, his Honour had regard to the decision in *R v Holmes; Ex parte Public Service Association* (NSW) [1977] HCA 70; (1977) 140 CLR 63 where it was found that where the prosecutor had relevant coverage under its eligibility rule there could be no doubt that it had a substantial interest sufficient to sustain its intervention and that a lack of coverage would result in the prosecutor's interest being much more tenuous (525). Justice Mason in *Ludeke* also said (527):

Indeed, the principal object of intervention is to ensure that all interested parties will participate in a single resolution of a controversy instead of being relegated to a resolution of the controversy in

several proceedings. It is the attainment of this object that justifies intrusion into the litigant's right or interest in pursuing his proceedings as he chooses to constitute them.

- 21 Justice Brennan said that he generally agreed with the judgment of the Chief Justice. His Honour then went on to add that in determining whether a repository of a statutory power is bound to hear a person who is not directly involved in proceedings regard must be had (528):

to all the circumstances of the case, including the language of the statute, the nature of the power and of the body in which the power is reposed, the nature of the proceedings, the procedural rules that govern the proceedings (especially any provision for intervention by a person not directly involved in them), the interests which are likely to be affected, directly or indirectly, by the exercise of the power and the stage the proceedings have reached when the repository of the power learns of those interests. Generally speaking, a decision that will affect adversely a person's legal rights or his proprietary or financial interests or his reputation ought not to be taken without first giving him an opportunity to be heard provided such an opportunity can be reasonably given (*F.A.I. Insurances Ltd. v. Winneke* ((1982) 151 C.L.R. 342, at pp. 411-412)), even if that person is not directly involved in the proceedings which lead to the making of the decision: cf. *Reg. v. Town and Country Planning Commissioner; Ex parte Scott* ([1970] Tas. S.R. 154, at pp. 182-187; 24 L.G.R.A. 108, at pp. 137-141). But that is not an absolute rule.

- 111 The Full Bench decision in *City of Cockburn* which referred to the principles set out, involved a case where the CFMEUW was able to establish, that it had a sufficient indirect interest, to be given leave to intervene in a case that involved a local council, the registration of an industrial agreement and the same union parties in this matter: (*City of Cockburn* at [47]).
- 112 I am also mindful the decision in *City of Cockburn* centred on whether two provisions in a local government industrial agreement, to which the CFMEUW was not a party, were contrary to the IR Act. In this matter, the CFMEUW was able to establish that it had an interest that was sufficient for it to be granted leave to appear as a contradictor.
- 113 The Full Bench in *City of Cockburn* accepted that it was appropriate to permit the CFMEUW to intervene, because the effect of the legal questions to be decided, may have had broader application, thereby indirectly affecting the interests of the CFMEUW: (*City of Cockburn* at [47]).

#### Industrial agreements under Division 2B of the IR Act

- 114 Sections 41 and 41A are contained in Division 2B of the IR Act, which I have extracted below:

#### 41. Industrial agreements, making, registration and effect of

- (1) An agreement with respect to any industrial matter or for the prevention or resolution under this Act of any related disputes, disagreements, or questions may be made between an organization or association of employees and any employer or organization or association of employers.
- (1a) An agreement may apply to a single enterprise or more than a single enterprise.
- (1b) For the purposes of subsection (1a) an agreement applies to more than a single enterprise if it applies to –
  - (a) more than one business, project or undertaking; or
  - (b) the activities carried on by more than one public authority.
- (2) Subject to subsection (3) and sections 41A and 49N, where the parties to an agreement referred to in subsection (1) apply to the Commission for registration of the agreement as an industrial agreement the Commission must register the agreement as an industrial agreement.
- (3) Before registering an industrial agreement, the Commission may require the parties to effect such variation as the Commission considers necessary or desirable for the purpose of giving clear expression to the true intention of the parties.
- (4) An industrial agreement extends to and binds –
  - (a) all employees who are employed –
    - (i) in any calling mentioned in the industrial agreement in the industry or industries to which the industrial agreement applies; and
    - (ii) by an employer who is –
      - (I) a party to the industrial agreement; or
      - (II) a member of an organisation of employers that is a party to the industrial agreement or that is a member of an association of employers that is a party to the industrial agreement;

and
  - (b) all employers referred to in paragraph (a)(ii), and no other employee or employer, and its scope must be expressly so limited in the industrial agreement.
- (5) An industrial agreement operates –
  - (a) in the area specified in the agreement; and
  - (b) for the term specified in the agreement.

- (6) Notwithstanding the expiry of the term of an industrial agreement, it continues in force in respect of all parties to the agreement, except those who retire from the agreement, until a new agreement or an award in substitution for the first-mentioned agreement has been made.

...

**41A Which industrial agreements must not be registered under s.41**

- (1) The Commission must not under section 41 register an agreement as an industrial agreement unless the agreement –
- (a) specifies a nominal expiry date that is no later than 3 years after the date on which the agreement will come into operation; and
  - (b) includes any provision specified in relation to that agreement by an order referred to in section 42G; and
  - (c) includes an estimate of the number of employees who will be bound by the agreement upon registration.
- (2) The Commission must not under section 41 register an agreement as an industrial agreement to which an organisation or association of employees is a party, unless the employees who will be bound by the agreement upon registration are members of, or eligible to be members of, that organisation or association.

**Issues to be determined in the substantive application**

115 In dealing with the substantive application, the Commission must decide if the pre-requisites to register an industrial agreement under Section 41 of the IR Act have been met, which will include a finding on whether an agreement with respect to an industrial matter or for the prevention or resolution under the IR Act, of any related disputes disagreements or questions under the IR Act has been reached.

116 I also consider the parties will need to make submissions on whether the proposed agreement describes with sufficient clarity, the callings of the employees who will be bound by the proposed agreement and which organization has the right to represent the employees who the proposed agreement ‘extends to and binds.’

117 I raise this issue because of the requirement under s 41A(2) of the IR Act.

**Requirements under s 41A**

118 Section 41A(2) of the IR Act makes it clear that the Commission must not register an agreement as an industrial agreement, to which an organisation or association of employees is a party, unless the employees who will be bound by the agreement upon registration, are members of or eligible to be members of that organisation or association.

119 It appears that because an industrial agreement extends to and binds all the employees who are employed in the classifications to which an industrial agreement applies, the union party/parties to a proposed industrial agreement, must be able to show the employees who are bound by the agreement are either:

- i. members of the union/unions that are parties to the proposed agreement upon registration; or
- ii. are eligible to be members of the union/unions that are parties to the proposed agreement.

120 It appears the reason for the inclusion of this requirement under s41A(2) of the IR Act, is because once an industrial agreement is registered, it has the effect of closing the gate to the making of any other agreements that:

- i. apply to the employees who are employed in the classifications that are contained in the agreement: ss 41(4);
- ii. apply for the term specified in the industrial agreement: ss 41(5); and
- iii. apply before a replacement agreement is made or the parties to the industrial agreement retire from it: s 41(6).

121 I therefore consider that when determining the substantive application, I will need be satisfied the employees, who work in the callings or classifications that are described in the proposed agreement, are either members of or are eligible to be members of the WASU and the LGRCEU.

**Consideration – Intervention application**

122 In this matter, the Commission is only concerned with whether the CFMEUW has a sufficient interest to justify the CFMEUW being granted permission to intervene in the substantive application.

123 The Commission does not have to reach a conclusion on whether the CFMEUW, if it is granted permission to intervene, will ultimately be successful in the arguments it is proposing to make in the substantive application. Rather the Commission must only be satisfied the CFMEUW has a sufficient interest to make those arguments; see *Fisher Catering Services Pty Ltd v Federated Liquor and Allied Industries Employees Union of Australia, Western Australia Branch, Union of Workers and Others* (1994) 74 WAIG 2953 at p. 2956

124 In reaching my decision in the intervention application, I have had regard to the submissions from the CFMEUW, the WASU, the LGRCEU and the COC. I have also considered the terms of the proposed agreement, the contents of the First Fisher Statement and the Cecchini Statement.

125 I have also reviewed the documents that were attached to the COC’s submissions. These documents include the various emails Mr Roffey sent to Mr Fisher, which confirm the COC was prepared to allow Mr Fisher to hold discussions with some of its employees who work in the ‘Flemming Avenue Operations Centre.’

126 The COC's documents also include Mr Roffey's letter to the CFMEUW dated 27 June 2024, which concluded with the following paragraph:

The City will continue to bargain with the CFMEUW in respect of its other claims for the proposed agreement as it has done since bargaining commenced.

127 I have not had regard to the Second Fisher Statement or those parts of the CFMEUW's Reply Submissions that refer to this statement. There was in my view, sufficient material before me to reach a decision on the intervention application, without the need to consider the contents of the Second Fisher Statement.

128 By reaching this conclusion, I have addressed the objection that was raised in the WASU's Application, to the Second Fisher Statement.

#### **Effect of registration**

129 I am satisfied that if the proposed agreement is registered, it will, on its current terms, significantly hamper the CFMEUW in its efforts to represent the industrial interests of any COC employee who may be a CFMEUW member or who is eligible to become one.

130 I am satisfied the registration of the proposed agreement will remove the standing of the CFMEUW to represent any members who work at the COC in proceedings before the Commission or in enforcement proceedings before the Industrial Magistrates Court.

131 More significantly the CFMEUW will, following registration of the proposed agreement and because of s 41(4) of the IR Act, lose any right that it may have to become a party to an industrial agreement that binds the COC's employees, who work in classifications, which the CFMEUW may cover, for the duration of the proposed agreement.

132 There is nothing in the proposed agreement that confirms the named parties to the proposed agreement, will following registration, accede to a request from the CFMEUW for it to be joined as a party, even if the result in the 72A proceedings confirms, the CFMEUW is able to represent the industrial interests of the employees who work at the COC.

133 As indicated earlier, the 72A proceedings are ongoing. Until a final decision in that matter is made, the representation issue in so far as it relates to the COC, the CFMEUW and any affected employees, remains unresolved.

134 The effects that I have described in the preceding paragraphs [128] - [132], on the respective rights of the CFMEUW and the employees who work at the COC, who may be either members of or eligible to be members, are substantial.

135 It is my view that the legal effects of the proposed agreement if it is registered, are relevant to determining whether the CFMEUW should be afforded the right to be heard in the substantive application.

#### **CFMEUW is a negotiating party**

136 In reaching a decision on the intervention application, it is important to note that this matter very much turns on its own facts and that my assessment of the CFMEUW's interests in the present case, was influenced by the CFMEUW's involvement as a negotiating party in bargaining for the proposed agreement.

137 I accept that an official from the CFMEUW and a workplace delegate (Mr Chee Lit Tan), who took part in the negotiations, contributed in some way to the proposed agreement. I accept the negotiating parties were aware the CFMEUW intended to become a party to the proposed agreement. I am also satisfied the three unions in their negotiations for the proposed agreement, had agreed to work in a 'unified' way.

138 After permitting the CFMEUW to hold meetings with some of its employees, albeit in a discrete section of the workplace, recognizing the CFMEUW's role as a bargaining agent for some COC employees by allowing a CFMEUW official and a workplace delegate to take part in negotiations, I consider that it is too late to suggest the success of the intervention application should now turn on the provision of hard evidence of the CFMEUW's membership at the COC.

139 There is an inconsistency in the position the COC has adopted in relation to the intervention application. The suggestion the CFMEUW's right to be heard, should now be conditional upon proof of membership sits at odds with the COC accepting the CFMEUW had a part to play in negotiations and by allowing an official of the CFMEUW to hold meetings with COC employees.

140 While direct evidence from the CFMEUW regarding its membership at the COC would have put the issue of whether it has a sufficient interest in the substantive application beyond all doubt, I am, because of the involvement of a CFMEUW workplace delegate, in bargaining for the proposed agreement, prepared to infer the CFMEUW has at least one member who works at the COC, with a direct interest sufficient to grant the CFMEUW a right to be heard.

141 I find the WASU's and LGRCEU's objections to the intervention application, which rely upon the CFMEUW having to demonstrate that it has membership at the COC, are similarly problematic, particularly after both unions agreed to take part in bargaining for the proposed agreement, alongside the CFMEUW.

142 If the CFMEUW had not been a negotiating party, played no role in the negotiations for the proposed agreement or was only seeking to leave intervene so that it could become a party, to the proposed agreement, when it had played no part in bargaining, I would have been less inclined to accede to the CFMEUW's intervention application.

143 However, and as the CFMEUW participated in negotiations for the proposed agreement as a negotiating party, committed resources to the negotiations for the proposed agreement and the CFMEUW's interests were represented, in at least one bargaining meeting by a CFMEUW workforce delegate, I am satisfied the CFMEUW has an interest in the substantive application, sufficient to grant the intervention application.

- 144 When the role the CFMEUW has played in bargaining is considered together with, the legal effects the registration of the proposed agreement, will have on the interests of the CFMEUW and any of its members who may work at the COC, it is, having regard to the principles referred to in *Re AWU*, appropriate for the CFMEUW be given permission to intervene.
- 145 In making my decision to grant the intervention application, I have at this stage and for the avoidance of any doubt, made no findings in relation to either the alleged misrepresentation or the representation issue.
- 146 In dealing with the intervention application, I have not delved into the issue of whether the CFMEUW has constitutional coverage over any of the classifications of the COC's employees who are bound by the terms of the proposed agreement either. There was no need to.
- 147 The involvement of the CFMEUW in bargaining was in and of itself sufficient to give rise to an interest to intervene, particularly where the COC has suggested the CFMEUW might yet be made a party to the proposed agreement if the outcome in the 72A proceedings goes the CFMEUW's way. This does not however mean the issue of constitutional coverage will not be a live issue in the substantive application.

#### **Matters to be addressed in the substantive application**

- 148 Having granted permission to the CFMEUW intervene in the substantive application, I expect to hear from both the parties to the proposed agreement and the CFMEUW, on whether the proposed agreement has been validly made and meets the requirements ss 41 and 41A of the IR Act.
- 149 This will require the parties to give some thought to what these provisions of the legislation require and how they fit within the context of the IR Act as a whole. In my view, there are potential implications from a decision on the construction and application of the relevant provisions of the IR Act to the present case, that apply more broadly.
- 150 I also consider that evidence on the number of members the WASU, the LGRCEU and the CFMEUW each respectively have and the classifications or callings in which they are employed, may have some bearing on the matters that I will be required to decide in the substantive application.
- 151 I have my doubts the Commission has the power to amend the proposed agreement to join the CFMEUW as a party to the proposed agreement. Noting the decision of the Full Bench in *City of Cockburn*, at [169] – [170], I am not at this stage convinced the Commission has the power under s 41(3) of the IR Act, to make an amendment in the form the CFMEUW has proposed.
- 152 It also does not appear from the materials filed, that the negotiating parties reached a final agreement on how the representation issue is to be resolved at the COC, to the extent that I could vary the proposed agreement in the terms the CFMEUW is suggesting.

#### **Conclusion**

- 153 For all the reasons I have provided in the preceding paragraphs, I have determined the CFMEUW should be given permission to intervene in the substantive application.
- 154 Before scheduling the matter for further hearing, it is my view that it would be in the best interests of the parties to the substantive application and the intervenor, to attend a conciliation conference that I will convene under s 32 of the IR Act.
- 155 To this end I will arrange for my Associate to contact the parties for their unavailable dates so that a conciliation conference in relation to the substantive application can be scheduled as soon as practicable.

2025 WAIRC 00266

#### **CITY OF CANNING INDUSTRIAL AGREEMENT 2025**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

#### **PARTIES**

CITY OF CANNING

**APPLICANT**

-v-

WESTERN AUSTRALIAN MUNICIPAL, CLERICAL AND SERVICES UNION (WASU), THE LOCAL GOVERNMENT RACING CEMETRIES EMPLOYEES UNION (LGRCEU)

**RESPONDENT**

**CORAM** COMMISSIONER T KUCERA  
**DATE** MONDAY, 5 MAY 2025  
**FILE NO/S** AG 9 OF 2025  
**CITATION NO.** 2025 WAIRC 00266

**Result** Order issued  
**Representation Applicant** Mr C Beetham (of counsel)

<b>Respondents</b>	Mr R Knox on behalf of the Western Australian Municipal, Clerical and Services Union (WASU) Mr K Trainer on behalf of the Local Government Racing Cemeteries Employees Union (LGRCEU)
<b>Intervenor</b>	Mr T Meagher on behalf of the Construction, Forestry, Mining and Energy Union of Workers (CFMEUW)

*Order*

HAVING heard from Mr C Beetham on behalf of the applicant, Mr R Knox on behalf of the WASU, Mr K Trainer on behalf of the LGRCEU, and Mr T Meagher on behalf of the CFMEUW, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979 (WA)* hereby orders –

1. THAT the CFMEUW be granted leave to intervene in application AG 9/2025.

(Sgd.) T KUCERA,  
Commissioner.

[L.S.]

## AWARDS/AGREEMENTS AND ORDERS—Variation of—

2025 WAIRC 00251

### REVIEW OF THE PLASTER, PLASTERGLASS AND CEMENT WORKERS' AWARD NO. A 29 OF 1989 PURSUANT TO S 40B OF THE INDUSTRIAL RELATIONS ACT 1979 (WA)

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

<b>CITATION</b>	:	2025 WAIRC 00251
<b>CORAM</b>	:	SENIOR COMMISSIONER R COSENTINO
<b>HEARD</b>	:	TUESDAY, 15 APRIL 2025
<b>DELIVERED</b>	:	WEDNESDAY, 23 APRIL 2025
<b>FILE NO.</b>	:	APPL 46 OF 2023
<b>BETWEEN</b>	:	COMMISSION'S OWN MOTION
		Applicant
		AND
		(NOT APPLICABLE)
		Respondent

**CatchWords** : Industrial Law (WA) – Commission's own motion – Section 40B(1) of the *Industrial Relations Act 1979 (WA)* – Award variation – *Plaster, Plasterglass and Cement Workers' Award* – To ensure award does not contain wages that are less than statutory minimum wages – Removal of obsolete, out of date and discriminatory provisions – Variations to ensure award facilitates efficient organisation and performance of work balanced with fairness – Award varied

**Legislation** : *Equal Opportunity Act 1984 (WA)*  
*Fair Work Act 2009 (Cth)*  
*Industrial Relations Act 1979 (WA)*  
*Industrial Relations Legislation Amendment and Repeal Act 1995 (WA)*  
*Labour Relations Reform Act 2002 (WA)*  
*Minimum Conditions of Employment Act 1993 (WA)*  
*Public and Bank Holidays Act 1972 (WA)*

**Result** : Award Varied

**Representation:**

Mr B Entrekin on behalf of the Hon. Minister for Industrial Relations

Mr T Meagher on behalf of the Construction, Forestry, Mining and Energy Union of Workers

**Case(s) referred to in reasons:**

*Commission's Own Motion v (Not Applicable)* [2024] WAIRC 00013; (2024) 104 WAIG 182

*Commission's Own Motion v (Not Applicable)* [2023] WAIRC 00836; (2023) 103 WAIG 1836

*Termination, Change and Redundancy General Order [2005] WAIRC 01715; (2005) 85 WAIG 1681*

*Reasons for Decision*

- 1 The Western Australian Industrial Relations **Commission** of its own motion, initiated this matter for variation of the *Plaster, Plasterglass and Cement Workers' Award No. A 29 of 1989* under s 40B of the *Industrial Relations Act 1979* (WA) (**IR Act**). Section 40B allows the Commission to vary an award for any one or more of the following purposes:
  - (a) to ensure that the award does not contain wages that are less than the minimum award wage as ordered by the Commission under s 50A;
  - (b) to ensure that the award does not contain conditions of employment that are less favourable than those provided by the *Minimum Conditions of Employment Act 1993* (WA) (**MCE Act**);
  - (c) to ensure that the award does not contain provisions that discriminate against an employee on any ground on which discrimination in work is unlawful under the *Equal Opportunity Act 1984* (WA);
  - (d) to ensure that the award does not contain provisions that are obsolete or need updating; and
  - (e) to ensure that the award is consistent with the facilitation of the efficient organisation and performance of work according to the needs of an industry and enterprises within it, balanced with fairness to the employees in the industry and enterprises.
- 2 Many of the Award's provisions were outdated or obsolete, or were less favourable than the MCE Act.
- 3 The Commission provided notice of its intention to vary the Award to UnionsWA, the Chamber of Commerce and Industry WA, the Australian Resources and Energy Employers Association, the Minister for Industrial Relations, the named employer parties to the Award, the Association of Wall and Ceiling Industries and the Construction, Forestry, Mining and Energy **Union of Workers** (WA) as the union party to the Award.
- 4 The Commission then sought input from interested parties about the issues with the Award, and the appropriate revisions to address them.
- 5 The parties have had an opportunity to provide comments in relation to draft variations which were circulated. Feedback was received from the Minister but no one else.
- 6 Following publication of the notice of proposed variations to the Award, pursuant to s 40B(2) of the IR Act, a hearing was convened on 15 April 2025 for the purpose of affording interested persons an opportunity to be heard in relation to those proposed variations.
- 7 The Minister and the Union both confirmed their support for the proposed variations with some further minor variations for accuracy and clarity. The variations were not opposed.
- 8 Accordingly, I have determined that it is appropriate to vary the Award in accordance with the Schedule to these reasons.
- 9 In the following paragraphs, I set out briefly the rationale for the variations contained in the Schedule.

**Clause 1 – Title**

- 10 The year and number of the Award has been removed from its title consistent with contemporary practice.

**Clause 2 – Arrangement**

- 11 Like clauses have been grouped together under functional headings in a standard arrangements clause.

**Clause 3 – Scope**

- 12 Cross referencing has been updated in line with other amendments.

**Clause 5 – Term**

- 13 This clause is deleted as it is obsolete.

**Clause 5 – Definitions**

- 14 The clause is renumbered from clause 6.
- 15 Subclause (6) was not strictly a definitional clause but prohibited junior employees being engaged in labouring work in a factory unless agreed by the Union. This prohibition has been deleted as it is likely to have the effect of removing most junior employees from coverage under the Award if they are doing labouring duties. It may also be discriminatory in its effect.

**Clause 6 – Contract of Employment**

- 16 The clause is renumbered from clause 7 and renamed from 'Contract of Service'.
- 17 Definitions for Full time, Part time and Casual employees are incorporated.

**New Clause 6A – Flexible Working Arrangement Requests**

- 18 This new clause makes provision for flexible working arrangement requests consistent with the provisions of the MCE Act.

**New Clause 7 – Termination of Employment**

- 19 This new clause has been updated to make it easier to follow and for consistency with the National Employment Standards of the *Fair Work Act 2009* (Cth) (**FW Act**), Division 3 of Part 6-3 which requires non-national system employers (including employers in the state industrial relations system) to provide notice of termination or payment in lieu to employees.

**Clause 8 – Trainee Casters**

- 20 This clause is renumbered from clause 7 and renamed to remove the word 'Adult' from the title.
- 21 The clause contained an outdated scheme for accreditation and examination of trainees, with reference to the now defunct Commonwealth Reconstruction Training Scheme. Its provisions were likely contrary to legislation which prohibits discrimination on the grounds of age.
- 22 The new clause incorporates the terms of the National Training Wage provisions of the *Joinery and Building Trades Award 2020* made under the FW Act.
- 23 The allowance for a caster training a trainee has been amended to be expressed as a percentage of the caster's minimum weekly wage, consistent with the percentage the allowance represented when the Award was made in 1990.

**Clause 12 – Hours**

- 24 This clause is renumbered from clause 10. Reference to the 38 hour week commencing from January 1984 and May 1990 have been removed as obsolete. Similarly, provisions about the implementation of a 38 hour week have been removed.
- 25 Sub-clause (5)(b) which permitted an employer and group of employees to extend the span of hours has been removed as it is contrary to the principles discussed in *Commission's Own Motion v (Not Applicable)* [2023] WAIRC 00836; (2023) 103 WAIG 1836.

**Clause 13 – Overtime**

- 26 The clause is renumbered from clause 12.
- 27 Meal allowance provisions have been updated to incorporate the meal allowance rate in the *Joinery and Building Trades Award 2020*, which is updated annually pursuant to the Fair Work Commission's Annual Wage Review.
- 28 Reference is now made to the MCE Act provisions about working reasonable overtime.

**Clause 14 – Wages**

- 29 This clause is renumbered from clause 13.
- 30 The column indicating the 'Arbitrated Safety Net' adjustment component of the rates of pay has been removed as it is unnecessary.
- 31 Junior rates of pay that were less than the statutory minimum have been increased by expressing the rates as a percentage of the Award's full time adult Labourers' rate. The percentages are those set out in s 13 of the MCE Act. This will ensure that the rates remain consistent with the statutory minimum rates for junior employees.
- 32 Casual loading has been increased from 20% to 25% for consistency with the MCE Act.

**Clause 15 – Special Rates and Provisions**

- 33 This clause is renumbered from clause 14.
- 34 Leading hand allowances have been converted to be expressed as a percentage of a Plaster Caster's weekly rate to maintain its relative value without the Award being varied.

**Clause 16 – Payment of Wages**

- 35 This clause is renumbered from clause 15. The clause has been simplified for clarity.
- 36 Sub-clause (4) which permitted an employer and majority of employees to agree an alternative method of payment has been removed as it is contrary to the principles discussed in *Commission's Own Motion v (Not Applicable)* [2023] WAIRC 00836; (2023) 103 WAIG 1836.
- 37 Sub-clause (8) headed 'Pay Packet Details' has been replaced with reference to the provisions of the IR Act about pay slips.

**Clause 17 – Supported Wage System**

- 38 The clause replaces former clause 16 'Under-Rate Employees'. It has been updated to reflect the current standard clause for Supported Wage System employees.

**Clause 18 – Superannuation**

- 39 This clause replaces clause 28. Most of its provisions were out-of-date and inconsistent with Commonwealth superannuation legislation. The clause has been updated to mirror the provisions of the IR Act.

**Clause 19 – Personal Leave & Clause 20 – Bereavement Leave**

- 40 These clauses replace clause 17 'Absence Through Sickness or Bereavement.' The existing clause was inconsistent with the MCE Act in several respects.
- 41 Personal leave and bereavement leave are now contained in separate clauses, incorporating the respective provisions of the MCE Act.
- 42 References to 'sick pay' and 'sick leave' have been replaced with 'personal leave', reflecting the provisions of the MCE Act.

**New Clause 21 – Family and Domestic Violence Leave**

- 43 This is a new clause. The Award made no provision for family and domestic violence leave.
- 44 The clause refers to the provisions of the FW Act for paid family and domestic violence leave which apply to state system employers and employees, as well as relevant provisions of the MCE Act.

**Clause 22 – Public Holidays & Clause 23 – Annual Leave**

- 45 These clauses replace clause 18 ‘Holidays and Annual Leave’.
- 46 The main changes of note are:
- (a) ‘Foundation Day’ has been changed to ‘Western Australia Day’. ‘Easter Sunday’ has been included as a public holiday in the Award, reflecting the provisions of s 3(2) and s 3(3) of the *Public and Bank Holidays Act 1972* (WA).
  - (b) Sub-clause 22(1)(c) stipulates that Easter Sunday is not substituted for another day because it falls on a weekend.
  - (c) Sub-clause 22(1)(b) reflects the MCE Act entitlement to be absent from work on a public holiday without loss of pay, and the balance of the clause mirrors the provisions of the MCE Act concerning employer requests of employees to work on public holidays.
- 47 Clause 23 provides for annual leave in accordance with the MCE Act, but retains the Award’s existing provisions about leave loading.
- 48 Previous subclause 18(6) has been deleted as the MCE Act now deals with the interaction of public holidays and annual leave.

#### **Clause 24 – Long Service Leave**

- 49 The clause has been renumbered from clause 25 and the now obsolete reference to the long service leave provisions published in the Industrial Gazette has been replaced with reference to the *Long Service Leave Act 1958* (WA).

#### **Clause 25 – Parental Leave**

- 50 The Award made no provision for parental leave, but clause 27 provided for ‘Maternity Leave’.
- 51 The varied clause refers to parental leave being provided in accordance with the FW Act. State system employers and employees are subject to the provisions of Division 5 of Part 2-2 of the FW Act.

#### **Clause 26 – Right of Entry and Inspection of Records**

- 52 This clause is renumbered and renamed from clause 19 ‘Records’.
- 53 The new provisions align with the conditions regarding right of entry and inspection of records contained in the IR Act.

#### **Clause 27 – Posting Copy of Award and Union Notices**

- 54 This clause is renumbered from clause 20. The liberty to apply provision has been removed on the basis that it is unnecessary. Parties have the right to apply to vary the Award.

#### **Clause 28 – Dispute Resolution Procedure**

- 55 This clause is renumbered from clause 26 ‘Grievance and Disputes Procedure.’ It has been renamed ‘Dispute Resolution Procedure’ to reflect the terminology used in the IR Act. No other variations are made.

#### **Clause 30 – Redundancy**

- 56 The redundancy pay provisions have been expanded to include redundancy pay for employees with more than 5 years’ continuous service, consistent with the *Termination, Change and Redundancy General Order* [2005] WAIRC 01715; (2005) 85 WAIG 1681.
- 57 Sub-clause 5 has been amended to ensure that the alternative employment provisions are consistent with the *Termination, Change and Redundancy General Order*.
- 58 Sub-clause (7) reduced the redundancy pay of employees who receive a benefit from a superannuation scheme. This has been deleted as it is inconsistent with the *Termination, Change and Redundancy General Order*.
- 59 Cross-referencing to other clauses has been updated.

#### **Schedule 2 – Respondents**

- 60 The Schedule has been updated to show accurate respondent names and indicate where a respondent to the Award is deregistered or deceased.

#### **Other changes**

- 61 Clause 21 titled ‘Representative Interviewing Employees’ is deleted. It was inconsistent with the provisions of the IR Act as it limited rights of entry to premises where an employer employs union members.
- 62 Clause 22 ‘Board of Reference’ is deleted as being obsolete, given no other clause requires a Board of Reference to make any determination.
- 63 Clause 31 ‘Enterprise Agreement’ is deleted. This clause is the same type as the clause I considered in APPL 27 of 2023: *Commission’s Own Motion v (Not Applicable)* [2024] WAIRC 00013; (2024) 104 WAIG 182. The clause is contrary to the scheme of the IR Act and invalid. It has, therefore, been deleted.
- 64 The Appendix titled ‘Resolution of Disputes Requirements’ is deleted. This Appendix is outdated, being inserted in the Award in 1996 pursuant to the *Industrial Relations Legislation Amendment and Repeal Act 1995* (WA) and to comply with what was then contained in s 49B of the IR Act, which was repealed pursuant to s 145 of the *Labour Relations Reform Act 2002* (WA). The information in the Appendix is therefore outdated and does not reflect the current statutory provisions regarding inspection of records.
- 65 Some clauses have been renumbered as a result of the deletion or addition of other clauses.
- 66 Percentages expressed in words have been expressed numerically and with symbols.
- 67 Imperial measurements have been changed to metric measurements.

68 Gendered language has been removed.

**Date of effect of variations**

69 The variations contained in the schedule to these reasons are to take effect from the date of the order.

SCHEDULE

Current Award	Variations
Plaster, Plasterglass and Cement Workers' Award No. A 29 of 1989	Plaster, Plasterglass and Cement Workers' Award
<p style="text-align: center;"><u>1. - TITLE</u></p> <p>This award shall be known as the Plaster, Plasterglass and Cement Workers' Award No. A 29 of 1989 and replaces Award No. 11 of 1969 and Award No. 6 of 1962 as amended.</p>	<p style="text-align: center;"><u>1. - TITLE</u></p> <p>This award shall be known as the <i>Plaster, Plasterglass and Cement Workers' Award</i>.</p>
	<p>Insert the following as a heading before clause 1 'Title':</p> <p>PART 1 – APPLICATION AND OPERATION</p>
<p><u>1B. - MINIMUM ADULT AWARD WAGE</u></p> <p>(1) No employee aged 21 or more shall be paid less than the minimum adult award wage unless otherwise provided by this clause.</p> <p>(2) The minimum adult award wage for full-time employees aged 21 or more working under an award that provides for a 38-hour week is \$918.60 per week.</p> <p>The minimum adult award wage for full-time employees aged 21 or more working under awards that provide for other than a 38-hour week is calculated as follows: divide \$918.60 by 38 and multiply by the number of ordinary hours prescribed for a full-time employee under the award.</p> <p>The minimum adult award wage is payable from the beginning of the first pay period commencing on or after 1 July 2024.</p> <p>(3) The minimum adult award wage is deemed to include all State Wage order adjustments from State Wage Case decisions.</p> <p>(4) Unless otherwise provided in this clause adults aged 21 or more employed as casuals, part-time employees or piece workers or employees who are remunerated wholly on the basis of payment by results, shall not be paid less than pro rata the minimum adult award wage according to the hours worked.</p> <p>(5) Employees under the age of 21 shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision in this award (if applicable) to the minimum adult award wage, provided that no employee shall be paid less than any applicable minimum rate of pay prescribed by the <i>Minimum Conditions of Employment Act 1993</i>.</p> <p>(6) The minimum adult award wage shall not apply to apprentices, employees engaged on traineeships or government approved work placement programs or employed under the</p>	<p style="text-align: center;">NO VARIATIONS</p>

<p>Commonwealth Government Supported Wage System or to other categories of employees who by prescription are paid less than the minimum award rate, provided that no employee shall be paid less than any applicable minimum rate of pay prescribed by the <i>Minimum Conditions of Employment Act 1993</i>.</p> <p>(7) Liberty to apply is reserved in relation to any special category of employees not included here or otherwise in relation to the application of the minimum adult award wage.</p> <p>(8) Subject to this clause the minimum adult award wage shall –</p> <p>(a) Apply to all work in ordinary hours.</p> <p>(b) Apply to the calculation of overtime and all other penalty rates, superannuation, payments during any period of paid leave and for all purposes of this award.</p> <p>(9) Minimum Adult Award Wage</p> <p>The rates of pay in this award include the minimum weekly wage for employees aged 21 or more payable under the 2024 State Wage order. Any increase arising from the insertion of the minimum wage will be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.</p> <p>Increases under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset the minimum wage.</p> <p>(10) Adult Apprentices</p> <p>(a) Notwithstanding the provisions of this clause, the minimum adult apprentice wage for a fulltime apprentice aged 21 years or more working under an award that provides for a 38-hour week is \$762.80 per week.</p> <p>(b) The minimum adult apprentice wage for a full-time apprentice aged 21 years or more working under an award that provides for other than a 38- hour week is calculated as follows: divide \$762.80 by 38 and multiply by the number of ordinary hours prescribed for a full-time apprentice under the award.</p>	
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<p>(c) The minimum adult apprentice wage is payable from the beginning of the first pay period commencing on or after 1 July 2024.</p> <p>(d) Adult apprentices aged 21 years or more employed on a part-time basis shall not be paid less than pro rata the minimum adult apprentice wage according to the hours worked.</p> <p>(e) The rates paid in the paragraphs above to an apprentice 21 years of age or more are payable on superannuation and during any period of paid leave prescribed by this award.</p> <p>(f) Where in this award an additional rate is expressed as a percentage, fraction or multiple of the ordinary rate of pay, it shall be calculated upon the rate prescribed in this award for the actual year of apprenticeship.</p>	
<p style="text-align: center;"><u>2. - ARRANGEMENT</u></p> <p>1. Title  1B. Minimum Adult Award Wage  2. Arrangement  3. Scope  4. Area  5. Term  6. Definitions  7. Adult Trainee Casters  8. Contract of Service  9. Breakdowns  10. Hours  12. Overtime  13. Wages  14. Special Rates and Provisions  15. Payment of Wages  16. Under Rate Employees  17. Absence Through Sickness or Bereavement  18. Holidays and Annual Leave  19. Records  20. Posting Copy of Award and Union Notices  21. Representative Interviewing Employees  22. Board of Reference  23. Junior Employees  24. Apprentices  25. Long Service Leave  26. Grievance and Disputes Procedure  27. Maternity Leave  28. Superannuation  29. Introduction of Change  30. Redundancy  31. Enterprise Agreement</p> <p>Appendix - Resolution of Disputes Requirements  Schedule 1 - Parties to the Award  Schedule 2 - Respondents</p>	<p style="text-align: center;"><u>2. - ARRANGEMENT</u></p> <p>PART 1 – APPLICATION AND OPERATION</p> <p>1. Title  1B. Minimum Adult Award Wage  2. Arrangement  3. Scope  4. Area  5. Definitions</p> <p>PART 2 – CONTRACT OF EMPLOYMENT</p> <p>6. Contract of Employment  6A. Flexible Working Arrangement Requests  7. Termination of Employment  8. Trainee Casters  9. Junior Employees  10. Apprentices  11. Breakdowns</p> <p>PART 3 – HOURS OF WORK</p> <p>12. Hours  13. Overtime</p> <p>PART 4 – RATES OF PAY AND ALLOWANCES</p> <p>14. Wages  15. Special Rates and Provisions  16. Payment of Wages  17. Supported Wage System  18. Superannuation</p> <p>PART 5 – LEAVE</p> <p>19. Personal Leave  20. Bereavement Leave  21. Family and Domestic Violence Leave  22. Public Holidays  23. Annual Leave  24. Long Service Leave  25. Parental Leave</p> <p>PART 6 – OTHER</p> <p>26. Right of Entry and Inspection of Records  27. Posting Copy of Award and Union Notices  28. Dispute Resolution Procedure</p>

	<p>29. Introduction of Change 30. Redundancy</p> <p>Schedule 1 – Parties to the Award Schedule 2 – Respondents</p>
<p><u>3. - SCOPE</u></p> <p>This Award shall apply to employees (except those employed on any work "on-site" in connection with the erection, repair, renovation, maintenance, ornamental or demolition of buildings or structures) engaged in the industries carried out by the respondents and employed in the classifications referred to in Clause 13. – Wages hereof.</p>	<p><u>3. - SCOPE</u></p> <p>This Award shall apply to employees (except those employed on any work "on-site" in connection with the erection, repair, renovation, maintenance, ornamental or demolition of buildings or structures) engaged in the industries carried out by the respondents and employed in the classifications referred to in Clause 14. – Wages hereof.</p>
<p><u>4. - AREA</u></p> <p>This Award shall have effect over the whole of the State of Western Australia.</p>	<p>NO VARIATIONS</p>
<p><u>5. - TERM</u></p> <p>The term of this award shall be for a period of three years from the beginning of the first pay period commencing on or after the date hereof.</p>	<p>CLAUSE DELETED</p>
<p><u>6. - DEFINITIONS</u></p> <p>(1) "Operative Fibrous Employee", "Operative Plasterglass Employee" or "Manufactured Cement Goods Employee" means an employee engaged in -</p> <p>(a) architectural modelling;</p> <p>(b) the manufacture of architectural ornaments of fibrous plaster, plasterglass plaster or cement;</p> <p>(c) the manufacture of fibrous plasterglass goods or portable articles of reinforced cement or concrete, cement pressed work, baths, wash tubs, troughs, sinks, pillars, ornaments, and other miscellaneous goods, including floor beams, partition blocks, lintels and acoustic tiles (but excluding cement roofing tiles);</p> <p>(d) any phase or phases of items (a) to (c) inclusive.</p> <p>(2) A "Modeller" is defined as an employee who prepares the ground work or who makes models and/or moulds, whether of gelatine, plaster, wax, plasterglass cement or fibreglass, or other suitable materials.</p> <p>(3) A "Fibrous Plaster Caster" is defined as an employee who prepares the benches or moulds for casting, prepares and applies plaster face gauges (whether for fibrous plaster boards, moulding, or other fibrous plaster products), prepares and applies plaster back gauges, places reinforcement into position, imbeds the reinforcement either by hand, or with rollers, rules off the sheet, trowels the sheet back, cleans the bench or mould rules, removes the manufactured article from bench or mould and places same in drying area. Keeps his/her working area, tools and appurtenances in a clean and workable condition and transfers</p>	<p><u>5. - DEFINITIONS</u></p> <p>(1) "Operative Fibrous Employee", "Operative Plasterglass Employee" or "Manufactured Cement Goods Employee" means an employee engaged in -</p> <p>(a) architectural modelling;</p> <p>(b) the manufacture of architectural ornaments of fibrous plaster, plasterglass plaster or cement;</p> <p>(c) the manufacture of fibrous plasterglass goods or portable articles of reinforced cement or concrete, cement pressed work, baths, wash tubs, troughs, sinks, pillars, ornaments, and other miscellaneous goods, including floor beams, partition blocks, lintels and acoustic tiles (but excluding cement roofing tiles);</p> <p>(d) any phase or phases of items (a) to (c) inclusive.</p> <p>(2) A "Modeller" is defined as an employee who prepares the ground work or who makes models and/or moulds, whether of gelatine, plaster, wax, plasterglass cement or fibreglass, or other suitable materials.</p> <p>(3) A "Fibrous Plaster Caster" is defined as an employee who prepares the benches or moulds for casting, prepares and applies plaster face gauges (whether for fibrous plaster boards, moulding, or other fibrous plaster products), prepares and applies plaster back gauges, places reinforcement into position, imbeds the reinforcement either by hand, or with rollers, rules off the sheet, trowels the sheet back, cleans the bench or mould rules, removes the manufactured article from bench or mould and places same in drying area. Keeps their working area, tools and appurtenances in a clean and workable condition and transfers plaster into the bin in accordance with subclause (6) of this clause.</p> <p>(4) "Labourers" may be employed on all or any of the following work, namely:-</p> <p>(a) filling of plaster bins, water troughs and fibre bins;</p> <p>(b) removing from benches or moulds fibrous plaster products, placing same in drying areas, changing moulds with the assistance of casters when necessary;</p>

<p>plaster into the bin in accordance with subclause (7) of this clause.</p> <p>(4) "Labourers" may be employed on all or any of the following work, namely:-</p> <p>(a) filling of plaster bins, water troughs and fibre bins;</p> <p>(b) removing from benches or moulds fibrous plaster products, placing same in drying areas, changing moulds with the assistance of casters when necessary;</p> <p>(c) maintaining appurtenances such as tubs, troughs, bins, drains, etc. in a clean and workable condition;</p> <p>(d) maintaining floor in a clean condition;</p> <p>(e) removing fibrous plaster products from drying areas into stores;</p> <p>(f) carting plaster</p> <p>(5) Except as provided in subclause (4) hereof, labourers shall not perform any operation which is the duty of a caster.</p> <p>(6) Junior employees shall not be employed on labourers' duties in any factory in which labourers are employed on the work set out in subclause (4) hereof, except such juniors as may be agreed upon between the union and the employer from time to time.</p> <p>(7) Carting plaster: For the purpose of the schedules to this award the term "carting plaster" shall not include the work of transferring plaster into the bin, from stacks adjacent to the bin nor the cartage of the gauge from the bin to the table. A stack shall be considered adjacent to the bin if it is within a radius of twelve feet from the bin.</p>	<p>(c) maintaining appurtenances such as tubs, troughs, bins, drains, etc. in a clean and workable condition;</p> <p>(d) maintaining floor in a clean condition;</p> <p>(e) removing fibrous plaster products from drying areas into stores;</p> <p>(f) carting plaster</p> <p>(5) Except as provided in subclause (4) hereof, labourers shall not perform any operation which is the duty of a caster.</p> <p>(6) Carting plaster: For the purpose of the schedules to this award the term "carting plaster" shall not include the work of transferring plaster into the bin, from stacks adjacent to the bin nor the cartage of the gauge from the bin to the table. A stack shall be considered adjacent to the bin if it is within a radius of 3.7 m from the bin.</p>
<p align="center"><u>8. - CONTRACT OF SERVICE</u></p> <p>(1) Except in the case of casual employees, the contract of service shall be weekly and shall be terminable by one week's notice on either side or by the payment or forfeiture of one week's pay as the case may be.</p> <p>(2) In the case of a casual employee the contract of service shall be hourly and shall be terminable by one hour's notice on either side or by the payment or forfeiture of one hour's pay as the case may be.</p> <p>(3) An employer may at any time dismiss an employee for misconduct.</p> <p>(4) Payment may be deducted for any period that an employee is absent from work during the ordinary working hours in any establishment.</p>	<p align="center"><u>6.- CONTRACT OF EMPLOYMENT</u></p> <p>(1) An employer may engage an employee on either a full-time, part-time or casual basis subject to the terms of this award.</p> <p>(2) At the time of the engagement the employer will inform each employee of the category of their employment, in particular, whether they are to be full-time, part-time or casual.</p> <p>(3) A "full time" employee is engaged to work an average of 38 hours per week on an ongoing basis. An employee not specifically engaged as a part-time or casual is a full-time employee for the purposes of this award.</p> <p>(4) A "part time" employee is an employee who is engaged to work less than an average of 38 hours per week on an ongoing basis and works a regular number of ordinary hours each week.</p> <p>(5) A "casual employee" is an employee who is engaged and paid as such, applying s 7B of the <i>Industrial Relations Act 1979</i> (WA). A casual employee is paid by the hour. A casual employee may only be employed for a period of less than one week.</p>
<p align="center">Insert the following as a heading before clause 6 'Contract of</p>	

	<p>Employment':</p> <p>PART 2 – CONTRACT OF EMPLOYMENT</p>										
	<p>Insert the following as a new clause before clause 7 'Termination of Employment':</p> <p style="text-align: center;"><u>6A. - FLEXIBLE WORKING ARRANGEMENT REQUESTS</u></p> <p>Employees may make a request for a flexible working arrangement in accordance with s 39F and s 39G of the <i>Minimum Conditions of Employment Act 1993</i> (WA). Any such request must be dealt with and determined in accordance with Part 4A of the <i>Minimum Conditions of Employment Act 1993</i> (WA).</p>										
	<p style="text-align: center;"><u>7. - TERMINATION OF EMPLOYMENT</u></p> <p>Termination by the Employer</p> <p>(1) In order to terminate the employment of a full time or part time employee the employer must give the employee the following notice in writing:</p> <table border="0" style="margin-left: 40px;"> <thead> <tr> <th style="text-align: center;"><b>Period of continuous service with the employer</b></th> <th style="text-align: center;"><b>Minimum Period of Notice</b></th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">Not more than 1 year</td> <td style="text-align: center;">At least 1 week</td> </tr> <tr> <td style="text-align: center;">More than 1 year but less than 3 years</td> <td style="text-align: center;">At least 2 weeks</td> </tr> <tr> <td style="text-align: center;">More than 3 years but less than 5 years</td> <td style="text-align: center;">At least 3 weeks</td> </tr> <tr> <td style="text-align: center;">More than 5 years</td> <td style="text-align: center;">At least 4 weeks</td> </tr> </tbody> </table> <p>(2) An employee who at the time of being given notice is over 45 years of age and who at the date of termination has completed two years' continuous service with the employer, is entitled to one week's notice in addition to the notice prescribed in clause 7(1).</p> <p>(3) Payment in lieu of the notice prescribed in clause 7(1) and (2) must be made if the prescribed notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu.</p> <p>(4) The period of notice in this subclause does not apply to those employees who are exempt from receiving notice under Subdivision A of Division 11 of Part 2-2 of the <i>Fair Work Act 2009</i> (Cth), as amended from time to time.</p> <p>(5) For the purpose of this clause an employee's continuity of service has the same meaning as prescribed in section 22 of the <i>Fair Work Act 2009</i> (Cth).</p> <p>Termination by the Employee</p> <p>(6) Except in the case of a pieceworker or a casual employee an employee may terminate the employment by giving one week's notice.</p> <p>Termination of Casual Employment</p> <p>(7) Casual employment may be terminated by either party with one hours' notice.</p> <p>Dismissal for Misconduct</p>	<b>Period of continuous service with the employer</b>	<b>Minimum Period of Notice</b>	Not more than 1 year	At least 1 week	More than 1 year but less than 3 years	At least 2 weeks	More than 3 years but less than 5 years	At least 3 weeks	More than 5 years	At least 4 weeks
<b>Period of continuous service with the employer</b>	<b>Minimum Period of Notice</b>										
Not more than 1 year	At least 1 week										
More than 1 year but less than 3 years	At least 2 weeks										
More than 3 years but less than 5 years	At least 3 weeks										
More than 5 years	At least 4 weeks										

	(8) Nothing in this clause shall prevent an employer from terminating the employment of an employee at any time for misconduct.
<p style="text-align: center;"><u>7. - ADULT TRAINEE CASTERS</u></p> <p>Where juniors are not available for employment as casters, adult trainee casters may be employed on the following terms:-</p> <p>(1) The period of training shall be one year; provided that if, in the opinion of the examiners a trainee reaches 100 per cent proficiency before the expiration of one year, his/her period of training may be reduced accordingly. Provided further, the examiners shall have power to extend the period of training in special circumstances where the trainee has not reached the full proficiency.</p> <p>(2) The combined number of trainee and junior casters employed by the employer shall not exceed the number of adult casters employed.</p> <p>(3) The employer shall notify the union of the engagement of a trainee within fourteen days of the engagement.</p> <p>(4) A caster responsible for the training of a trainee under this clause shall be paid \$2.90 per week extra whilst so engaged.</p> <p>(5) A trainee shall be allocated to a caster for three-monthly periods. No trainee shall be allocated to a junior or a person receiving training under the Commonwealth Reconstruction Training Scheme.</p> <p>(6) One examiner shall be appointed by the union and one by the employers for the purposes of examining trainees.</p> <p>(7) A syllabus of training shall be prepared by the examiners and employers shall provide training in accordance with such syllabus.</p> <p>(8) Examinations shall be conducted quarterly except where a trainee or employer requests an examination earlier than three months from the previous examination.</p> <p>(9) The examiners shall assess the proficiency of trainees and fix the percentage of the total wage prescribed for a plaster caster in Clause 13. - Wages which shall be paid to a trainee in accordance with paragraph (f) of subclause (1) of the said clause.</p> <p>(10) The examiners shall report to the Industrial Registrar the result of each examination and The Construction, Forestry, Mining and Energy Union of Workers and the Association of Wall and Ceiling Contractors of WA (Inc.) shall be supplied with a copy thereof.</p> <p>(11) In the event of a disagreement between the examiners on any matter within their</p>	<p style="text-align: center;"><u>8. - TRAINEE CASTERS</u></p> <p>(1) The minimum rates of pay and conditions of employment applicable to trainees will be those set out in Schedule E - National Training Wage of the <i>Joinery and Building Trades Award 2020</i> as amended from time to time. Provided that any reference to "this award" in Schedule E to the <i>Joinery and Building Trades Award 2020</i> is to be read as referring to the <i>Plaster, Plasterglass and Cement Workers' Award</i>.</p> <p>Note: The <i>Joinery and Building Trades Award 2020</i> is a modern award that applies to employers and employees in the national industrial relations system. The rates of pay for trainees are usually adjusted from 1 July each year.</p> <p>(2) A caster responsible for the training of a trainee under this clause shall be paid an additional 0.6% of a Plaster Caster's wage per week whilst so engaged.</p>

<p>jurisdiction, the matter shall be referred to the Registrar whose decision shall be final.</p> <p>(12) Nothing in this clause shall apply to trainees employed under the Commonwealth Reconstruction Training Scheme.</p>	
<p style="text-align: center;"><u>23. - JUNIOR EMPLOYEES</u></p> <p>(1) Junior Employees may only be employed in the Fibrous Plaster Casting and Cement branches of the industry in the proportion of one junior to one adult employee.</p> <p>(2) One junior only shall be employed on the teasing machine.</p> <p>(3) Junior employees, upon being engaged, shall furnish the employer with a certificate showing the following particulars –</p> <p>(a) name in full;</p> <p>(b) age and date of birth;</p> <p>(c) name of each previous employer;</p> <p>(d) length of service with each previous employer.</p> <p>(4) No employee shall have any claim for additional wages in the event of his/her age or length of service with another employer being wrongly stated on this certificate and he/she alone shall be guilty of breach of this award.</p> <p>(1) The provisions of this clause do not apply to employees engaged in the Plaster Mill industry.</p>	<p style="text-align: center;"><u>9. - JUNIOR EMPLOYEES</u></p> <p>(1) Junior Employees may only be employed in the Fibrous Plaster Casting and Cement branches of the industry in the proportion of one junior to one adult employee.</p> <p>(2) One junior only shall be employed on the teasing machine.</p> <p>(3) Junior employees, upon being engaged, shall furnish the employer with a certificate showing the following particulars –</p> <p>(a) name in full;</p> <p>(b) age and date of birth;</p> <p>(c) name of each previous employer;</p> <p>(d) length of service with each previous employer.</p> <p>(4) No employee shall have any claim for additional wages in the event of their age or length of service with another employer being wrongly stated on this certificate and they alone shall be guilty of breach of this award.</p> <p>(5) The provisions of this clause do not apply to employees engaged in the Plaster Mill industry.</p>
<p style="text-align: center;"><u>24. - APPRENTICES</u></p> <p>(1) Apprentices to the Modelling Branch of the fibrous plaster trade may be taken in the ratio of one apprentice to every two or fraction of two (the fraction being not less than one) tradespersons and shall not be taken in excess of that ratio.</p> <p>(2) Liberty to apply is reserved to either party to vary the provisions of this clause.</p>	<p style="text-align: center;"><u>10. - APPRENTICES</u></p> <p>Apprentices to the Modelling Branch of the fibrous plaster trade may be taken in the ratio of one apprentice to every two or fraction of two (the fraction being not less than one) tradespersons and shall not be taken in excess of that ratio.</p>
<p style="text-align: center;"><u>9. - BREAKDOWNS</u></p> <p>The employer shall be entitled to deduct payment for any day or portion of a day upon which the employee cannot be usefully employed because of any strike by the union or unions affiliated with it or by any other association or union or through the breakdown of the employer's machinery or any stoppage of work by any cause which the employer cannot reasonably prevent.</p>	<p style="text-align: center;">RENUMBERED AS CLAUSE 11</p>
	<p>Insert the following as a heading before clause 12 'Hours':</p> <p style="text-align: center;">PART 3 – HOURS OF WORK</p>
<p style="text-align: center;"><u>10. - HOURS</u></p> <p>(1) Hours of Work:</p> <p>(a) The ordinary working hours shall be 38 per week to operate from the beginning of the first pay period</p>	<p style="text-align: center;"><u>12. - HOURS</u></p> <p>Hours of Work:</p> <p>(a) The ordinary working hours shall be 38 per week.</p> <p>(b) The ordinary hours of work shall be worked on one of the</p>

<p>commencing on or after January 1, 1984, provided that for employees employed up until the date of this award pursuant to the Plaster Mill Employees Award No. 6 of 1962 shall have ordinary working hours of 38 per week from the first pay period commencing on or after 1st May 1990.</p> <p>(b) Subject to the provisions of this subclause and subclauses (2) - Implementation of 38 Hour Week - (3) - Procedures for In-house Discussions; the ordinary hours of work shall be an average of 38 per week to be worked on one of the following bases.</p> <p>(i) 38 hours within a work cycle not exceeding seven consecutive days; or</p> <p>(ii) 76 hours within a work cycle not exceeding fourteen consecutive days; or</p> <p>(iii) 114 hours within a work cycle not exceeding twenty-one consecutive days; or</p> <p>(iv) 152 hours within a work cycle not exceeding twenty-eight consecutive days.</p> <p>(c) The ordinary hours of work may be worked on any or all days of the week, Monday to Friday, inclusive, and except in the case of shift employees, shall be worked between the hours of 6.00am to 6.00pm with an interval of not less than thirty minutes or more than sixty minutes for lunch.</p> <p>(d) The ordinary hours of work shall not exceed 10 hours on any day.</p> <p>Provided that in any arrangement of ordinary working hours, where such ordinary hours are to exceed 8 hours on any day, the arrangement of hours shall be subject to agreement between the employer and the majority of employees in the employer's premises or section or sections concerned.</p> <p>(e) (i) In establishments where shift work is performed, subject to the provisions of subclause (5) of Varied Starting Times, such shift work hours shall commence not earlier than 7.00am and shall finish not later than 12.00 midnight. Provided that where shifts are worked, an interval of not less than thirty minutes shall be allowed as a meal break.</p>	<p>following bases.</p> <p>(i) 38 hours within a work cycle not exceeding seven consecutive days; or</p> <p>(ii) 76 hours within a work cycle not exceeding fourteen consecutive days; or</p> <p>(iii) 114 hours within a work cycle not exceeding twenty-one consecutive days; or</p> <p>(iv) 152 hours within a work cycle not exceeding twenty-eight consecutive days.</p> <p>(c) The ordinary hours of work may be worked on any or all days of the week, Monday to Friday, inclusive, and except in the case of shift employees, shall be worked between the hours of 6.00am to 6.00pm with an interval of not less than thirty minutes or more than sixty minutes for lunch.</p> <p>(d) The ordinary hours of work shall not exceed 10 hours on any day.</p> <p>Provided that in any arrangement of ordinary working hours, where such ordinary hours are to exceed 8 hours on any day, the arrangement of hours shall be subject to agreement between the employer and the majority of employees in the employer's premises or section or sections concerned.</p> <p>(e) (i) In establishments where shift work is performed, such shift work hours shall commence not earlier than 7.00am and shall finish not later than 12.00 midnight. Provided that where shifts are worked, an interval of not less than thirty minutes shall be allowed as a meal break.</p> <p>(ii) The ordinary hours of shift employees shall average 38 per week (inclusive of crib time) and shall not exceed 152 hours in twenty-eight consecutive days.</p> <p>(iii) Provided that in any arrangement of ordinary working hours, where such ordinary hours are to exceed eight hours on any day, the arrangement of hours shall be subject to agreement between the employer and the majority of employees in the employer's premises or section or sections concerned.</p> <p>(iv) When an employee is engaged on afternoon shift they shall be entitled to be paid at the rate of 15% in addition to the rates prescribed.</p> <p>(2) An employee shall not be prohibited nor discouraged by their employer, nor by any leading hand or foreperson acting for the employer, from having a 10 minute morning rest break at a convenient time once during each morning work period.</p> <p>Provided that such a morning rest break is taken at a suitable place (where flasks and cribs may be safely left) designated by the employer for any particular employee or group of employees or, if no such place be designated, then at the nearest such suitable place to the place where the employee in question reasonably believes when they commence work for the morning that they will be working at about the time they customarily have such morning rest break, and</p>
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<p>(ii) Subject to the provisions of subclause (2) - Implementation of 38 Hour Week and subclause (3) - Procedures for In-house discussions, the ordinary hours of shift employees shall average 38 per week (inclusive of crib time) and shall not exceed 152 hours in twenty-eight consecutive days.</p> <p>(iii) Provided that in any arrangement of ordinary working hours, where such ordinary hours are to exceed eight hours on any day, the arrangement of hours shall be subject to agreement between the employer and the majority of employees in the employer's premises or section or sections concerned.</p> <p>(iv) When an employee is engaged on afternoon shift he/she shall be entitled to be paid at the rate of 15 per cent in addition to the rates prescribed.</p>	<p>Provided further that work is not unduly interfered with and that there is no organised stoppage of work for the purpose of having the morning rest break except with the consent of the employer.</p> <p>(3) The ordinary hours of work may, at the option of the employer, be varied within a span of hours between 6.00am and 6.00pm and the working time shall then begin to run from the time so fixed, by the employer, with a consequential adjustment to the meal cessation period.</p> <p>(4) (a) If the ordinary hours of duty in a workplace provide for rostered days off, an employee shall be advised by the employer at least four weeks in advance of the day they are to take off duty.</p> <p>(b) An employer, with the agreement of the majority of employees concerned, may substitute an employee's rostered day off for another day in the case of a breakdown in machinery or a failure or shortage of electric power or some other emergency situation.</p> <p>(c) An employer and employee may agree to substitute the employee's rostered day off for another day.</p> <p>(d) Where any rostered day off duty falls on a public holiday, the next working day shall be taken in lieu, unless an alternate day is agreed between the employer and employee.</p>
<p>(2) Implementation of 38 Hour Week:</p> <p>(a) Except as provided in paragraph (c) hereof, the method of implementation of the 38 hour week may be any one of the following:-</p> <p>(i) by employees working less than 8 ordinary hours each day; or</p> <p>(ii) by employees working less than 8 ordinary hours on one or more days each week; or</p> <p>(iii) by fixing one day of ordinary working hours on which all employees will be off duty during a particular four week cycle; or</p> <p>(iv) by rostering employees off duty on various days of the week during a particular four week cycle so that each employee has one day of ordinary working hours off duty during that cycle; or</p> <p>(v) Where any rostered day off</p>	

<p>duty falls on a Holiday as prescribed in Clause 18. - Holidays and Annual Leave, the next working day shall be taken in lieu unless an alternate day in that four week cycle or the next is agreed.</p> <p>(b) An assessment should be made as to which method of implementation best suits each employer and the proposal shall be discussed with the employees concerned, the objective being to reach agreement on the method of implementation.</p> <p>(c) Different methods of implementation of a 38 hour week may apply to various sections or establishments of the one employer.</p> <p>(d) Notice of Days Off Duty:</p> <p>Except as provided in paragraph (e) hereof, in cases where, by virtue of the arrangement of his/her ordinary working hours, an employee, in accordance with sub-paragraphs (iii) and (v) of paragraph (a) hereof, is entitled to a day off duty during his/her four week cycle, such employee shall be advised by the employer at least four weeks in advance of the day he/she is to take off duty.</p> <p>(e) (i) An employer, with the agreement of the majority of employees concerned, may substitute the day an employee is to take off in accordance with subparagraphs (iii) and (v) of paragraph (a) hereof, for another day in the case of a breakdown in machinery or a failure or shortage of electric power or some other emergency situation.</p> <p>(ii) An employer and employee may by agreement substitute the day the employee is to take off for another day.</p> <p>(3) Procedure for In-House Discussions:</p> <p>(a) Procedures shall be established for in-house discussions, the objective being to agree on the method of implementing a 38 hour week in accordance with subclauses (1) - Hours of Work and (3) - Implementation of 38 Hour Week of this clause and shall entail an objective review of current practices to establish where improvements can be made and implemented.</p>	
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<p>(b) The procedures should make suggestions as to the recording of understandings reached and methods of communicating agreements and understandings to all employees, including the overcoming of language difficulties.</p> <p>(c) The procedures should allow for the monitoring of agreements and understandings reached inhouse.</p> <p>(d) In cases where agreement cannot be reached in-house in the first instance or where problems arise after initial agreements or understandings have been achieved in-house, a formal monitoring procedure shall apply. The basic steps in this procedure for settling such a problem are as follows –</p> <p>(i) Consultation shall take place within the particular establishment concerned.</p> <p>(ii) If it is unable to be resolved at establishment level, the matter shall be referred to the State Secretary of the union (or unions) concerned or his/her deputy, at which level a conference of the parties shall be convened without delay.</p> <p>(iii) In the absence of agreement either party may refer the matter to the Western Australian Industrial Commission.</p> <p>(4) an employee shall not be prohibited nor discouraged by his/her employer, nor by any leading hand or foreperson acting for the employer, from having a "cup of tea" (which expression includes any suitable beverage, together with something to eat) at a convenient time once during each morning work period.</p> <p>Provided that such a "cup of tea" is taken at a suitable place (where flasks and cribs may be safely left) designated by the employer for any particular employee or group of employees or, if no such place be designated, then at the nearest such suitable place to the place where the employee in question reasonably believes when he/she commences work for the morning that he/she will be working at about the time he/she customarily has such "cup of tea", and</p> <p>Provided further that work is not unduly interfered with and that there is no organised stoppage of work for the purpose of having the "cup of tea" except with the consent of the employer.</p> <p>(5) (a) The ordinary hours of work may, at the</p>	
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<p>option of the employer, be varied within a span of hours between 6.00am and 6.00pm and the working time shall then begin to run from the time so fixed, by the employer, with a consequential adjustment to the meal cessation period.</p> <p>(b) Subject to agreement between the employer and an employee or a group of employees, or the workforce, at a particular location, the span of hours prescribed by paragraph (a) hereof he/she maybe extended, to any agreed time, earlier than 6.00am.</p>	
<p style="text-align: center;"><u>12. - OVERTIME</u></p> <p>(1) All work performed outside the normal limits of the hours of labour shall be paid for at the rate of time and a half for the first two hours and double time thereafter, provided an employee who commences at or after midnight shall be paid double time until 6.00am the following morning.</p> <p>Subject to the provisions of subclause (3) of this clause, for the purpose of this subclause, the normal limits of the hours of labour shall be ascertained by reference to the time of commencement and time of finishing generally observed in regard to the employee in question for the particular job on which he/she is engaged.</p> <p>(2) Any employee who is called upon to continue working for more than two hours beyond his/her usual ceasing time shall be provided with any meal required or shall be paid an allowance of \$7.30 in lieu thereof.</p> <p>Provided that this subclause shall not apply to any employee who was advised on the previous day that he/she would be required to work such overtime, nor to any employee who can conveniently return home for a meal.</p> <p>(3) Any employee who has left the premises at which he/she is employed and is recalled to work after the usual ceasing time for less than one hour shall receive payment for one hour at overtime rates.</p> <p>(4) If an employee is required to work during the recognised meal period so that the commencement of the meal period is postponed for more than half an hour, that employee shall receive payment at double time rates until he/she gets his/her meal.</p> <p>(5) Subject to the preceding subclause, if an employee who is required to work during the recognised meal period does not in consequence obtain during the shift the full continuous meal period, or loses any portion of the meal period, he/she shall be paid at double time rates for the period not obtained or any portion lost.</p> <p>(6) The expression "recognised meal period" means the period customarily observed as the meal</p>	<p style="text-align: center;"><u>13. - OVERTIME</u></p> <p>(1) All work performed outside the ordinary hours of work shall be paid for at the rate of time and a half for the first two hours and double time thereafter, provided an employee who commences at or after midnight shall be paid double time until 6.00am the following morning.</p> <p>(2) Any employee who is called upon to continue working for more than two hours beyond their usual ceasing time shall be provided with any meal required or shall be paid an allowance equal to the amount provided for in Clause 21.4(c) of the <i>Joinery and Building Trades Award 2020</i> .</p> <p>Note: The <i>Joinery and Building Trades Award 2020</i> is a modern award that applies to employers and employees in the national industrial relations system. The meal allowance contained in Clause 21.4(c) of the <i>Joinery and Building Trades Award 2020</i> is usually adjusted from 1 July each year.</p> <p>Provided that this subclause shall not apply to any employee who was advised on the previous day that they would be required to work such overtime, nor to any employee who can conveniently return home for a meal.</p> <p>(3) Any employee who has left the premises at which they are employed and is recalled to work after the usual ceasing time for less than one hour shall receive payment for one hour at overtime rates.</p> <p>(4) If an employee is required to work during the recognised meal period so that the commencement of the meal period is postponed for more than half an hour, that employee shall receive payment at double time rates until they get their meal.</p> <p>(5) Subject to the preceding subclause, if an employee who is required to work during the recognised meal period does not in consequence obtain during the shift the full continuous meal period, or loses any portion of the meal period, they shall be paid at double time rates for the period not obtained or any portion lost.</p> <p>(6) The expression "recognised meal period" means the period customarily observed as the meal period between fixed times on the job, or at the works, as the case may be, except where the time of commencement of the customary period is altered by mutual consent of the employer and the employees on a job to suit the convenience of the employees or the building proprietor, in which case the altered times shall be the basis of any rights under the preceding subclauses (4) and (5).</p>

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<p style="text-align: center;"><u>13. - WAGES</u></p> <table border="1"> <thead> <tr> <th></th> <th>Wage Per Week\$</th> <th>Arbitrated Safety Net\$</th> <th>Total Wage Per Week\$</th> </tr> </thead> <tbody> <tr> <td>(1) (a) Modeller Tool Allowance</td> <td>408.90</td> <td>592.50</td> <td>1001.40 1.44</td> </tr> <tr> <td>(b) Plaster Caster</td> <td>386.15</td> <td>587.05</td> <td>973.20</td> </tr> <tr> <td>(c) Plaster Caster (Mechanical)</td> <td>362.35</td> <td>581.45</td> <td>943.80</td> </tr> <tr> <td>(d) Labourers</td> <td>342.10</td> <td>576.50</td> <td>918.60</td> </tr> <tr> <td>(e) Cement employee</td> <td>338.25</td> <td>575.75</td> <td>914.00</td> </tr> <tr> <td>(f) Trainee Casters – up to 40 per cent proficiency</td> <td></td> <td></td> <td>897.90</td> </tr> </tbody> </table> <p>Thereafter, such percentage of the plaster caster's total wage as is assessed in accordance with subclause (9) of Clause 7. – Adult Trainee Casters.</p> <table border="1"> <thead> <tr> <th></th> <th>Wage Per Week\$</th> <th>Arbitrated Safety Net\$</th> <th>Total Wage Per Week\$</th> </tr> </thead> <tbody> <tr> <td>(g) Plant Operator</td> <td></td> <td></td> <td>897.90</td> </tr> <tr> <td>(h) Bagger</td> <td></td> <td></td> <td>897.90</td> </tr> <tr> <td>(i) Washer</td> <td></td> <td></td> <td>897.90</td> </tr> <tr> <td>(j) Front</td> <td></td> <td></td> <td>897.90</td> </tr> </tbody> </table>		Wage Per Week\$	Arbitrated Safety Net\$	Total Wage Per Week\$	(1) (a) Modeller Tool Allowance	408.90	592.50	1001.40 1.44	(b) Plaster Caster	386.15	587.05	973.20	(c) Plaster Caster (Mechanical)	362.35	581.45	943.80	(d) Labourers	342.10	576.50	918.60	(e) Cement employee	338.25	575.75	914.00	(f) Trainee Casters – up to 40 per cent proficiency			897.90		Wage Per Week\$	Arbitrated Safety Net\$	Total Wage Per Week\$	(g) Plant Operator			897.90	(h) Bagger			897.90	(i) Washer			897.90	(j) Front			897.90	<p style="text-align: center;"><u>14. - WAGES</u></p> <table border="1"> <thead> <tr> <th></th> <th>Wage Per Week \$</th> </tr> </thead> <tbody> <tr> <td>(1) (a) Modeller</td> <td>1001.40</td> </tr> <tr> <td>(b) Tool Allowance</td> <td>1.44</td> </tr> <tr> <td>(c) Plaster Caster</td> <td>973.20</td> </tr> <tr> <td>(d) Plaster Caster (Mechanical)</td> <td>943.80</td> </tr> <tr> <td>(e) Labourers</td> <td>918.60</td> </tr> <tr> <td>(f) Cement Employee</td> <td>918.60</td> </tr> <tr> <td>(g) Plant Operator</td> <td>918.60</td> </tr> <tr> <td>(h) Bagger</td> <td>918.60</td> </tr> <tr> <td>(i) Washer</td> <td>918.60</td> </tr> <tr> <td>(j) Front End Loader</td> <td>918.60</td> </tr> <tr> <td>(k) Fork Lift Driver</td> <td>918.60</td> </tr> </tbody> </table> <p>(2) Junior Employees Under 21 years of age</p> <table border="1"> <thead> <tr> <th>Age Group</th> <th>% of a Labourers' wage*</th> </tr> </thead> <tbody> <tr> <td>20 years of age</td> <td>90</td> </tr> <tr> <td>19 years of age</td> <td>80</td> </tr> <tr> <td>Under 19 years of age</td> <td>70</td> </tr> </tbody> </table> <p>*Rounded to the nearest 10 cents.</p> <p>(3) Apprentice Modellers - Four Year Term</p> <table border="1"> <thead> <tr> <th>Year</th> <th>% of a Modeller's wage</th> </tr> </thead> <tbody> <tr> <td>First year</td> <td>42</td> </tr> <tr> <td>Second year</td> <td>55</td> </tr> <tr> <td>Third year</td> <td>75</td> </tr> <tr> <td>Fourth year</td> <td>88</td> </tr> </tbody> </table> <p>Note 1: The above percentages are of both the adult wages and the tool allowance.</p> <p>Note 2: Adult apprentices aged 21 years or over must receive the</p>		Wage Per Week \$	(1) (a) Modeller	1001.40	(b) Tool Allowance	1.44	(c) Plaster Caster	973.20	(d) Plaster Caster (Mechanical)	943.80	(e) Labourers	918.60	(f) Cement Employee	918.60	(g) Plant Operator	918.60	(h) Bagger	918.60	(i) Washer	918.60	(j) Front End Loader	918.60	(k) Fork Lift Driver	918.60	Age Group	% of a Labourers' wage*	20 years of age	90	19 years of age	80	Under 19 years of age	70	Year	% of a Modeller's wage	First year	42	Second year	55	Third year	75	Fourth year	88
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<p>Award, except where such absorption is contrary to the terms of an industrial agreement.</p> <p>Increases in rates of pay otherwise made under the State Wage Case Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.</p>																	
<p><b>14. - SPECIAL RATES AND PROVISIONS</b></p> <p>(1) Leading Hands: An employee placed in charge for not less than one day of -</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 80%;"></td> <td style="text-align: right; vertical-align: bottom;">\$ Per Week</td> </tr> <tr> <td>(a) Not less than three (3) and not more than ten (10) other tradeperson</td> <td style="text-align: right;">13.89</td> </tr> <tr> <td>(b) More than ten (10) and not more than twenty (20) other tradeperson</td> <td style="text-align: right;">21.95</td> </tr> <tr> <td>(c) More than twenty (20) other tradeperson</td> <td style="text-align: right;">29.35</td> </tr> </table> <p>(d) The rates herein prescribed shall be deemed to form part of the ordinary rate of wage of the employees concerned for all purposes of this Award</p> <p>Where the leading hand works under the supervision of a foreperson or of the employer for the major portion of the day, the extra rates set out in this subclause shall be halved.</p> <p>(2) The employer shall provide at lunch time on each job, boiling water for the use of all employees.</p> <p>(3) Protection of Tools: The employer shall, where practicable, provide a place on each job for the safekeeping of the employees' tools when not in use</p> <p>(4) Change Room: The employer shall, where practicable, provide and maintain in a cleanly condition -</p> <p>(a) on each job a proper change room where the employee may change his/her clothes, and such place shall not be used for storing lime, cement, or other similar materials;</p> <p>(b) separate locker accommodation, fitted with a suitable lock, for each employee employed in or about the factory or shop for the safekeeping of the employees' clothes and effects;</p> <p>(c) suitable heating facilities for the drying of wet clothes of employees employed on casting.</p> <p>(5) Changing Time: At the factory, five minutes be allowed to employees who desire to change their clothes, but no employee shall leave the factory before the proper time for ceasing work.</p> <p>(6) Gloves for Cement Concrete Employees:</p>		\$ Per Week	(a) Not less than three (3) and not more than ten (10) other tradeperson	13.89	(b) More than ten (10) and not more than twenty (20) other tradeperson	21.95	(c) More than twenty (20) other tradeperson	29.35	<p><b>15. - SPECIAL RATES AND PROVISIONS</b></p> <p>(1) All employees required to work on any Sunday shall be paid double time rate for all time worked on any such day.</p> <p>(2) Leading Hands: An employee placed in charge of other tradepersons for not less than one day shall be paid the following additional amounts per week -</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 80%;"></td> <td style="text-align: right; vertical-align: bottom;">% of a Plaster Caster's weekly wage</td> </tr> <tr> <td>(a) Not less than 3 and not more than 10 other tradepersons</td> <td style="text-align: right;">2.8%</td> </tr> <tr> <td>(b) More than 10 and not more than 20 other tradepersons</td> <td style="text-align: right;">4.5%</td> </tr> <tr> <td>(c) More than 20 other tradepersons</td> <td style="text-align: right;">6.0%</td> </tr> </table> <p>The rates herein prescribed shall be deemed to form part of the ordinary rate of wage of the employees concerned for all purposes of this Award.</p> <p>Where the leading hand works under the supervision of a foreperson or of the employer for the major portion of the day, the extra rates set out in this subclause shall be halved.</p> <p>(3) The employer shall provide at lunch time on each job, boiling water for the use of all employees.</p> <p>(4) Protection of Tools: The employer shall, where practicable, provide a place on each job for the safekeeping of the employees' tools when not in use.</p> <p>(5) Change Room: The employer shall, where practicable, provide and maintain in a cleanly condition -</p> <p>(a) on each job a proper change room where the employee may change their clothes, and such place shall not be used for storing lime, cement, or other similar materials;</p> <p>(b) separate locker accommodation, fitted with a suitable lock, for each employee employed in or about the factory or shop for the safekeeping of the employees' clothes and effects;</p> <p>(c) suitable heating facilities for the drying of wet clothes of employees employed on casting.</p> <p>(6) Changing Time: At the factory, five minutes be allowed to employees who desire to change their clothes, but no employee shall leave the factory before the proper time for ceasing work.</p> <p>(7) Gloves for Cement Concrete Employees:</p>		% of a Plaster Caster's weekly wage	(a) Not less than 3 and not more than 10 other tradepersons	2.8%	(b) More than 10 and not more than 20 other tradepersons	4.5%	(c) More than 20 other tradepersons	6.0%
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<p style="text-align: center;"><u>15. - PAYMENT OF WAGES</u></p> <p>(1) Subject to subclause (2) of this clause, from the beginning of the first pay period commencing on or after 1 st May, 1984 wages shall be paid as follows:-</p> <p>(a) Actual 38 ordinary hours</p> <p>In the case of an employee whose ordinary hours of work are arranged in accordance with subparagraph (i) or (ii) of paragraph (a) of subclause (2) – Implementation of 38 Hour Week – of Clause 10. – Hours so that he/she works 38 ordinary hours each week, wages shall be paid weekly according to the actual ordinary hours worked each week.</p> <p>(b) Average of 38 ordinary hours</p> <p>Subject to subclauses (2) and (3) of this clause, in the case of an employee whose ordinary hours of work are arranged in accordance with subparagraphs (iii) or (iv) of paragraph (a) of subclause (2) – Implementation of 38 Hour Week – of Clause 10. – Hours so that he/she works an average of 38 ordinary hours each week during a particular four week cycle, wages shall be paid weekly according to a weekly average of ordinary hours worked even though more or less than 38 ordinary hours may be worked in any particular week of the four week cycle.</p> <p>(2) For employees employed up until the date of this award pursuant to the Plaster Mill Employees Award No. 6 of 1962, the provisions of this clause have effect from 1 January 1990.</p> <p>(3) Absences from Duty</p> <p>(a) An employee whose ordinary hours are arranged in accordance with subparagraph (iii) or (iv) of paragraph (a) of subclause (2) – Implementation of 38 Hour Week – of Clause 10. – Hours and who is paid wages in accordance with paragraph (b) of subclause (1) hereof and is absent from duty (except for paid leave pursuant to Clause 18. – Holidays and Annual Leave, except annual leave, and Clause 17. – Absence Through Sickness) shall, for each day or part day he/she is so absent lose the average pay “credit” or 0.4 hours for that day.</p>	<p style="text-align: center;"><u>16. - PAYMENT OF WAGES</u></p> <p>(1) Wages shall be paid as follows:</p> <p>(a) Actual hours</p> <p>In the case of an employee whose hours of duty are constant each week, wages shall be paid weekly or fortnightly according to the actual ordinary hours worked each week or fortnight.</p> <p>(b) Average hours</p> <p>In the case of an employee whose hours of duty are averaged each week during a particular work cycle, wages shall be paid weekly or fortnightly according to a weekly average of ordinary hours of duty even though more or less hours may be worked in any particular week of the work cycle.</p> <p>(2) (a) Where an employee is paid in accordance with clause 16(1)(b), the average weekly pay will be reduced by the ordinary hourly rate for each hour the employee is absent from duty other than on paid leave.</p> <p>(b) When an employee is dismissed (other than for misconduct) or lawfully terminates their service, they shall be paid all wages due to them before leaving the job unless that payment is prevented because of circumstances beyond the control of the employer. Otherwise all moneys due shall be paid on the next working day.</p> <p>(c) In the case of an employee who is paid average pay and who has not taken time off due to them during the work cycle in which their employment is terminated, the wages due to that employee shall include a total of credits accrued during the work cycle. Provided further, where the employee has taken time off during the work cycle in which their employment is terminated, the wages due to that employee shall be reduced by the total of credits which have not accrued during the work cycle.</p> <p>(3) The employee’s wages may be paid by cash or direct transfer into the employee's nominated bank account.</p> <p>(4) Wages paid in cash shall be paid in the employee’s time. Payment of wages shall be made at least weekly or fortnightly.</p> <p>(6) An employer must keep employment records and provide pay slips in accordance with Part II of Division 2F ‘Keeping of and access to employment records and pay slips’ of the <i>Industrial Relations Act 1979 (WA)</i> and section 26 of the <i>Long Service Leave Act 1958 (WA)</i>.</p>

<p>(b) Consequently, during the week of the work cycle he/she is to work less than 38 ordinary hours he/she will not be entitled to average pay for that week. In that week, the average pay will be reduced by the amount of the “credit” he/she does not accrue for each whole or part day during the work cycle he/she is absent.</p> <p>(4) Alternative Method of Payment.</p> <p>An alternative method of paying wages to that prescribed by subclauses (1) and (2) of this clause may be agreed between the employer and the majority of the employees concerned.</p> <p>(5) (a) When an employee is dismissed (other than for misconduct) or lawfully terminates his/her service, he/she shall be paid all wages due to him/her before leaving the job unless that payment is prevented because of circumstances beyond the control of the employer. Otherwise all monies due shall be posted on the next working day to the employee’s last known address or such other address as may be nominated by the employee.</p> <p>(b) In the case of an employee whose ordinary hours are arranged in accordance with subparagraph (ii) or (iv) of paragraph (a) of subclause (2) – Implementation of 38 Hour Week – of Clause 10. – Hours and who is paid average pay and who has not taken the day off due to him/her during the work cycle in which his/her employment is terminated, the wages due to that employee shall include a total of credits accrued during the work cycle.</p> <p>Provided further, where the employee has taken a day off during the work cycle in which his/her employment is terminated, the wages due to that employee shall be reduced by the total of credits which have not accrued during the work cycle.</p> <p>(6) Payment of wages shall be made at least once weekly and, at the option of the employer, may be paid by Electronics Funds Transfer.</p> <p>(7) Subject to subclause (4) hereof, where an employee is required to spend time in waiting for wages or attending the employer’s office on a subsequent day, he/she shall be paid at the ordinary rate of pay for the time so spent, in addition to any fares incurred. Providing that this subclause shall not apply where such waiting or attending was due to an underpayment caused by a genuine mistake or by a genuine dispute as to amount due.</p> <p>(8) Pay Packet Details:</p> <p>Particulars of details of payment to each</p>	
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<p>employee shall be included on the envelope holding the payment, or in a statement handed to the employee at the time such payment is made and shall contain the following information -</p> <ul style="list-style-type: none"> <li>(a) Date of payment.</li> <li>(b) Period covered by such payment.</li> <li>(c) The amount of wages paid for work at ordinary rates.</li> <li>(d) The gross amount of wages and allowances paid.</li> <li>(e) The amount of each deduction made and the nature thereof</li> <li>(f) The net amount of wages and allowances paid.</li> </ul> <p>In addition, the following details will also be included in the statement which such payments and benefits apply:</p> <ul style="list-style-type: none"> <li>(g) The number of hours paid at overtime rates and the amount paid 12heretofore.</li> <li>(h) The amount of allowances of special rates paid and the nature thereof.             <ul style="list-style-type: none"> <li>(i) Annual leave payments.</li> </ul> </li> <li>(j) Payment due on termination, including payment for annual leave, rostered day off accumulation, and public holidays, (on termination payment only).</li> <li>(k) The employer and employee's superannuation number upon payments of superannuation for the employee.</li> <li>(l) The amount of superannuation contribution paid by the employer for the employee.</li> </ul>	
<p><u>16. - UNDER-RATE EMPLOYEES</u></p> <ul style="list-style-type: none"> <li>(1) Any employee who by reason of old age or infirmity is unable to earn the minimum wage may be paid such lesser wage as may from time to time be agreed upon in writing between the union and the employer.</li> <li>(2) In the event of no agreement being arrived at the matter may be referred to the Board of Reference for determination.</li> <li>(3) After application has been made to the Board and pending the Board's decision, the employee shall be entitled to work for and be employed at the proposed lesser rate.</li> </ul>	<p><u>17. - SUPPORTED WAGE SYSTEM</u></p> <ul style="list-style-type: none"> <li>(1) Definitions             <p>This clause defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this award. In the context of this clause, the following definitions will apply:</p> <ul style="list-style-type: none"> <li>(a) approved assessor means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System.</li> <li>(b) assessment instrument means the tool provided for under the Supported Wage System that records the</li> </ul> </li> </ul>

	<p>assessment of the productive capacity of the person to be employed under the Supported Wage System.</p> <p>(c) disability support pension means the Commonwealth Government pension scheme to provide income security for persons with a disability as provided under the Social Security Act 1991, as amended from time to time, or any successor to that scheme.</p> <p>(d) supported wage system (SWS) means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from the following website: <a href="http://www.jobaccess.gov.au">www.jobaccess.gov.au</a>.</p> <p>(e) SWS wage assessment agreement means the document in the form required by the Department of Social Services that records the employee's productive capacity and agreed wage rate.</p> <p>(2) Eligibility criteria</p> <p>(a) Employees covered by this clause will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a Disability Support Pension.</p> <p>(b) This clause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their current employment.</p> <p>(3) Supported wage rates</p> <p>(a) Employees to whom this clause applies will be paid the applicable percentage of the minimum rate of pay prescribed by this award for the class of work which the person is performing according to the following schedule:</p> <table border="1" data-bbox="1034 1599 1509 1939"> <thead> <tr> <th>Assessed Capacity</th> <th>% of Prescribed Award Rate</th> </tr> </thead> <tbody> <tr><td>10%</td><td>10%</td></tr> <tr><td>20%</td><td>20%</td></tr> <tr><td>30%</td><td>30%</td></tr> <tr><td>40%</td><td>40%</td></tr> <tr><td>50%</td><td>50%</td></tr> <tr><td>60%</td><td>60%</td></tr> <tr><td>70%</td><td>70%</td></tr> <tr><td>80%</td><td>80%</td></tr> <tr><td>90%</td><td>90%</td></tr> </tbody> </table> <p>(b) Provided that the minimum amount payable must not be less than \$106.00 per week.</p> <p>(c) Where an employee's assessed capacity is 10%,</p>	Assessed Capacity	% of Prescribed Award Rate	10%	10%	20%	20%	30%	30%	40%	40%	50%	50%	60%	60%	70%	70%	80%	80%	90%	90%
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60%	60%																				
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	<p>they must receive a high degree of assistance and support.</p> <p>(4) Assessment of capacity</p> <p>(a) For the purpose of establishing the percentage of the award rate to be paid to an employee under this award, the productive capacity of the employee will be assessed in accordance with the SWS by an approved assessor, having consulted the employer and employee and, if the employee so desires, the union.</p> <p>(b) All assessments made under this clause must be documented in a SWS wage assessment agreement and retained by the employer as a time and wages record.</p> <p>(5) Lodgement of SWS wage assessment agreement</p> <p>(a) All SWS wage assessment agreements under the conditions of this clause, including the appropriate percentage of the award wage to be paid to the employee, must be lodged by the employer with the Commission.</p> <p>(b) All SWS wage assessment agreements must be agreed and signed by the employee and employer parties to the assessment. Where the union is not a party to the assessment, the assessment will be referred by the Commission to the union by certified mail and the agreement will take effect unless an objection is notified to the Commission within 10 working days.</p> <p>(6) Review of assessment</p> <p>The assessment of the applicable percentage should be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review will be in accordance with the procedures for assessing capacity under the SWS.</p> <p>(7) Other terms and conditions of employment</p> <p>Where an assessment has been made, the applicable percentage will apply to the wage rate only. Employees covered by the provisions of this clause will be entitled to the same terms and conditions of employment as all other employees covered by this award paid on a pro-rata basis.</p> <p>(8) Workplace adjustment</p> <p>An employer wishing to employ a person under the provisions of this clause must take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve redesign of job duties, working time arrangements and work organisation in consultation with other employees in the area.</p> <p>(9) Trial period</p> <p>(a) In order for an adequate assessment of the employee's capacity to be made, an employer may</p>
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	<p>employ a person under the provisions of this clause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.</p> <p>(b) During the trial period the assessment of capacity will be undertaken and the proposed wage rate for a continuing employment relationship will be determined.</p> <p>(c) The minimum amount payable to the employee during the trial period must be no less than \$106.00 per week.</p> <p>(d) Work trials should include induction or training as appropriate to the job being trialled.</p> <p>(e) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of assessment under subclause (4) – Assessment of capacity.</p>
<p style="text-align: center;"><u>28. - SUPERANNUATION</u></p> <p>The superannuation provisions contained herein operate subject to the requirements of the hereinafter prescribed provision titled – Compliance, Nomination and Transition.</p> <p>(1) Application:</p> <p>(a) Subject to the provisions of subclause (4) Exemptions of this clause, each employer to whom this Award applies shall execute an agreement to become a contributor to an approved Occupational Superannuation Scheme, within one month of the enactment of this clause.</p> <p>(b) For the purpose of this Award an approved Occupational Superannuation Scheme means any scheme which complies with the standards for occupational superannuation schemes under the Occupational Superannuation Standards Act 1987 and Regulations made thereunder.</p> <p>(2) Contributions:</p> <p>(a) Subject to the provisions of subclause (4) Exemptions of this clause, each employer shall make monthly contributions to the fund in respect of all eligible employees at the rate of 9% of ordinary time earnings.</p> <p>(b) Eligible employees are full-time and part-time employees to whose employment this Award applies and whose length of employment with the employer exceeds one month.</p>	<p style="text-align: center;"><u>18. – SUPERANNUATION</u></p> <p>(1) The <i>Superannuation Guarantee (Administration) Act 1992</i> (Cth), the <i>Superannuation Guarantee Charge Act 1992</i> (Cth), the <i>Superannuation Industry (Supervision) Act 1993</i> (Cth) and the <i>Superannuation (Resolution of Complaints) Act 1993</i> (Cth) deals with the superannuation rights and obligations of employers and employees.</p> <p>(2) The employer must make superannuation contributions to a superannuation fund for the benefit of an employee as will avoid the employer being required to pay the superannuation guarantee charge under superannuation legislation with respect to that employee.</p> <p>(3) The employer must notify the employee of the entitlement to nominate a complying superannuation fund or scheme to which contributions in respect of the employee may be made.</p> <p>(4) The employer must make contributions to a complying fund or scheme nominated by the employer until the employee nominates such a fund or scheme.</p> <p>(5) The employer and the employee are bound by the employee's nomination unless the employer and employee agree to change the complying superannuation fund or scheme to which contributions are to be made.</p> <p>(6) An employer must not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by an employee.</p>

<p>(c) Subject to the provisions of subclauses (3) Employee Entry into Fund and (4) Exemptions of this clause, contributions shall be made in respect of each current eligible employee from the date the employer executes the fund trust deed. Contributions in respect of all other eligible employees shall be made from commencement of employment with the employer but in no case prior to the date the employer executes the fund trust deed.</p> <p>(d) “Ordinary time earnings” (which for the purposes of the <i>Superannuation Guarantee (Administration) Act 1992</i> will operate to provide a notional earnings base) shall mean the actual ordinary rate of pay the employee receives for ordinary hours of work leading hand where applicable. The term includes any regular over-award pay as well as casual rates received, and additional rates and allowances paid for work undertaken during ordinary hours of work excluding fares and travel and other reimbursement allowances.</p> <p>(e) No contributions shall be made for periods of unpaid leave, or unauthorised absences in excess of 38 ordinary hours or for periods of workers’ compensation in excess of 26 weeks. No shall be made in respect of annual leave paid out on termination or any other payments on termination.</p> <p>(3) Employee Entry into Fund:</p> <p>(a) On executing the fund trust deed the employer shall provide each current employee with an application form and documentation explaining the fund.</p> <p>(b) If an employee fails to return to the employer a completed application form to join the fund within two weeks of receipt, the employer shall provide a reminder notice together with an application form and documentation explaining the fund to the employee.</p> <p>(c) If the employee fails to complete and return the application to join the fund within two weeks of receipt of the second form, no contribution need be made in respect of that employee until such time as a completed application form is received by the employer.</p> <p>(d) It shall be the responsibility of the employer to ensure that all new</p>	
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<p>employees complete an application to join the fund during the first month of employment. Provided that where an eligible employee refuses to complete an application to join the fund the employer shall notify the union in writing of the employee's refusal to do so.</p> <p>(4) Exemptions:</p> <p>(a) Employers of eligible employees who are covered by a Superannuation Order or Award made pursuant to the Industrial Relations Act 1979 shall be exempted from the provisions of this clause in respect of those employees to whose employment the said Order or Award applies.</p> <p>(b) Employers of eligible employees who are contributing to a Superannuation Fund in accordance with an Order or Award made pursuant to the Industrial Relations Act 1979, the Conciliation and Arbitration Act 1904 or the Industrial Relations Act 1988 for a majority of employees and, at the date of issue of this Order, make payment for eligible employees covered by this Award in accordance with that Order or Award shall be exempt from the provisions of this clause.</p> <p>An employer may make an application to the Western Australian Industrial Relations Commission for exemption from the provisions of this clause and until proceedings before the Western Australian Industrial Relations Commission are finalised, the provisions of this clause shall be deemed to have been complied with.</p> <p>Compliance, Nomination and Transition</p> <p>Notwithstanding anything contained elsewhere herein which requires that contribution be made to a superannuation fund or scheme in respect of an employee, on and from 30 June 1998 -</p> <p>(a) Any such fund or scheme shall no longer be a complying superannuation fund or scheme for the purposes of this clause unless -</p> <p>(i) the fund or scheme is a complying fund or scheme within the meaning of the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth; and</p> <p>(ii) under the governing rules of the fund or scheme, contributions may be made by or in respect of the</p>	
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<p>employee permitted to nominate a fund or scheme;</p> <p>(b) The employee shall be entitled to nominate the complying superannuation fund or scheme to which contributions are to be made by or in respect of the employee;</p> <p>(c) The employer shall notify the employee of the entitlement to nominate a complying superannuation fund or scheme as soon as practicable;</p> <p>(d) A nomination or notification of the type referred to in paragraphs (b) and (c) of this subclause shall, subject to the requirements of regulations made pursuant to the Industrial Relations Legislation Amendment and Repeal Act 1995, be given in writing to the employer or the employee to whom such is directed;</p> <p>(e) The employee and employer shall be bound by the nomination of the employee unless the employee and employer agree to change the complying superannuation fund or scheme to which contributions are to be made;</p> <p>(f) The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by a employee;</p> <p>Provided that on and from 30 June 1998, and until an employee thereafter nominates a complying superannuation fund or scheme -</p> <p>(g) if one or more complying superannuation funds or schemes to which contributions may be made be specified herein, the employer is required to make contributions to that fund or scheme, or one of those funds or schemes nominated by the employer;</p> <p>or</p> <p>(h) if no complying superannuation fund or scheme to which contributions may be made be specified herein, the employer is required to make contributions to a complying fund or scheme nominated by the employer.</p>	
	<p>Insert the following as a heading before clause 19 'Personal Leave':</p> <p>PART 5 – LEAVE</p>
<p><u>17. - ABSENCE THROUGH SICKNESS OR BEREAVEMENT</u></p> <p>(1) An employee shall be entitled to payment for</p>	<p><u>19. - PERSONAL LEAVE</u></p> <p>Paid and unpaid personal leave, including carer's leave, is as provided for in the</p>

<p>non-attendance at work during ordinary hours on the ground of personal ill-health or injury at the rate of one-sixth of a week's pay at the rate prescribed for his/her classification by Clause 13. – Wages for each completed month of service.</p> <p>(2) Payment hereunder may be adjusted at the end of each calendar year or at the time the employee leaves the service of the employer, in the event of the employee being entitled by service subsequent to the sickness or injury to a greater allowance than that made at the time the sickness or injury occurred.</p> <p>(3) This clause shall not apply to employees who are entitled to payment under the Workers' Compensation and Assistance Act nor to employees whose injury or illness is the result of the employee's own misconduct.</p> <p>(4) (a) The employee shall, where possible, within 24 hours of the commencement of such absence, inform the employer of his/her inability to attend for duty, and, as far as practicable state the nature of the injury or illness and the estimated duration of the absence.</p> <p>(b) No employee shall be entitled to the benefits of this clause unless he/she produces proof satisfactory to his/her employer of sickness or injury, but the employer shall not be entitled to a medical certificate unless the absence is for three days or more.</p> <p>(5) Notwithstanding the provisions of subclause (4) hereof, an employee, who in any calendar year, has already been allowed paid sick leave on one occasion for one day only shall not be entitled to payment for any further absence of one day only unless he/she produces to the employer a medical certificate stating that he/she was unable to attend for duty on account of personal ill-health or injury.</p> <p>(6) Sick leave shall accumulate from year to year so that any balance of the period specified in subclause (1) of this clause which has in any year not been allowed to any employee by his/her employer as paid sick leave may be claimed by the employee and, subject to the conditions hereinbefore prescribed, shall be allowed by his/her employer in any subsequent year without diminution of the sick leave prescribed in respect of that year. Provided that an employee shall not be entitled to claim payment for any period exceeding ten weeks in any one year of service.</p> <p>An employee shall, on the death within Australia of a wife, husband, father, mother, brother, sister, child or stepchild, be entitled on notice of leave up to and including the day of the funeral of such relation and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the</p>	<p><i>Minimum Conditions of Employment Act 1993 (WA).</i></p>
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<p>employee in two ordinary days of work. Proof of such death to be furnished by the employee to the satisfaction of his/her employer.</p> <p>Provided that this subclause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave.</p> <p>For the purposes of this subclause the words “wife” and “husband” shall include a person who lives with the employee as a de facto wife or husband.</p>	
	<p style="text-align: center;"><u>20. - BEREAVEMENT LEAVE</u></p> <p>Bereavement leave is as provided for in the <i>Minimum Conditions of Employment Act 1993</i> (WA).</p>
	<p style="text-align: center;"><u>21. - FAMILY AND DOMESTIC VIOLENCE LEAVE</u></p> <p>Family and Domestic Violence leave is provided for in Division 7 Part 2-2 of the <i>Fair Work Act 2009</i> (Cth) and the <i>Minimum Conditions of Employment Act 1993</i> (WA).</p>
<p style="text-align: center;"><u>18. - HOLIDAYS AND ANNUAL LEAVE</u></p> <p>(1) (a) The following days, or the days observed in lieu shall, subject to this subclause be allowed as holidays without deduction of pay, namely – New Year’s Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign’s Birthday, Christmas Day and Boxing Day. Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in this subclause.</p> <p>(b) Where any of the days mentioned in paragraph (a) hereof falls on a Saturday or a Sunday, the holiday shall be observed on the next succeeding Monday, provided that when a Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday. In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.</p> <p>(2) (a) All employees required to work on the days named in subclause (1)(a) hereof shall be paid at the rate of double time and a half for all time worked.</p> <p>(b) All employees required to work on any Sunday shall be paid double time rate for all time worked on any such day.</p> <p>(3) On any public holiday not prescribed as a holiday under this award the employer’s establishment or place of business may be closed in which case an employee need not present himself for duty and payment may be deducted, but if work be done ordinary rates of pay shall apply.</p>	<p style="text-align: center;"><u>22. - PUBLIC HOLIDAYS</u></p> <p>(1) (a) The following days, or the days observed in lieu shall, subject to this subclause be recognised as public holidays for the purpose of this award namely - New Year’s Day, Australia Day, Good Friday, Easter Sunday, Easter Monday, Anzac Day, Labour Day, Western Australia Day, Sovereign’s Birthday, Christmas Day and Boxing Day. Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in this subclause.</p> <p>(b) An employee is entitled to be absent from work without loss of pay on a day or part of a day that is a public holiday for the purpose of this award, or a public holiday as defined in the <i>Minimum Conditions of Employment Act 1993</i>(WA).</p> <p>(c) Where any of the days mentioned in paragraph (a) hereof, other than Easter Sunday, falls on a Saturday or a Sunday, the holiday shall be observed on the next succeeding Monday, provided that when a Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday. In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.</p> <p>(2) The employer may request that an employee work on a day or part of a day that is a public holiday if the request is reasonable.</p> <p>(3) If the employer makes a request, the employee may refuse the request if -</p> <p>(a) the request is not reasonable; or</p> <p>(b) the refusal is reasonable.</p> <p>(4) In determining whether a request or refusal is reasonable, the following must be taken into account -</p>

<p>(4) Except as hereinafter provided a period of four consecutive weeks' leave with payment of ordinary wages as prescribed shall be allowed annually to an employee by his/her employer after a period of twelve months' continuous service with such employer.</p> <p>(5) (a) During a period of annual leave an employee shall be paid a loading of 17½ per cent, calculated on his/her ordinary wage as prescribed.</p> <p>(b) The loading prescribed by this subclause shall not apply to proportionate leave on termination.</p> <p>(6) If any prescribed holiday falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day there shall be added to that period one day being an ordinary working day for each such holiday observed as aforesaid.</p> <p>(7) If after one month's continuous service in any qualifying twelve monthly period an employee leaves his/her employment on or after the 1st day of January, 1984 or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid 2.932 hours pay at his/her ordinary hourly rate of wage in respect of each completed week of service from January 1, 1984 up until the date of termination. Should an employee leave his/her employment before the 1st day of January 1984, he/she shall be paid one-third of a week's pay at his/her ordinary rate of wage in respect of each completed month of service in any qualifying twelve monthly period up until January 2, 1984.</p> <p>(8) Any time in respect of which an employee is absent from work except time for which he/she is entitled to claim sick pay or time spent on holidays or annual leave as prescribed by this award shall not count for the purpose of determining his/her right to annual leave.</p> <p>(9) In the event of an employee being employed by an employer for portion only of a year, he/she shall only be entitled, subject to subclause (7) of this clause to such leave on full pay as is proportionate to his/her length of service during that period with such employer, and if such leave is not equal to the leave given to the other employees he/she shall not be entitled to work or pay whilst the other employees of such employer are on leave on full pay.</p> <p>(10) (a) In addition to any payment to which he/she may be entitled under subclause (7) of this clause, an employee, whose employment terminates after he/she has completed a twelve monthly qualifying period and who has not been allowed leave prescribed under this award in respect of that qualifying period shall be given payment in lieu of that leave or, in a case</p>	<p>(a) the nature and conduct of the employer's business or operations;</p> <p>(b) the nature of the employee's work;</p> <p>(c) the employee's personal circumstances, including family responsibilities</p> <p>(d) whether the employee could reasonably expect that the employer might request work on the public holiday;</p> <p>(e) whether the employee is entitled to receive overtime payments, penalty rates or other compensation (including compensation in the form of an annualised salary) for, or a level of remuneration that reflects an expectation of, work on the public holiday;</p> <p>(f) the type of employment of the employee (for example, whether full time, part time, casual or shift work);</p> <p>(g) the amount of notice in advance of the public holiday given</p> <p>(i) by the employer when making the request; or</p> <p>(ii) by the employee when refusing the request.</p> <p>(5) All employees required to work on a public holiday shall be paid at the rate of double time and a half for all time worked.</p> <p>(6) Where a day is proclaimed as a public holiday or public half-holiday under section 7 of the <i>Public and Bank Holidays Act 1972</i> (WA), either throughout the State or within a district or locality as specified in the proclamation, that day will be a public holiday or public half-holiday for the purposes of this award within the area specified in the proclamation.</p>
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<p>to which paragraph (b) of this subclause or subclause (13) of this clause applies, in lieu of so much of that leave as has not been allowed unless -</p> <p>(i) he/she has been justifiably dismissed for misconduct; and</p> <p>(ii) the misconduct for which he/she has been dismissed occurred prior to the completion of that qualifying period.</p> <p>(b) In special circumstances and by mutual consent of the employer, the employee and the union concerned, annual leave may be taken in not more than two periods.</p> <p>(11) For the purpose of this clause “double time” rate shall be the rate which is payable to the employee on any ordinary working day (including all allowances paid in accordance with the provisions of Clause 13. – Wages) multiplied by two.</p> <p>(12) The provisions of this clause shall not apply to casual employees.</p> <p>(13) Notwithstanding anything else herein contained an employer who observes a Christmas closedown for the purpose of granting annual leave may require an employee to take his/her annual leave in not more than two periods but neither of such periods shall be less than one week.</p>	
	<p style="text-align: center;"><u>23. - ANNUAL LEAVE</u></p> <p>(1) Annual leave is as provided for in the <i>Minimum Conditions of Employment Act 1993</i> (WA).</p> <p>(2) (a) During a period of annual leave an employee shall be paid a loading of 17½%, calculated on their ordinary wage as prescribed.</p> <p>(b) The loading prescribed by this subclause shall not apply to proportionate leave on termination.</p> <p>(3) The provisions of this clause shall not apply to casual employees.</p>
<p style="text-align: center;"><u>25. - LONG SERVICE LEAVE</u></p> <p>The Long Service Leave provisions published in Volume 60 of the “Western Australian Industrial Gazette” at pages 1 to 6 inclusive are hereby incorporated in and shall be deemed to be part of this award.</p>	<p style="text-align: center;"><u>24. - LONG SERVICE LEAVE</u></p> <p>The Long Service Leave provisions of the <i>Long Service Leave Act 1958</i> (WA) are hereby incorporated in and shall be deemed to be part of this award.</p>
<p style="text-align: center;"><u>27. - MATERNITY LEAVE</u></p> <p>(1) Eligibility for Maternity Leave:</p> <p>An employee who becomes pregnant shall, upon production to her employer of a certificate from a duly qualified medical practitioner stating the presumed date of her confinement, be entitled to maternity leave provided that she</p>	<p style="text-align: center;"><u>25.- PARENTAL LEAVE</u></p> <p>Parental leave is provided for in accordance with Division 5 of Part 2-2 of the <i>Fair Work Act 2009</i> (Cth).</p>

<p>has had not less than 12 months' continuous service with that employer immediately proceeding the date upon which she proceeds upon such leave.</p> <p>For the purpose of this clause:</p> <p>(a) An employee shall include a part-time employee but shall not include an employee engaged upon casual or seasonal work.</p> <p>(b) Maternity leave shall mean unpaid maternity leave.</p> <p>(2) Period of Leave and Commencement of Leave.</p> <p>(a) Subject of subclauses (3) and (6) hereof, the period of maternity leave shall be for an unbroken period of from 12 to 52 weeks and shall include a period of six weeks' compulsory leave to be taken immediately following confinement.</p> <p>(b) An employee shall, not less than 10 weeks prior to the presumed date of confinement, give notice in writing to her employer stating the presumed date of confinement.</p> <p>(c) An employee shall give not less than four weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave, stating the period of leave to be taken.</p> <p>(d) An employer by not less than 14 days' notice in writing to the employee may require her to commence maternity leave at any time within the six weeks immediately prior to her presumed date of confinement.</p> <p>(e) An employee shall not be in breach of this order as a consequence of failure to give the stipulated period of notice in accordance with paragraph (c) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.</p> <p>(3) Transfer to a Safe-Job. Where in the opinion of a duly qualified medical practitioner, illness or risks arising out of the pregnancy of hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.</p> <p>If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to take leave for such period as is</p>	
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certified necessary by a duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (7), (8), (9) and (10) hereof.

(4) Variation of Period of Maternity Leave.

- (a) Provided the addition does not extend the maternity leave beyond 52 weeks, the period may be lengthened once only, save with the agreement of the employer, by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened.
- (b) The period of leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(5) Cancellation of Maternity Leave.

- (a) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.
- (b) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.

(6) Special Maternity Leave and Sick Leave.

- (a) Where a pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then -
  - (i) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, or
  - (ii) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a duly qualified medical practitioner

<p style="text-align: center;">certifies as necessary before her return to work.</p> <p>(b) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed 52 weeks.</p> <p>(c) For the purposes of subclauses (7), (8) and (9) hereof, maternity leave shall include special maternity leave,</p> <p>(d) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (3), to the position she held immediately before such transfer.</p> <p style="padding-left: 40px;">Where such position no longer exists but there are other positions available, for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wages to that of her former position.</p> <p>(7) <b>Maternity Leave and Other Leave Entitlements:</b></p> <p>Provided the aggregate of leave including leave taken pursuant to subclauses (3) and (6) hereof does not exceed 52 weeks:</p> <p>(a) An employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is then entitled.</p> <p>(b) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.</p> <p>(8) <b>Effect of Maternity Leave on Employment:</b></p> <p>Notwithstanding any award, or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purposes of the award.</p>	
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<p>(9) Termination of Employment.</p> <p>(a) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.</p> <p>(b) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.</p>	
<p>(10) Return to Work After Maternity Leave.</p> <p>(a) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.</p> <p>(b) An employee, upon the expiration of the notice required by paragraph (a) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (3), to the position which she held immediately before such transfer. Where such position no longer exists but there are other positions available for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.</p>	
<p>(11) Replacement Employees.</p> <p>(a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.</p> <p>(b) Before an employer engages a replacement employee under this subclause, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.</p> <p>(c) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.</p> <p>(d) Provided that nothing in this</p>	

<p>subclause shall be construed as requiring an employer to engage a replacement employee.</p> <p>(e) A replacement employee shall not be entitled to any of the rights conferred by this clause except where her employment continues beyond the 12 months' qualifying period.</p>	
	<p>Insert the following as a heading before clause 26 'Right of Entry and Inspection of Records.'</p> <p>PART 6 – OTHER</p>
<p style="text-align: center;"><u>19. - RECORDS</u></p> <p>(1) In addition to the requirements of the Industrial Relations (General) Regulations 1997, each employer shall keep a record, on a separate page for each employee, from which can be readily ascertained the following:</p> <p>(a) the name of each employee and his/her classification;</p> <p>(b) each day worked, the hours worked each day, including time of starting and finishing work each day, overtime hours worked and meal breaks taken;</p> <p>(c) the gross amount of ordinary wages, overtime wages, special rates and specific allowances paid each week;</p> <p>(d) the amount of each deduction and the nature thereof;</p> <p>(e) the net amount of wages and allowances paid each week;</p> <p>(f) any relevant records which detail taxation deductions and remittances to the Australian Taxation Office, including those payments made as PAYE tax whether under a Group Employer's Scheme or not;</p> <p>(g) where an employer is required to make payments to the Construction Industry Long Service Leave Board, a certificate or other documentation from the Board which will confirm the employer's registration, the date of the last payment, and the period for which that payment applies;</p> <p>(h) the employer's and the employee's Occupational Superannuation Scheme number and the contribution returns by the employer to the Scheme on behalf of the employee, where such benefit applies; and</p> <p>(2) In addition, the employer shall record the location of the job if it is outside the Perth Metropolitan area.</p>	<p style="text-align: center;"><u>26. - RIGHT OF ENTRY AND INSPECTION OF RECORDS</u></p> <p>Conditions regarding the right of entry by authorised representatives of the union for the purpose of inspection of records are dealt with in Part II of Division 2G 'Right of Entry and Inspection by authorised representatives' of the <i>Industrial Relations Act 1979</i> (WA).</p>

<p>(3) The employer shall provide evidence of the employer’s current Workers Compensation Policy or other satisfactory proof of insurance such as a renewal certificate.</p> <p>(4) Subject to subclause (6) of this clause, all records and documentation referred to in subclauses (1), (2) and (3), or copies thereof, shall be available for inspection by a duly accredited official under the rules of an organisation of employees bound by this Award during the usual office hours, at the employer’s office or other convenient place. If desired, the official may take extracts from the records and documentation.</p> <p>Before exercising the power of inspection, reasonable notice of not less than 24 hours of the intention to inspect the records must be given to the employer by the union or duly accredited union official.</p> <p>(5) If the secretary of the union reasonably suspects that a breach of the award has occurred, copies of the appropriate records may, by agreement, be provided to the official for retention, or sent to the union office within seven days of notification of the suspected breach.</p> <p>(6) The employer may refuse the representative access to the records if the employer:</p> <ul style="list-style-type: none"> <li>(a) is of the opinion that access to the records by a duly accredited official of the organisation of employees would infringe the privacy of persons who are not members of the union;</li> <li>(b) undertakes to produce the records to an Industrial Inspector within 48 hours of being notified of the requirements to inspect by the Union official; and</li> <li>(c) complies with the undertaking to produce the records to an Industrial Inspector.</li> </ul>	
<p><u>21. - REPRESENTATIVE INTERVIEWING EMPLOYEES</u></p> <p>Consistent with the terms of the Labour Relations Legislation Amendment Act 1997 and S.23(3)(c)(iii) of the Industrial Relations Act a representative of the Union shall not exercise the rights under this clause with respect to entering any part of the premises of the employer unless the employer is the employer, or former employer of a member of the Union.</p> <p>(1) The Secretary or any authorised officer of the union or association shall be allowed free access to any job or shop at any time during the meal period and, with the consent of the employer or his/her foreperson at any other time, to interview any of the employees if he/she desires to do so.</p> <p>(2) The Secretary or any authorised representative of the union or association shall have the right</p>	<p><u>CLAUSE DELETED</u></p>

<p>to visit and inspect any factory or works or any part thereof during the time that work is being carried on outside the ordinary working hours and to interview employees therein.</p>	
<p><u>20. - POSTING COPY OF AWARD AND UNION NOTICES</u></p> <p>(1) No employer shall prevent an official of the employees' union from posting a copy of this award, or any union notice, not exceeding fourteen inches by nine inches in a suitable place on any job.</p> <p>(2) Liberty to apply to amend this clause is reserved in the event of any objectionable notice being posted.</p>	<p><u>27. - POSTING COPY OF AWARD AND UNION NOTICES</u></p> <p>No employer shall prevent an official of the employees' union from posting a copy of this award, or any union notice, not exceeding 36 cm by 23cm in a suitable place on any job.</p>
<p><u>26. - GRIEVANCE AND DISPUTES PROCEDURE</u></p> <p>All parties (employers, employees and the Union – including all of its officers and officials) accept and provide a commitment to abide by the following to prevent disputation:</p> <p>(1) An employee (or shop steward) shall immediately refer any grievance, or other matter which may lead to a dispute, to the foreperson or immediate supervisor.</p> <p>(2) If the grievance, or other such matter likely to lead to dispute, is not resolved following the procedures outlined in subclause (1), it shall be immediately referred to the appropriate officer nominated by the employer to deal with such matters.</p> <p>(3) If any grievance, or other such matter is not resolved through the procedures outlined in subclause (2) it shall be immediately referred to the appropriate full- time official of the Union.</p> <p>(4) The aforementioned Union official shall take all steps necessary to resolve the matter and the Union official and the Union, its officers and members, shall, at all times, act in accordance with the rules of the Union and the provisions of the Industrial Relations Act, 1979.</p> <p>(5) If any grievance or other matter is not resolved through the procedures outlined in subclauses (3) and (4) it shall be immediately referred to the Commission for determination.</p> <p>(6) Nothing shall prevent any party from immediately referring any grievance, or other such matter which is likely to lead to a dispute, to the Commission.</p> <p>(7) There shall be no bans, limitations or any other form of industrial action and normal uninterrupted work shall continue at the direction of the employer whilst any matters are processed through this Grievance and Disputes Procedure.</p>	<p>RENUMBERED AND RENAMED:</p> <p><u>28. - DISPUTE RESOLUTION PROCEDURE</u></p>
<p><u>29. - INTRODUCTION OF CHANGE</u></p> <p>(1) Where an employer has made a definite decision to introduce major changes in</p>	<p><u>NO VARIATIONS</u></p>

<p>production, programme, organisation, structure or technology that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and their union or unions.</p> <p>(2) The employer shall discuss with its employees affected and their union, the introduction of the changes referred to in subclause (1) hereof, the effects the changes are likely to have on employees, measures to avert or mitigate the adverse effects of such changes on employees and shall give prompt consideration to matters raised by the employees and their union in relation to the changes.</p> <p>(3) For the purposes of such discussion, the employer shall provide in writing to the employees concerned and their union, all relevant information about the changes including the nature of the changes proposed; the expected effects of the changes on employees and any other matters likely to affect employees provided that any employer shall not be required to disclose confidential information the disclosure of which would be inimical to the employer's interests.</p> <p>(4) In the event of disagreement over the proposed changes the parties shall consult to resolve the problematic issue(s) and work shall continue normally while the matter is discussed.</p>							
<p style="text-align: center;"><u>30. - REDUNDANCY</u></p> <p>(1) Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone and this is not due to the ordinary and customary turnover of labour and that decision may lead to termination of employment, the employer shall hold discussions with the employee directly affected and with his/her union.</p> <p>(2) <b>Transfer to Lower Paid Duties:</b>  Where an employee is transferred to lower paid duties for reasons set out in subclause (1) hereof the e same period of notice of transfer as he/she would have been entitled to if his/her employment had been terminated, and the employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former ordinary time rate of pay and the new lower ordinary time rates for the number of weeks of notice still owing.</p> <p>(3) <b>Severance Pay:</b>  In addition to the period of notice prescribed for ordinary termination in Clause 8. – Contract of Service, and subject to further order of the Commission, an employee whose employment is terminated for se (1) hereof shall be entitled to the following minimum amount of severance pay in respect of a continuous period of service.</p>	<p style="text-align: center;"><u>30. - REDUNDANCY</u></p> <p>(1) Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone and this is not due to the ordinary and customary turnover of labour and that decision may lead to termination of employment, the employer shall hold discussions with the employee directly affected and with their union.</p> <p>(2) <b>Transfer to Lower Paid Duties:</b>  Where an employee is transferred to lower paid duties for reasons set out in subclause (1) hereof the employee shall be entitled to the same period of notice of transfer as they would have been entitled to if their employment had been terminated, and the employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former ordinary time rate of pay and the new lower ordinary time rates for the number of weeks of notice still owing.</p> <p>(3) <b>Severance Pay:</b>  In addition to the period of notice prescribed for ordinary termination in Clause 7. – Termination of Employment, and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in subclause (1) hereof shall be entitled to the following minimum amount of severance pay in respect of a continuous period of service.</p> <table style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;">Period of Continuous Service</th> <th style="text-align: center;">Severance Pay Weeks</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1 year or less</td> <td style="text-align: center;">Nil</td> </tr> <tr> <td style="text-align: center;">1 year and up to the completion of 2</td> <td style="text-align: center;">4</td> </tr> </tbody> </table>	Period of Continuous Service	Severance Pay Weeks	1 year or less	Nil	1 year and up to the completion of 2	4
Period of Continuous Service	Severance Pay Weeks						
1 year or less	Nil						
1 year and up to the completion of 2	4						

Period of Continuous Service	Severance Pay Weeks	
1 year or less	Nil	years
1 year and up to the completion of 2 years	4	2 years and up to the completion of 6
2 years and up to the completion of 3 years	6	3 years
3 years and up to the completion of 4 years	7	3 years and up to the completion of 7
4 years and over	8	4 years
		4 years and less than 5 years 8
		5 years and less than 6 years 10
		6 years and less than 7 years 11
		7 years and less than 8 years 13
		8 years and less than 9 years 14
		9 years and less than 10 years 16
		10 years and over 12
<p>(4) Employee Leaving During Notice</p> <p>An employee whose employment is terminated for reasons set out in subclause (1) hereof may terminate his/her employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had he/she remained with the employer until the expiry of such notice. Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.</p>		<p>(4) Employee Leaving During Notice:</p> <p>An employee whose employment is terminated for reasons set out in subclause (1) hereof may terminate their employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had they remained with the employer until the expiry of such notice. Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.</p>
<p>(5) Alternative Employment:</p> <p>An employer, in a particular redundancy case, may make application to the Western Australian Industrial Relations Commission to have the general severance pay prescription varied if the employer obtains acceptable alternative employment for an employee.</p>		<p>(5) Alternative Employment:</p> <p>An employer, in a particular redundancy case, may make an application to the Western Australian Industrial Relations Commission to have the general severance pay prescription varied if the employer obtains acceptable alternative employment for an employee. This subclause does not apply in circumstances involving a transfer of business as set out in clause 4.7 of the Termination, Change and Redundancy General Order [2005] WAIRC 01715.</p>
<p>(6) Time Off During Notice Period:</p> <p>(a) During the period of notice of termination given by the employer an employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.</p> <p>(b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or he/she shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.</p>		<p>(6) Time Off During Notice Period:</p> <p>(a) During the period of notice of termination given by the employer an employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.</p> <p>(b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or they shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.</p>
<p>(7) Subject to further order of the Western Australian Industrial Relations Commission where an employee who is terminated receives a benefit from a superannuation scheme, he/she shall only receive under subclause (3) hereof the difference between the severance pay specified in that subclause and the amount of the superannuation benefit he/she receives which is attributable to employer contributions only.</p> <p>If the superannuation benefit is greater than the amount due under subclause (3) hereof then he/she shall receive no payment under that</p>		<p>(7) Employees with Less than One Year's Service:</p> <p>This clause shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.</p> <p>Note: Clause 4.2 – Consultation Before Termination of the Termination, Change and Redundancy General Order applies to all employees regardless of their length of continuous service.</p> <p>(8) Employees Exempted:</p>

<p>subclause.</p> <p>(8) Employees with Less than One Year's Service:</p> <p>This clause shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable g by the employees of suitable alternative employment.</p> <p>(9) Employees Exempted:</p> <p>This clause shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty, or in the case of casual employees, apprentices, or employees engaged for a specific period of time or for a specific task or tasks.</p> <p>Incapacity to Pay:</p> <p>An employer, in a particular redundancy case, may make application to the Western Australian Industrial Relations Commission (to ha tion varied) [to have the general severance pay prescription varied] on the basis of the employer's incapacity to pay.</p>	<p>This clause shall not apply where employment is terminated as a consequence of conduct that justifies summary dismissal, or in the case of casual employees, apprentices, or employees engaged for a specific period of time or for a specific task or tasks.</p> <p>(9) Incapacity to Pay:</p> <p>An employer, in a particular redundancy case, may make an application to the Western Australian Industrial Relations Commission to have the general severance pay prescription varied on the basis of the employer's incapacity to pay.</p>
<p><u>22. - BOARD OF REFERENCE</u></p> <p>(1) The Commission hereby appoints, for the purposes of this award, a Board of Reference consisting of a Chairman and two other members who shall be appointed pursuant to Regulation 16 of the Industrial Commission Regulations, 1980.</p> <p>(2) The Board of Reference is hereby assigned the function of allowing, approving, fixing, determining or dealing with any matter of difference between the parties in relation to any matter which, under this award, may be allowed, approved, fixed, determined or dealt with by a Board of Reference.</p>	<p><u>CLAUSE DELETED</u></p>
<p><u>31. - ENTERPRISE AGREEMENT</u></p> <p>(1) (a) Where an agreement is reached between the employer, the employees and the union concerning the working arrangements to be followed within the respondent employer's factory, workshop, department or section thereof the provisions of this award may be varied in any manner as agreed.</p> <p>(b) The union will not unreasonably withhold agreement to the alternative working arrangements.</p> <p>(2) (a) An enterprise agreement shall not act to increase the ordinary hours of work beyond an average of 38 hours per week; reduce the quantum of annual leave, sick leave, maternity leave, public holidays and long service leave.</p> <p>(b) Where any agreement concluded</p>	<p><u>CLAUSE DELETED</u></p>

<p>under subclause (1) hereof affects award conditions the parties shall jointly support such agreement before the Western Australian Industrial Relations Commission for registration as an appendix to the award.</p> <p>(3) The following procedures shall apply in the formation of any agreement negotiated under the terms of this clause:</p> <p>(a) The proposed variations for each workplace or part thereof shall be explained to the employees concerned and written notification of proposals will be placed on the notice board at the worksite and sent to the union.</p> <p>(b) The employer and affected employees will then consult with each other on the changes with a view to reaching agreement.</p> <p>The union will be notified in writing of the proposed variations prior to any change taking place.</p>	
<p><u>APPENDIX - RESOLUTION OF DISPUTES REQUIREMENTS</u></p> <p>(1) This Appendix is inserted into the award/industrial agreement as a result of legislation which came into effect on 16 January 1996 (Industrial Relations Legislation Amendment and Repeal Act 1995) and further varied by legislation which came into effect on 23 May 1997 (Labour Relations Legislation Amendment Act 1997).</p> <p>(2) Any dispute or grievance procedure in this award/industrial agreement shall also apply to any questions, disputes or difficulties which may arise under it.</p> <p>With effect from 22 November 1997 the dispute or grievance procedures in this award/industrial agreement is hereby varied to include the requirement that persons involved in the question, dispute or difficulty will confer among themselves and make reasonable attempts to resolve questions, disputes or taking those matters to the Commission.</p>	<p><u>APPENDIX DELETED</u></p>
<p><u>SCHEDULE 1 - PARTIES TO THE AWARD</u></p> <p>The following organisation is a party to this award:</p> <p>The Construction, Forestry, Mining and Energy Union of Workers</p>	<p><u>NO VARIATIONS</u></p>
<p><u>SCHEDULE 2 - RESPONDENTS</u></p> <p>Anderson Industries Pty. Ltd., 3 Roydhouse Street, Subiaco.</p> <p>E.D.U. Concrete Co., 97 Guildford Road, Bassendean.</p> <p>Formica Ceilings, 195 Welshpool Road, Queens Park.</p> <p>Geraldton Building Co. Pty. Ltd., Ocean Street,</p>	<p><u>SCHEDULE 2 - RESPONDENTS</u></p> <p>Anderson Industries Pty. Ltd. (now deregistered).</p> <p>E.D.U. Concrete Co., 97 Guildford Road, Bassendean.</p> <p>Formica Ceilings Pty Ltd (defunct state company).</p> <p>Geraldton Building Co. Pty. Ltd. (now deregistered).</p>

Geraldton.	H.B. Brady Co. Pty Ltd. (now deregistered).
H.B. Brady Co. Pty Ltd., Bayswater Henderson Modelling Workers, Bourke Street, Bunbury.	Henderson Modelling Workers, Bourke Street, Bunbury.
Lite-Ceil Modelling Works, McCoy Street, Melville.	Wallis Enterprises Pty Ltd formerly known as Lite-Ceil Pty Ltd t/as Lite-Ceil Plaster Works, McCoy Street, Melville.
Midceil Moulding Supply, 19 Wildon Street, Bellevue	Mid-ceil Moulding Supplies, 19 Wildon Street, Bellevue.
Modern Ceilings, Victoria Road, Malaga.	Fording Bridge Nominees Pty Ltd formerly known as Modern Ceilings Pty Ltd t/a Modern Ceilings, Victoria Road, Malaga.
New Cement Co., 78 Goodwood Parade, Rivervale.	New Cement Co.Pty Ltd (now deregistered).
Placor Plaster Products, 288 Gngangara Road, Landsdale.	Placor Plaster Products, 288 Gngangara Road, Landsdale.
Plasterceil Modelling Workers, Beechboro Road, Bayswater.	Plasterceil Pty Ltd t/as Plasterceil Modelling Workers (now deregistered).
Plasterline Industries, 16 King Edward Road, Osborne Park.	Plasterline Industries, 16 King Edward Road, Osborne Park.
R. Galvin, Sundercombe Street, Osborne Park.	R. Galvin (decd).
Regal Cement Works, 22 Sussex Street, Maylands.	Regal Cement Manufacturers Pty Ltd t/as Regal Cement Works, 22 Sussex Street, Maylands.
Savage Plaster Pty Ltd, 10 Collingwood Street, Osborne Park.	Savage Plaster Pty Ltd (now deregistered).
Superb Ceilings, 19 Winchester Road, Spearwood.	Superb Ceilings Pty Ltd, 19 Winchester Road, Spearwood. Swan Concrete Works Pty Ltd (now deregistered).
Swan Concrete Works, 22 Hines Road, Hilton Park.	Hydraplant Equipment Pty Ltd previously known as Welshpool Concrete Products Pty Ltd (now deregistered).
Welshpool Concrete Products , 21 Kew Street, Welshpool.	

2025 WAIRC 00261

**REVIEW OF THE PLASTER, PLASTERGLASS AND CEMENT WORKERS' AWARD NO. A 29 OF 1989 PURSUANT TO S 40B OF THE INDUSTRIAL RELATIONS ACT 1979 (WA)**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

COMMISSION'S OWN MOTION

**APPLICANT**

-v-  
(NOT APPLICABLE)

**RESPONDENT**

**CORAM** SENIOR COMMISSIONER R COSENTINO  
**DATE** TUESDAY, 29 APRIL 2025  
**FILE NO/S** APPL 46 OF 2023  
**CITATION NO.** 2025 WAIRC 00261

**Result** Award Varied

**Representation**

Mr B Entrekin on behalf of the Hon. Minister for Industrial Relations

Mr T Meagher on behalf of the Construction, Forestry, Mining and Energy Union of Workers

*Order*

HAVING heard from Mr Entrekin on behalf of the Hon. Minister for Industrial Relations and Mr T Meagher on behalf of the Construction, Forestry, Mining and Energy Union of Workers, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), the Commission hereby orders –

THAT the *Plaster, Plasterglass and Cement Workers' Award No. A 29 of 1989* be varied in accordance with the attached Schedule with such variations to take effect from the date of this Order.

(Sgd.) R COSENTINO,  
Senior Commissioner.

[L.S.]

SCHEDULE

Current Award	Variations
Plaster, Plasterglass and Cement Workers' Award No. A 29 of 1989	Plaster, Plasterglass and Cement Workers' Award
<p style="text-align: center;"><u>1. - TITLE</u></p> <p>This award shall be known as the Plaster, Plasterglass and Cement Workers' Award No. A 29 of 1989 and replaces Award No. 11 of 1969 and Award No. 6 of 1962 as amended.</p>	<p style="text-align: center;"><u>1. - TITLE</u></p> <p>This award shall be known as the <i>Plaster, Plasterglass and Cement Workers' Award</i>.</p>
	<p>Insert the following as a heading before clause 1 'Title':</p> <p>PART 1 – APPLICATION AND OPERATION</p>
<p style="text-align: center;"><u>1B. - MINIMUM ADULT AWARD WAGE</u></p> <p>(1) No employee aged 21 or more shall be paid less than the minimum adult award wage unless otherwise provided by this clause.</p> <p>(2) The minimum adult award wage for full-time employees aged 21 or more working under an award that provides for a 38-hour week is \$918.60 per week.</p> <p>The minimum adult award wage for full-time employees aged 21 or more working under awards that provide for other than a 38-hour week is calculated as follows: divide \$918.60 by 38 and multiply by the number of ordinary hours prescribed for a full-time employee under the award.</p> <p>The minimum adult award wage is payable from the beginning of the first pay period commencing on or after 1 July 2024.</p> <p>(3) The minimum adult award wage is deemed to include all State Wage order adjustments from State Wage Case decisions.</p> <p>(4) Unless otherwise provided in this clause adults aged 21 or more employed as casuals, part-time employees or piece workers or employees who are remunerated wholly on the basis of payment by results, shall not be paid less than pro rata the minimum adult award wage according to the hours worked.</p> <p>(5) Employees under the age of 21 shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision in this award (if applicable) to the minimum adult award wage, provided that no employee shall be paid less than any applicable minimum rate of pay prescribed by the <i>Minimum Conditions of Employment Act 1993</i>.</p>	<p style="text-align: center;">NO VARIATIONS</p>

<p>(6) The minimum adult award wage shall not apply to apprentices, employees engaged on traineeships or government approved work placement programs or employed under the Commonwealth Government Supported Wage System or to other categories of employees who by prescription are paid less than the minimum award rate, provided that no employee shall be paid less than any applicable minimum rate of pay prescribed by the <i>Minimum Conditions of Employment Act 1993</i>.</p> <p>(7) Liberty to apply is reserved in relation to any special category of employees not included here or otherwise in relation to the application of the minimum adult award wage.</p> <p>(8) Subject to this clause the minimum adult award wage shall –</p> <p>(a) Apply to all work in ordinary hours.</p> <p>(b) Apply to the calculation of overtime and all other penalty rates, superannuation, payments during any period of paid leave and for all purposes of this award.</p> <p>(9) <b>Minimum Adult Award Wage</b></p> <p>The rates of pay in this award include the minimum weekly wage for employees aged 21 or more payable under the 2024 State Wage order. Any increase arising from the insertion of the minimum wage will be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.</p> <p>Increases under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset the minimum wage.</p> <p>(10) <b>Adult Apprentices</b></p> <p>(a) Notwithstanding the provisions of this clause, the minimum adult apprentice wage for a fulltime apprentice aged 21 years or more working under an award that provides for a 38-hour week is \$762.80 per week.</p> <p>(b) The minimum adult apprentice wage for a full-time apprentice aged 21 years or more working under an award that provides for other than a 38- hour week is calculated as</p>	
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<p>follows: divide \$762.80 by 38 and multiply by the number of ordinary hours prescribed for a full-time apprentice under the award.</p> <p>(c) The minimum adult apprentice wage is payable from the beginning of the first pay period commencing on or after 1 July 2024.</p> <p>(d) Adult apprentices aged 21 years or more employed on a part-time basis shall not be paid less than pro rata the minimum adult apprentice wage according to the hours worked.</p> <p>(e) The rates paid in the paragraphs above to an apprentice 21 years of age or more are payable on superannuation and during any period of paid leave prescribed by this award.</p> <p>(f) Where in this award an additional rate is expressed as a percentage, fraction or multiple of the ordinary rate of pay, it shall be calculated upon the rate prescribed in this award for the actual year of apprenticeship.</p>	
<p style="text-align: center;"><u>2. - ARRANGEMENT</u></p> <ol style="list-style-type: none"> <li>1. Title</li> <li>1B. Minimum Adult Award Wage</li> <li>2. Arrangement</li> <li>3. Scope</li> <li>4. Area</li> <li>5. Term</li> <li>6. Definitions</li> <li>7. Adult Trainee Casters</li> <li>8. Contract of Service</li> <li>9. Breakdowns</li> <li>10. Hours</li> <li>12. Overtime</li> <li>13. Wages</li> <li>14. Special Rates and Provisions</li> <li>15. Payment of Wages</li> <li>16. Under Rate Employees</li> <li>17. Absence Through Sickness or Bereavement</li> <li>18. Holidays and Annual Leave</li> <li>19. Records</li> <li>20. Posting Copy of Award and Union Notices</li> <li>21. Representative Interviewing Employees</li> <li>22. Board of Reference</li> <li>23. Junior Employees</li> <li>24. Apprentices</li> <li>25. Long Service Leave</li> <li>26. Grievance and Disputes Procedure</li> <li>27. Maternity Leave</li> <li>28. Superannuation</li> <li>29. Introduction of Change</li> <li>30. Redundancy</li> <li>31. Enterprise Agreement</li> </ol> <p>Appendix - Resolution of Disputes Requirements                  Schedule 1 - Parties to the Award                  Schedule 2 - Respondents</p>	<p style="text-align: center;"><u>2. - ARRANGEMENT</u></p> <p>PART 1 – APPLICATION AND OPERATION</p> <ol style="list-style-type: none"> <li>1. Title</li> <li>1B. Minimum Adult Award Wage</li> <li>2. Arrangement</li> <li>3. Scope</li> <li>4. Area</li> <li>5. Definitions</li> </ol> <p>PART 2 – CONTRACT OF EMPLOYMENT</p> <ol style="list-style-type: none"> <li>6. Contract of Employment</li> <li>6A. Flexible Working Arrangement Requests</li> <li>7. Termination of Employment</li> <li>8. Trainee Casters</li> <li>9. Junior Employees</li> <li>10. Apprentices</li> <li>11. Breakdowns</li> </ol> <p>PART 3 – HOURS OF WORK</p> <ol style="list-style-type: none"> <li>12. Hours</li> <li>13. Overtime</li> </ol> <p>PART 4 – RATES OF PAY AND ALLOWANCES</p> <ol style="list-style-type: none"> <li>14. Wages</li> <li>15. Special Rates and Provisions</li> <li>16. Payment of Wages</li> <li>17. Supported Wage System</li> <li>18. Superannuation</li> </ol> <p>PART 5 – LEAVE</p> <ol style="list-style-type: none"> <li>19. Personal Leave</li> <li>20. Bereavement Leave</li> <li>21. Family and Domestic Violence Leave</li> <li>22. Public Holidays</li> <li>23. Annual Leave</li> <li>24. Long Service Leave</li> <li>25. Parental Leave</li> </ol>

	<p>PART 6 – OTHER</p> <p>26. Right of Entry and Inspection of Records</p> <p>27. Posting Copy of Award and Union Notices</p> <p>28. Dispute Resolution Procedure</p> <p>29. Introduction of Change</p> <p>30. Redundancy</p> <p>Schedule 1 – Parties to the Award</p> <p>Schedule 2 – Respondents</p>
<p><u>3. - SCOPE</u></p> <p>This Award shall apply to employees (except those employed on any work "on-site" in connection with the erection, repair, renovation, maintenance, ornamental or demolition of buildings or structures) engaged in the industries carried out by the respondents and employed in the classifications referred to in Clause 13. – Wages hereof.</p>	<p><u>3. - SCOPE</u></p> <p>This Award shall apply to employees (except those employed on any work "on-site" in connection with the erection, repair, renovation, maintenance, ornamental or demolition of buildings or structures) engaged in the industries carried out by the respondents and employed in the classifications referred to in Clause 14. – Wages hereof.</p>
<p><u>4. - AREA</u></p> <p>This Award shall have effect over the whole of the State of Western Australia.</p>	<p>NO VARIATIONS</p>
<p><u>5. - TERM</u></p> <p>The term of this award shall be for a period of three years from the beginning of the first pay period commencing on or after the date hereof.</p>	<p>CLAUSE DELETED</p>
<p><u>6. - DEFINITIONS</u></p> <p>(1) "Operative Fibrous Employee", "Operative Plasterglass Employee" or "Manufactured Cement Goods Employee" means an employee engaged in -</p> <p>(a) architectural modelling;</p> <p>(b) the manufacture of architectural ornaments of fibrous plaster, plasterglass plaster or cement;</p> <p>(c) the manufacture of fibrous plasterglass goods or portable articles of reinforced cement or concrete, cement pressed work, baths, wash tubs, troughs, sinks, pillars, ornaments, and other miscellaneous goods, including floor beams, partition blocks, lintels and acoustic tiles (but excluding cement roofing tiles);</p> <p>(d) any phase or phases of items (a) to (c) inclusive.</p> <p>(2) A "Modeller" is defined as an employee who prepares the ground work or who makes models and/or moulds, whether of gelatine, plaster, wax, plasterglass cement or fibreglass, or other suitable materials.</p> <p>(3) A "Fibrous Plaster Caster" is defined as an employee who prepares the benches or moulds for casting, prepares and applies plaster face gauges (whether for fibrous plaster boards, moulding, or other fibrous plaster products), prepares and applies plaster back gauges, places reinforcement into position, imbeds the reinforcement either by hand, or with rollers, rules off the sheet, trowels the sheet back, cleans the bench or mould rules, removes the</p>	<p><u>5. - DEFINITIONS</u></p> <p>(1) "Operative Fibrous Employee", "Operative Plasterglass Employee" or "Manufactured Cement Goods Employee" means an employee engaged in -</p> <p>(a) architectural modelling;</p> <p>(b) the manufacture of architectural ornaments of fibrous plaster, plasterglass plaster or cement;</p> <p>(c) the manufacture of fibrous plasterglass goods or portable articles of reinforced cement or concrete, cement pressed work, baths, wash tubs, troughs, sinks, pillars, ornaments, and other miscellaneous goods, including floor beams, partition blocks, lintels and acoustic tiles (but excluding cement roofing tiles);</p> <p>(d) any phase or phases of items (a) to (c) inclusive.</p> <p>(2) A "Modeller" is defined as an employee who prepares the ground work or who makes models and/or moulds, whether of gelatine, plaster, wax, plasterglass cement or fibreglass, or other suitable materials.</p> <p>(3) A "Fibrous Plaster Caster" is defined as an employee who prepares the benches or moulds for casting, prepares and applies plaster face gauges (whether for fibrous plaster boards, moulding, or other fibrous plaster products), prepares and applies plaster back gauges, places reinforcement into position, imbeds the reinforcement either by hand, or with rollers, rules off the sheet, trowels the sheet back, cleans the bench or mould rules, removes the manufactured article from bench or mould and places same in drying area. Keeps their working area, tools and appurtenances in a clean and workable condition and transfers plaster into the bin in accordance with subclause (6) of this clause.</p> <p>(4) "Labourers" may be employed on all or any of the following work, namely:-</p> <p>(a) filling of plaster bins, water troughs and fibre bins;</p>

<p>manufactured article from bench or mould and places same in drying area. Keeps his/her working area, tools and appurtenances in a clean and workable condition and transfers plaster into the bin in accordance with subclause (7) of this clause.</p> <p>(4) "Labourers" may be employed on all or any of the following work, namely:-</p> <p>(a) filling of plaster bins, water troughs and fibre bins;</p> <p>(b) removing from benches or moulds fibrous plaster products, placing same in drying areas, changing moulds with the assistance of casters when necessary;</p> <p>(c) maintaining appurtenances such as tubs, troughs, bins, drains, etc. in a clean and workable condition;</p> <p>(d) maintaining floor in a clean condition;</p> <p>(e) removing fibrous plaster products from drying areas into stores;</p> <p>(f) carting plaster</p> <p>(5) Except as provided in subclause (4) hereof, labourers shall not perform any operation which is the duty of a caster.</p> <p>(6) Junior employees shall not be employed on labourers' duties in any factory in which labourers are employed on the work set out in subclause (4) hereof, except such juniors as may be agreed upon between the union and the employer from time to time.</p> <p>(7) Carting plaster: For the purpose of the schedules to this award the term "carting plaster" shall not include the work of transferring plaster into the bin, from stacks adjacent to the bin nor the cartage of the gauge from the bin to the table. A stack shall be considered adjacent to the bin if it is within a radius of twelve feet from the bin.</p>	<p>(b) removing from benches or moulds fibrous plaster products, placing same in drying areas, changing moulds with the assistance of casters when necessary;</p> <p>(c) maintaining appurtenances such as tubs, troughs, bins, drains, etc. in a clean and workable condition;</p> <p>(d) maintaining floor in a clean condition;</p> <p>(e) removing fibrous plaster products from drying areas into stores;</p> <p>(f) carting plaster</p> <p>(5) Except as provided in subclause (4) hereof, labourers shall not perform any operation which is the duty of a caster.</p> <p>(6) Carting plaster: For the purpose of the schedules to this award the term "carting plaster" shall not include the work of transferring plaster into the bin, from stacks adjacent to the bin nor the cartage of the gauge from the bin to the table. A stack shall be considered adjacent to the bin if it is within a radius of 3.7 m from the bin.</p>
<p style="text-align: center;"><u>8. - CONTRACT OF SERVICE</u></p> <p>(1) Except in the case of casual employees, the contract of service shall be weekly and shall be terminable by one week's notice on either side or by the payment or forfeiture of one week's pay as the case may be.</p> <p>(2) In the case of a casual employee the contract of service shall be hourly and shall be terminable by one hour's notice on either side or by the payment or forfeiture of one hour's pay as the case may be.</p> <p>(3) An employer may at any time dismiss an employee for misconduct.</p> <p>(4) Payment may be deducted for any period that an employee is absent from work during the ordinary working hours in any establishment.</p>	<p style="text-align: center;"><u>6.- CONTRACT OF EMPLOYMENT</u></p> <p>(1) An employer may engage an employee on either a full-time, part-time or casual basis subject to the terms of this award.</p> <p>(2) At the time of the engagement the employer will inform each employee of the category of their employment, in particular, whether they are to be full-time, part-time or casual.</p> <p>(3) A "full time" employee is engaged to work an average of 38 hours per week on an ongoing basis. An employee not specifically engaged as a part-time or casual is a full-time employee for the purposes of this award.</p> <p>(4) A "part time" employee is an employee who is engaged to work less than an average of 38 hours per week on an ongoing basis and works a regular number of ordinary hours each week.</p> <p>(5) A "casual employee" is an employee who is engaged and paid as such, applying s 7B of the <i>Industrial Relations Act 1979</i> (WA). A casual employee is paid by the hour. A casual</p>

	<p>employee may only be employed for a period of less than one week.</p>										
	<p>Insert the following as a heading before clause 6 ‘Contract of Employment’:</p> <p>PART 2 – CONTRACT OF EMPLOYMENT</p>										
	<p>Insert the following as a new clause before clause 7 ‘Termination of Employment’:</p> <p><u>6A. - FLEXIBLE WORKING ARRANGEMENT REQUESTS</u></p> <p>Employees may make a request for a flexible working arrangement in accordance with s 39F and s 39G of the <i>Minimum Conditions of Employment Act 1993</i> (WA). Any such request must be dealt with and determined in accordance with Part 4A of the <i>Minimum Conditions of Employment Act 1993</i> (WA).</p>										
	<p><u>7. - TERMINATION OF EMPLOYMENT</u></p> <p>Termination by the Employer</p> <p>(1) In order to terminate the employment of a full time or part time employee the employer must give the employee the following notice in writing:</p> <table border="0" data-bbox="766 974 1340 1265"> <thead> <tr> <th style="text-align: center;"><b>Period of continuous service with the employer</b></th> <th style="text-align: center;"><b>Minimum Period of Notice</b></th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">Not more than 1 year</td> <td style="text-align: center;">At least 1 week</td> </tr> <tr> <td style="text-align: center;">More than 1 year but less than 3 years</td> <td style="text-align: center;">At least 2 weeks</td> </tr> <tr> <td style="text-align: center;">More than 3 years but less than 5 years</td> <td style="text-align: center;">At least 3 weeks</td> </tr> <tr> <td style="text-align: center;">More than 5 years</td> <td style="text-align: center;">At least 4 weeks</td> </tr> </tbody> </table> <p>(2) An employee who at the time of being given notice is over 45 years of age and who at the date of termination has completed two years’ continuous service with the employer, is entitled to one week’s notice in addition to the notice prescribed in clause 7(1).</p> <p>(3) Payment in lieu of the notice prescribed in clause 7(1) and (2) must be made if the prescribed notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu.</p> <p>(4) The period of notice in this subclause does not apply to those employees who are exempt from receiving notice under Subdivision A of Division 11 of Part 2-2 of the <i>Fair Work Act 2009</i> (Cth), as amended from time to time.</p> <p>(5) For the purpose of this clause an employee’s continuity of service has the same meaning as prescribed in section 22 of the <i>Fair Work Act 2009</i> (Cth).</p> <p>Termination by the Employee</p> <p>(6) Except in the case of a pieceworker or a casual employee an employee may terminate the employment by giving one week’s notice.</p> <p>Termination of Casual Employment</p>	<b>Period of continuous service with the employer</b>	<b>Minimum Period of Notice</b>	Not more than 1 year	At least 1 week	More than 1 year but less than 3 years	At least 2 weeks	More than 3 years but less than 5 years	At least 3 weeks	More than 5 years	At least 4 weeks
<b>Period of continuous service with the employer</b>	<b>Minimum Period of Notice</b>										
Not more than 1 year	At least 1 week										
More than 1 year but less than 3 years	At least 2 weeks										
More than 3 years but less than 5 years	At least 3 weeks										
More than 5 years	At least 4 weeks										

	<p>(7) Casual employment may be terminated by either party with one hours' notice.</p> <p>Dismissal for Misconduct</p> <p>(8) Nothing in this clause shall prevent an employer from terminating the employment of an employee at any time for misconduct.</p>
<p style="text-align: center;"><u>7. - ADULT TRAINEE CASTERS</u></p> <p>Where juniors are not available for employment as casters, adult trainee casters may be employed on the following terms:-</p> <p>(1) The period of training shall be one year; provided that if, in the opinion of the examiners a trainee reaches 100 per cent proficiency before the expiration of one year, his/her period of training may be reduced accordingly. Provided further, the examiners shall have power to extend the period of training in special circumstances where the trainee has not reached the full proficiency.</p> <p>(2) The combined number of trainee and junior casters employed by the employer shall not exceed the number of adult casters employed.</p> <p>(3) The employer shall notify the union of the engagement of a trainee within fourteen days of the engagement.</p> <p>(4) A caster responsible for the training of a trainee under this clause shall be paid \$2.90 per week extra whilst so engaged.</p> <p>(5) A trainee shall be allocated to a caster for three-monthly periods. No trainee shall be allocated to a junior or a person receiving training under the Commonwealth Reconstruction Training Scheme.</p> <p>(6) One examiner shall be appointed by the union and one by the employers for the purposes of examining trainees.</p> <p>(7) A syllabus of training shall be prepared by the examiners and employers shall provide training in accordance with such syllabus.</p> <p>(8) Examinations shall be conducted quarterly except where a trainee or employer requests an examination earlier than three months from the previous examination.</p> <p>(9) The examiners shall assess the proficiency of trainees and fix the percentage of the total wage prescribed for a plaster caster in Clause 13. - Wages which shall be paid to a trainee in accordance with paragraph (f) of subclause (1) of the said clause.</p> <p>(10) The examiners shall report to the Industrial Registrar the result of each examination and The Construction, Forestry, Mining and Energy Union of Workers and the Association of Wall and Ceiling Contractors of WA (Inc.) shall be</p>	<p style="text-align: center;"><u>8. - TRAINEE CASTERS</u></p> <p>(1) The minimum rates of pay and conditions of employment applicable to trainees will be those set out in Schedule E - National Training Wage of the <i>Joinery and Building Trades Award 2020</i> as amended from time to time. Provided that any reference to "this award" in Schedule E to the <i>Joinery and Building Trades Award 2020</i> is to be read as referring to the <i>Plaster, Plasterglass and Cement Workers' Award</i>.</p> <p>Note: The <i>Joinery and Building Trades Award 2020</i> is a modern award that applies to employers and employees in the national industrial relations system. The rates of pay for trainees are usually adjusted from 1 July each year.</p> <p>(2) A caster responsible for the training of a trainee under this clause shall be paid an additional 0.6% of a Plaster Caster's wage per week whilst so engaged.</p>

<p>supplied with a copy thereof.</p> <p>(11) In the event of a disagreement between the examiners on any matter within their jurisdiction, the matter shall be referred to the Registrar whose decision shall be final.</p> <p>(12) Nothing in this clause shall apply to trainees employed under the Commonwealth Reconstruction Training Scheme.</p>	
<p style="text-align: center;"><u>23. - JUNIOR EMPLOYEES</u></p> <p>(1) Junior Employees may only be employed in the Fibrous Plaster Casting and Cement branches of the industry in the proportion of one junior to one adult employee.</p> <p>(2) One junior only shall be employed on the teasing machine.</p> <p>(3) Junior employees, upon being engaged, shall furnish the employer with a certificate showing the following particulars –</p> <p>(a) name in full;</p> <p>(b) age and date of birth;</p> <p>(c) name of each previous employer;</p> <p>(d) length of service with each previous employer.</p> <p>(4) No employee shall have any claim for additional wages in the event of his/her age or length of service with another employer being wrongly stated on this certificate and he/she alone shall be guilty of breach of this award.</p> <p>(1) The provisions of this clause do not apply to employees engaged in the Plaster Mill industry.</p>	<p style="text-align: center;"><u>9. - JUNIOR EMPLOYEES</u></p> <p>(1) Junior Employees may only be employed in the Fibrous Plaster Casting and Cement branches of the industry in the proportion of one junior to one adult employee.</p> <p>(2) One junior only shall be employed on the teasing machine.</p> <p>(3) Junior employees, upon being engaged, shall furnish the employer with a certificate showing the following particulars –</p> <p>(a) name in full;</p> <p>(b) age and date of birth;</p> <p>(c) name of each previous employer;</p> <p>(d) length of service with each previous employer.</p> <p>(4) No employee shall have any claim for additional wages in the event of their age or length of service with another employer being wrongly stated on this certificate and they alone shall be guilty of breach of this award.</p> <p>(5) The provisions of this clause do not apply to employees engaged in the Plaster Mill industry.</p>
<p style="text-align: center;"><u>24. - APPRENTICES</u></p> <p>(1) Apprentices to the Modelling Branch of the fibrous plaster trade may be taken in the ratio of one apprentice to every two or fraction of two (the fraction being not less than one) tradespersons and shall not be taken in excess of that ratio.</p> <p>(2) Liberty to apply is reserved to either party to vary the provisions of this clause.</p>	<p style="text-align: center;"><u>10. - APPRENTICES</u></p> <p>Apprentices to the Modelling Branch of the fibrous plaster trade may be taken in the ratio of one apprentice to every two or fraction of two (the fraction being not less than one) tradespersons and shall not be taken in excess of that ratio.</p>
<p style="text-align: center;"><u>9. - BREAKDOWNS</u></p> <p>The employer shall be entitled to deduct payment for any day or portion of a day upon which the employee cannot be usefully employed because of any strike by the union or unions affiliated with it or by any other association or union or through the breakdown of the employer's machinery or any stoppage of work by any cause which the employer cannot reasonably prevent.</p>	<p style="text-align: center;">RENUMBERED AS CLAUSE 11</p>
	<p>Insert the following as a heading before clause 12 'Hours':</p> <p style="text-align: center;">PART 3 – HOURS OF WORK</p>
<p style="text-align: center;"><u>10. - HOURS</u></p> <p>(1) Hours of Work:</p>	<p style="text-align: center;"><u>12. - HOURS</u></p> <p>Hours of Work:</p>

<p>(a) The ordinary working hours shall be 38 per week to operate from the beginning of the first pay period commencing on or after January 1, 1984, provided that for employees employed up until the date of this award pursuant to the Plaster Mill Employees Award No. 6 of 1962 shall have ordinary working hours of 38 per week from the first pay period commencing on or after 1st May 1990.</p> <p>(b) Subject to the provisions of this subclause and subclauses (2) - (3) - Procedures for In-house Discussions; the ordinary hours of work shall be an average of 38 per week to be worked on one of the following bases.</p> <p>(i) 38 hours within a work cycle not exceeding seven consecutive days; or</p> <p>(ii) 76 hours within a work cycle not exceeding fourteen consecutive days; or</p> <p>(iii) 114 hours within a work cycle not exceeding twenty-one consecutive days; or</p> <p>(iv) 152 hours within a work cycle not exceeding twenty-eight consecutive days.</p> <p>(c) The ordinary hours of work may be worked on any or all days of the week, Monday to Friday, inclusive, and except in the case of shift employees, shall be worked between the hours of 6.00am to 6.00pm with an interval of not less than thirty minutes or more than sixty minutes for lunch.</p> <p>(d) The ordinary hours of work shall not exceed 10 hours on any day.</p> <p>Provided that in any arrangement of ordinary working hours, where such ordinary hours are to exceed 8 hours on any day, the arrangement of hours shall be subject to agreement between the employer and the majority of employees in the employer's premises or section or sections concerned.</p> <p>(e) (i) In establishments where shift work is performed, subject to the provisions of subclause (5) of Varied Starting Times, such shift work hours shall commence not earlier than 7.00am and shall finish not later than</p>	<p>(a) The ordinary working hours shall be 38 per week.</p> <p>(b) The ordinary hours of work shall be worked on one of the following bases.</p> <p>(i) 38 hours within a work cycle not exceeding seven consecutive days; or</p> <p>(ii) 76 hours within a work cycle not exceeding fourteen consecutive days; or</p> <p>(iii) 114 hours within a work cycle not exceeding twenty-one consecutive days; or</p> <p>(iv) 152 hours within a work cycle not exceeding twenty-eight consecutive days.</p> <p>(c) The ordinary hours of work may be worked on any or all days of the week, Monday to Friday, inclusive, and except in the case of shift employees, shall be worked between the hours of 6.00am to 6.00pm with an interval of not less than thirty minutes or more than sixty minutes for lunch.</p> <p>(d) The ordinary hours of work shall not exceed 10 hours on any day.</p> <p>Provided that in any arrangement of ordinary working hours, where such ordinary hours are to exceed 8 hours on any day, the arrangement of hours shall be subject to agreement between the employer and the majority of employees in the employer's premises or section or sections concerned.</p> <p>(e) (i) In establishments where shift work is performed, such shift work hours shall commence not earlier than 7.00am and shall finish not later than 12.00 midnight. Provided that where shifts are worked, an interval of not less than thirty minutes shall be allowed as a meal break.</p> <p>(ii) The ordinary hours of shift employees shall average 38 per week (inclusive of crib time) and shall not exceed 152 hours in twenty-eight consecutive days.</p> <p>(iii) Provided that in any arrangement of ordinary working hours, where such ordinary hours are to exceed eight hours on any day, the arrangement of hours shall be subject to agreement between the employer and the majority of employees in the employer's premises or section or sections concerned.</p> <p>(iv) When an employee is engaged on afternoon shift they shall be entitled to be paid at the rate of 15% in addition to the rates prescribed.</p> <p>(2) An employee shall not be prohibited nor discouraged by their employer, nor by any leading hand or foreperson acting for the employer, from having a 10 minute morning rest break at a convenient time once during each morning work period.</p> <p>Provided that such a morning rest break is taken at a suitable place (where flasks and cribs may be safely left) designated by the employer for any particular employee or group of employees or, if no such place be designated, then at the nearest such suitable place to the place where the employee</p>
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<p>12.00 midnight. Provided that where shifts are worked, an interval of not less than thirty minutes shall be allowed as a meal break.</p> <p>(ii) Subject to the provisions of subclause (2) - Implementation of 38 Hour Week and subclause (3) - Procedures for In-house discussions, the ordinary hours of shift employees shall average 38 per week (inclusive of crib time) and shall not exceed 152 hours in twenty-eight consecutive days.</p> <p>(iii) Provided that in any arrangement of ordinary working hours, where such ordinary hours are to exceed eight hours on any day, the arrangement of hours shall be subject to agreement between the employer and the majority of employees in the employer's premises or section or sections concerned.</p> <p>(iv) When an employee is engaged on afternoon shift he/she shall be entitled to be paid at the rate of 15 per cent in addition to the rates prescribed.</p>	<p>in question reasonably believes when they commence work for the morning that they will be working at about the time they customarily have such morning rest break, and</p> <p>Provided further that work is not unduly interfered with and that there is no organised stoppage of work for the purpose of having the morning rest break except with the consent of the employer.</p> <p>(3) The ordinary hours of work may, at the option of the employer, be varied within a span of hours between 6.00am and 6.00pm and the working time shall then begin to run from the time so fixed, by the employer, with a consequential adjustment to the meal cessation period.</p> <p>(4) (a) If the ordinary hours of duty in a workplace provide for rostered days off, an employee shall be advised by the employer at least four weeks in advance of the day they are to take off duty.</p> <p>(b) An employer, with the agreement of the majority of employees concerned, may substitute an employee's rostered day off for another day in the case of a breakdown in machinery or a failure or shortage of electric power or some other emergency situation.</p> <p>(c) An employer and employee may agree to substitute the employee's rostered day off for another day.</p> <p>(d) Where any rostered day off duty falls on a public holiday, the next working day shall be taken in lieu, unless an alternate day is agreed between the employer and employee.</p>
<p>(2) Implementation of 38 Hour Week:</p> <p>(a) Except as provided in paragraph (c) hereof, the method of implementation of the 38 hour week may be any one of the following:-</p> <p>(i) by employees working less than 8 ordinary hours each day; or</p> <p>(ii) by employees working less than 8 ordinary hours on one or more days each week; or</p> <p>(iii) by fixing one day of ordinary working hours on which all employees will be off duty during a particular four week cycle; or</p> <p>(iv) by rostering employees off duty on various days of the week during a particular four week cycle so that each employee has one day of ordinary working hours</p>	

<p>off duty during that cycle; or</p> <p>(v) Where any rostered day off duty falls on a Holiday as prescribed in Clause 18. - Holidays and Annual Leave, the next working day shall be taken in lieu unless an alternate day in that four week cycle or the next is agreed.</p> <p>(b) An assessment should be made as to which method of implementation best suits each employer and the proposal shall be discussed with the employees concerned, the objective being to reach agreement on the method of implementation.</p> <p>(c) Different methods of implementation of a 38 hour week may apply to various sections or establishments of the one employer.</p> <p>(d) Notice of Days Off Duty:  Except as provided in paragraph (e) hereof, in cases where, by virtue of the arrangement of his/her ordinary working hours, an employee, in accordance with sub-paragraphs (iii) and (v) of paragraph (a) hereof, is entitled to a day off duty during his/her four week cycle, such employee shall be advised by the employer at least four weeks in advance of the day he/she is to take off duty.</p> <p>(e) (i) An employer, with the agreement of the majority of employees concerned, may substitute the day an employee is to take off in accordance with subparagraphs (iii) and (v) of paragraph (a) hereof, for another day in the case of a breakdown in machinery or a failure or shortage of electric power or some other emergency situation.</p> <p>(ii) An employer and employee may by agreement substitute the day the employee is to take off for another day.</p> <p>(3) Procedure for In-House Discussions:</p> <p>(a) Procedures shall be established for in-house discussions, the objective being to agree on the method of implementing a 38 hour week in accordance with subclauses (1) - Hours of Work and (3) - Implementation of 38 Hour Week of this clause and shall entail an</p>	
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<p>objective review of current practices to establish where improvements can be made and implemented.</p> <p>(b) The procedures should make suggestions as to the recording of understandings reached and methods of communicating agreements and understandings to all employees, including the overcoming of language difficulties.</p> <p>(c) The procedures should allow for the monitoring of agreements and understandings reached inhouse.</p> <p>(d) In cases where agreement cannot be reached in-house in the first instance or where problems arise after initial agreements or understandings have been achieved in-house, a formal monitoring procedure shall apply. The basic steps in this procedure for settling such a problem are as follows –</p> <p>(i) Consultation shall take place within the particular establishment concerned.</p> <p>(ii) If it is unable to be resolved at establishment level, the matter shall be referred to the State Secretary of the union (or unions) concerned or his/her deputy, at which level a conference of the parties shall be convened without delay.</p> <p>(iii) In the absence of agreement either party may refer the matter to the Western Australian Industrial Commission.</p> <p>(4) an employee shall not be prohibited nor discouraged by his/her employer, nor by any leading hand or foreperson acting for the employer, from having a "cup of tea" (which expression includes any suitable beverage, together with something to eat) at a convenient time once during each morning work period.</p> <p>Provided that such a "cup of tea" is taken at a suitable place (where flasks and cribs may be safely left) designated by the employer for any particular employee or group of employees or, if no such place be designated, then at the nearest such suitable place to the place where the employee in question reasonably believes when he/she commences work for the morning that he/she will be working at about the time he/she customarily has such "cup of tea", and</p> <p>Provided further that work is not unduly interfered with and that there is no organised stoppage of work for the purpose of having the</p>	
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<p>"cup of tea" except with the consent of the employer.</p> <p>(5) (a) The ordinary hours of work may, at the option of the employer, be varied within a span of hours between 6.00am and 6.00pm and the working time shall then begin to run from the time so fixed, by the employer, with a consequential adjustment to the meal cessation period.</p> <p>(b) Subject to agreement between the employer and an employee or a group of employees, or the workforce, at a particular location, the span of hours prescribed by paragraph (a) hereof he/she may be extended, to any agreed time, earlier than 6.00am.</p>	
<p style="text-align: center;"><u>12. - OVERTIME</u></p> <p>(1) All work performed outside the normal limits of the hours of labour shall be paid for at the rate of time and a half for the first two hours and double time thereafter, provided an employee who commences at or after midnight shall be paid double time until 6.00am the following morning.</p> <p>Subject to the provisions of subclause (3) of this clause, for the purpose of this subclause, the normal limits of the hours of labour shall be ascertained by reference to the time of commencement and time of finishing generally observed in regard to the employee in question for the particular job on which he/she is engaged.</p> <p>(2) Any employee who is called upon to continue working for more than two hours beyond his/her usual ceasing time shall be provided with any meal required or shall be paid an allowance of \$7.30 in lieu thereof.</p> <p>Provided that this subclause shall not apply to any employee who was advised on the previous day that he/she would be required to work such overtime, nor to any employee who can conveniently return home for a meal.</p> <p>(3) Any employee who has left the premises at which he/she is employed and is recalled to work after the usual ceasing time for less than one hour shall receive payment for one hour at overtime rates.</p> <p>(4) If an employee is required to work during the recognised meal period so that the commencement of the meal period is postponed for more than half an hour, that employee shall receive payment at double time rates until he/she gets his/her meal.</p> <p>(5) Subject to the preceding subclause, if an employee who is required to work during the recognised meal period does not in consequence obtain during the shift the full continuous meal period, or loses any portion of the meal period, he/she shall be paid at double time rates for the</p>	<p style="text-align: center;"><u>13. - OVERTIME</u></p> <p>(1) All work performed outside the ordinary hours of work shall be paid for at the rate of time and a half for the first two hours and double time thereafter, provided an employee who commences at or after midnight shall be paid double time until 6.00am the following morning.</p> <p>(2) Any employee who is called upon to continue working for more than two hours beyond their usual ceasing time shall be provided with any meal required or shall be paid an allowance equal to the amount provided for in Clause 21.4(c) of the <i>Joinery and Building Trades Award 2020</i>.</p> <p>Note: The <i>Joinery and Building Trades Award 2020</i> is a modern award that applies to employers and employees in the national industrial relations system. The meal allowance contained in Clause 21.4(c) of the <i>Joinery and Building Trades Award 2020</i> is usually adjusted from 1 July each year.</p> <p>Provided that this subclause shall not apply to any employee who was advised on the previous day that they would be required to work such overtime, nor to any employee who can conveniently return home for a meal.</p> <p>(3) Any employee who has left the premises at which they are employed and is recalled to work after the usual ceasing time for less than one hour shall receive payment for one hour at overtime rates.</p> <p>(4) If an employee is required to work during the recognised meal period so that the commencement of the meal period is postponed for more than half an hour, that employee shall receive payment at double time rates until they get their meal.</p> <p>(5) Subject to the preceding subclause, if an employee who is required to work during the recognised meal period does not in consequence obtain during the shift the full continuous meal period, or loses any portion of the meal period, they shall be paid at double time rates for the period not obtained or any portion lost.</p> <p>(6) The expression "recognised meal period" means the period customarily observed as the meal period between fixed times on the job, or at the works, as the case may be, except where the time of commencement of the customary period is altered by mutual consent of the employer and the employees on a job to suit the convenience of the employees</p>

<p>period not obtained or any portion lost.</p> <p>(6) The expression "recognised meal period" means the period customarily observed as the meal period between fixed times on the job, or at the works, as the case may be, except where the time of commencement of the customary period is altered by mutual consent of the employer and the employees on a job to suit the convenience of the employees or the building proprietor, in which case the altered times shall be the basis of any rights under the preceding subclauses (4) and (5).</p> <p>(7) Notwithstanding anything contained herein -</p> <p>(a) An employer may require any employee to work reasonable overtime and such employee shall work the overtime in accordance with such requirement.</p> <p>(b) An organisation, party to this award, and/or an employee or employees covered by this award, shall not in any way, whether directly or indirectly, be a party to or concerned in any ban, limitation or restriction upon the working of overtime in accordance with (a) above.</p>	<p>or the building proprietor, in which case the altered times shall be the basis of any rights under the preceding subclauses (4) and (5).</p> <p>(7) Notwithstanding anything contained herein -</p> <p>(a) An employer may require any employee to work reasonable overtime consistent with the requirements of section 9B of the <i>Minimum Conditions of Employment Act 1993</i> (WA).</p> <p>(b) An organisation, party to this award, and/or an employee or employees covered by this award, shall not in any way, whether directly or indirectly, be a party to or concerned in any ban, limitation or restriction upon the working of overtime in accordance with (a) above.</p>
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Insert the following as a heading before clause 14 'Wages':

**PART 4 – RATES OF PAY AND ALLOWANCES**

<u>13. - WAGES</u>				<u>14. - WAGES</u>			
		Wage Per Week\$	Arbitrated Safety Net\$	Total Wage Per Week\$			Wage Per Week \$
(1)	(a)	408.90	592.50	1001.40	(1)	(a)	1001.40
				1.44		(b)	1.44
	(b)	386.15	587.05	973.20		(c)	973.20
	(c)	362.35	581.45	943.80		(d)	943.80
	(d)	342.10	576.50	918.60		(e)	918.60
	(e)	338.25	575.75	914.00		(f)	918.60
	(f)			897.90		(g)	918.60
						(h)	918.60
						(i)	918.60
						(j)	918.60
					(2)	Junior Employees Under 21 years of age	
							% of a Labourers' wage*
						20 years of age	90
						19 years of age	80
						Under 19 years of age	70
						*Rounded to the nearest 10 cents.	
					(3)	Apprentice Modellers - Four Year Term	% of a Modeller's wage
						First year	42
						Second year	55
						Third year	75
						Fourth year	88

Thereafter, such percentage of the plaster caster's total wage as is assessed in accordance with subclause (9) of Clause 7. – Adult Trainee Casters.

	Wage Per Week\$	Arbitrated Safety Net\$	Total Wage Per Week\$
(g) Plant Operator			897.90

<p>(h) Bagger 897.90  (i) Washer 897.90  (j) Front End Loader 897.90  (k) Fork Lift Driver 897.90</p>	<p>Note 1: The above percentages are of both the adult wages and the tool allowance.</p> <p>Note 2: Adult apprentices aged 21 years or over must receive the minimum adult apprentice wage outlined in Clause 1B, or the above percentage of the Modeller's Wage, whichever is the greater.</p>										
<p>(2) Junior Employees Under 21 years of age 808.10  Under 20 years of age 718.30  Under 19 years of age 628.50</p>	<p>(4) A "Casual Employee" shall be paid for the time so engaged at the rate of 25% in addition to the rates prescribed herein.</p>										
<p>(3) Apprentice Modellers –</p> <table border="0"> <tr> <td>Four Year Term</td> <td>%</td> </tr> <tr> <td>First year</td> <td>42</td> </tr> <tr> <td>Second year</td> <td>55</td> </tr> <tr> <td>Third year</td> <td>75</td> </tr> <tr> <td>Fourth year</td> <td>88</td> </tr> </table>	Four Year Term	%	First year	42	Second year	55	Third year	75	Fourth year	88	
Four Year Term	%										
First year	42										
Second year	55										
Third year	75										
Fourth year	88										
<p>N.B. The above percentages are of both the adult wage and the tool allowance.</p>											
<p>(4) A "Casual Employee" being a person who is engaged or employed for a period of less than one week shall be paid for the time so engaged at the rate of 20 per cent in addition to the rates prescribed herein. Provided that this shall not apply to an employee who serves his/her contract of service or who is dismissed for misconduct.</p>											
<p>(5) The rates of pay in this award include the arbitrated safety net adjustment payable under the June 1998 State Wage Case Decision. This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.</p> <p>Increases made under previous State Wage Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.</p> <p>Further the rates of pay in this award include the \$12 per week or \$10 per week arbitrated safety net adjustments payable from the beginning of the first pay period on or after 1<sup>st</sup> August, 1999.</p> <p>The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.</p> <p>These arbitrated safety net adjustments may be</p>											

<p>offset against any equivalent amount in the rate of pay received by employees since 1 November 1991 above the rate prescribed in the Award, except where such absorption is contrary to the terms of an industrial agreement.</p> <p>Increases in rates of pay otherwise made under the State Wage Case Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.</p>																													
<p><b>14. - SPECIAL RATES AND PROVISIONS</b></p> <p>(1) Leading Hands: An employee placed in charge for not less than one day of -</p> <table border="0" style="margin-left: 40px;"> <tr> <td></td> <td style="text-align: right;">\$ Per Week</td> </tr> <tr> <td>(a) Not less than three (3) and not more than ten (10) other tradeperson</td> <td style="text-align: right;">13.89</td> </tr> <tr> <td>(b) More than ten (10) and not more than twenty (20) other tradeperson</td> <td style="text-align: right;">21.95</td> </tr> <tr> <td>(c) More than twenty (20) other tradeperson</td> <td style="text-align: right;">29.35</td> </tr> </table> <p>(d) The rates herein prescribed shall be deemed to form part of the ordinary rate of wage of the employees concerned for all purposes of this Award</p> <p>Where the leading hand works under the supervision of a foreperson or of the employer for the major portion of the day, the extra rates set out in this subclause shall be halved.</p> <p>(2) The employer shall provide at lunch time on each job, boiling water for the use of all employees.</p> <p>(3) Protection of Tools: The employer shall, where practicable, provide a place on each job for the safekeeping of the employees' tools when not in use</p> <p>(4) Change Room: The employer shall, where practicable, provide and maintain in a cleanly condition -</p> <table border="0" style="margin-left: 40px;"> <tr> <td>(a)</td> <td>on each job a proper change room where the employee may change his/her clothes, and such place shall not be used for storing lime, cement, or other similar materials;</td> </tr> <tr> <td>(b)</td> <td>separate locker accommodation, fitted with a suitable lock, for each employee employed in or about the factory or shop for the safekeeping of the employees' clothes and effects;</td> </tr> <tr> <td>(c)</td> <td>suitable heating facilities for the drying of wet clothes of employees employed on casting.</td> </tr> </table> <p>(5) Changing Time: At the factory, five minutes be allowed to employees who desire to change their clothes, but no employee shall leave the</p>		\$ Per Week	(a) Not less than three (3) and not more than ten (10) other tradeperson	13.89	(b) More than ten (10) and not more than twenty (20) other tradeperson	21.95	(c) More than twenty (20) other tradeperson	29.35	(a)	on each job a proper change room where the employee may change his/her clothes, and such place shall not be used for storing lime, cement, or other similar materials;	(b)	separate locker accommodation, fitted with a suitable lock, for each employee employed in or about the factory or shop for the safekeeping of the employees' clothes and effects;	(c)	suitable heating facilities for the drying of wet clothes of employees employed on casting.	<p><b>15. - SPECIAL RATES AND PROVISIONS</b></p> <p>(1) All employees required to work on any Sunday shall be paid double time rate for all time worked on any such day.</p> <p>(2) Leading Hands: An employee placed in charge of other tradepersons for not less than one day shall be paid the following additional amounts per week -</p> <table border="0" style="margin-left: 40px;"> <tr> <td></td> <td style="text-align: right;">% of a Plaster Caster's weekly wage</td> </tr> <tr> <td>(a) Not less than 3 and not more than 10 other tradepersons</td> <td style="text-align: right;">2.8%</td> </tr> <tr> <td>(b) More than 10 and not more than 20 other tradepersons</td> <td style="text-align: right;">4.5%</td> </tr> <tr> <td>(c) More than 20 other tradepersons</td> <td style="text-align: right;">6.0%</td> </tr> </table> <p>The rates herein prescribed shall be deemed to form part of the ordinary rate of wage of the employees concerned for all purposes of this Award.</p> <p>Where the leading hand works under the supervision of a foreperson or of the employer for the major portion of the day, the extra rates set out in this subclause shall be halved.</p> <p>(3) The employer shall provide at lunch time on each job, boiling water for the use of all employees.</p> <p>(4) Protection of Tools:</p> <p>The employer shall, where practicable, provide a place on each job for the safekeeping of the employees' tools when not in use.</p> <p>(5) Change Room:</p> <p>The employer shall, where practicable, provide and maintain in a cleanly condition -</p> <table border="0" style="margin-left: 40px;"> <tr> <td>(a)</td> <td>on each job a proper change room where the employee may change their clothes, and such place shall not be used for storing lime, cement, or other similar materials;</td> </tr> <tr> <td>(b)</td> <td>separate locker accommodation, fitted with a suitable lock, for each employee employed in or about the factory or shop for the safekeeping of the employees' clothes and effects;</td> </tr> <tr> <td>(c)</td> <td>suitable heating facilities for the drying of wet clothes of employees employed on casting.</td> </tr> </table> <p>(6) Changing Time:</p> <p>At the factory, five minutes be allowed to employees who desire to change their clothes, but no employee shall leave</p>		% of a Plaster Caster's weekly wage	(a) Not less than 3 and not more than 10 other tradepersons	2.8%	(b) More than 10 and not more than 20 other tradepersons	4.5%	(c) More than 20 other tradepersons	6.0%	(a)	on each job a proper change room where the employee may change their clothes, and such place shall not be used for storing lime, cement, or other similar materials;	(b)	separate locker accommodation, fitted with a suitable lock, for each employee employed in or about the factory or shop for the safekeeping of the employees' clothes and effects;	(c)	suitable heating facilities for the drying of wet clothes of employees employed on casting.
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<p style="text-align: center;"><u>15. - PAYMENT OF WAGES</u></p> <p>(1) Subject to subclause (2) of this clause, from the beginning of the first pay period commencing on or after 1 st May, 1984 wages shall be paid as follows:-</p> <p>(a) Actual 38 ordinary hours</p> <p>In the case of an employee whose ordinary hours of work are arranged in accordance with subparagraph (i) or (ii) of paragraph (a) of subclause (2) – Implementation of 38 Hour Week – of Clause 10. – Hours so that he/she works 38 ordinary hours each week, wages shall be paid weekly according to the actual ordinary hours worked each week.</p> <p>(b) Average of 38 ordinary hours</p> <p>Subject to subclauses (2) and (3) of this clause, in the case of an employee whose ordinary hours of work are arranged in accordance with subparagraphs (iii) or (iv) of paragraph (a) of subclause (2) – Implementation of 38 Hour Week – of Clause 10. – Hours so that he/she works an average of 38 ordinary hours each week during a particular four week cycle, wages shall be paid weekly according to a weekly average of ordinary hours worked even though more or less than 38 ordinary hours may be worked in any particular week of the four week cycle.</p> <p>(2) For employees employed up until the date of this award pursuant to the Plaster Mill Employees Award No. 6 of 1962, the provisions of this clause have effect from 1 January 1990.</p> <p>(3) Absences from Duty</p> <p>(a) An employee whose ordinary hours are arranged in accordance with subparagraph (iii) or (iv) of paragraph (a) of subclause (2) – Implementation of 38 Hour Week – of Clause 10. – Hours and who is paid wages in accordance with paragraph (b) of subclause (1) hereof and is absent from duty (except for paid leave pursuant to Clause 18. – Holidays and Annual Leave, except annual leave, and Clause 17. – Absence Through Sickness) shall, for each day or part</p>	<p style="text-align: center;"><u>16. - PAYMENT OF WAGES</u></p> <p>(1) Wages shall be paid as follows:</p> <p>(a) Actual hours</p> <p>In the case of an employee whose hours of duty are constant each week, wages shall be paid weekly or fortnightly according to the actual ordinary hours worked each week or fortnight.</p> <p>(b) Average hours</p> <p>In the case of an employee whose hours of duty are averaged each week during a particular work cycle, wages shall be paid weekly or fortnightly according to a weekly average of ordinary hours of duty even though more or less hours may be worked in any particular week of the work cycle.</p> <p>(2) (a) Where an employee is paid in accordance with clause 16(1)(b), the average weekly pay will be reduced by the ordinary hourly rate for each hour the employee is absent from duty other than on paid leave.</p> <p>(b) When an employee is dismissed (other than for misconduct) or lawfully terminates their service, they shall be paid all wages due to them before leaving the job unless that payment is prevented because of circumstances beyond the control of the employer. Otherwise all moneys due shall be paid on the next working day.</p> <p>(c) In the case of an employee who is paid average pay and who has not taken time off due to them during the work cycle in which their employment is terminated, the wages due to that employee shall include a total of credits accrued during the work cycle. Provided further, where the employee has taken time off during the work cycle in which their employment is terminated, the wages due to that employee shall be reduced by the total of credits which have not accrued during the work cycle.</p> <p>(3) The employee's wages may be paid by cash or direct transfer into the employee's nominated bank account.</p> <p>(4) Wages paid in cash shall be paid in the employee's time. Payment of wages shall be made at least weekly or fortnightly.</p> <p>(5) An employer must keep employment records and provide pay slips in accordance with Part II of Division 2F 'Keeping of and access to employment records and pay slips' of the <i>Industrial Relations Act 1979</i> (WA) and section 26 of the <i>Long Service Leave Act 1958</i> (WA).</p>

<p>day he/she is so absent lose the average pay "credit" or 0.4 hours for that day.</p> <p>(b) Consequently, during the week of the work cycle he/she is to work less than 38 ordinary hours he/she will not be entitled to average pay for that week. In that week, the average pay will be reduced by the amount of the "credit" he/she does not accrue for each whole or part day during the work cycle he/she is absent.</p> <p>(4) Alternative Method of Payment.</p> <p>An alternative method of paying wages to that prescribed by subclauses (1) and (2) of this clause may be agreed between the employer and the majority of the employees concerned.</p> <p>(5) (a) When an employee is dismissed (other than for misconduct) or lawfully terminates his/her service, he/she shall be paid all wages due to him/her before leaving the job unless that payment is prevented because of circumstances beyond the control of the employer. Otherwise all monies due shall be posted on the next working day to the employee's last known address or such other address as may be nominated by the employee.</p> <p>(b) In the case of an employee whose ordinary hours are arranged in accordance with subparagraph (ii) or (iv) of paragraph (a) of subclause (2) – Implementation of 38 Hour Week – of Clause 10. – Hours and who is paid average pay and who has not taken the day off due to him/her during the work cycle in which his/her employment is terminated, the wages due to that employee shall include a total of credits accrued during the work cycle.</p> <p>Provided further, where the employee has taken a day off during the work cycle in which his/her employment is terminated, the wages due to that employee shall be reduced by the total of credits which have not accrued during the work cycle.</p> <p>(6) Payment of wages shall be made at least once weekly and, at the option of the employer, may be paid by Electronics Funds Transfer.</p> <p>(7) Subject to subclause (4) hereof, where an employee is required to spend time in waiting for wages or attending the employer's office on a subsequent day, he/she shall be paid at the ordinary rate of pay for the time so spent, in addition to any fares incurred. Providing that this subclause shall not apply where such waiting or attending was due to an underpayment caused by a genuine mistake or by a genuine dispute as to amount due.</p>	
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<p>(8) Pay Packet Details:</p> <p>Particulars of details of payment to each employee shall be included on the envelope holding the payment, or in a statement handed to the employee at the time such payment is made and shall contain the following information -</p> <p>(a) Date of payment.</p> <p>(b) Period covered by such payment.</p> <p>(c) The amount of wages paid for work at ordinary rates.</p> <p>(d) The gross amount of wages and allowances paid.</p> <p>(e) The amount of each deduction made and the nature thereof</p> <p>(f) The net amount of wages and allowances paid.</p> <p>In addition, the following details will also be included in the statement which such payments and benefits apply:</p> <p>(g) The number of hours paid at overtime rates and the amount paid 12heretofore.</p> <p>(h) The amount of allowances of special rates paid and the nature thereof.</p> <p>(i) Annual leave payments.</p> <p>(j) Payment due on termination, including payment for annual leave, rostered day off accumulation, and public holidays, (on termination payment only).</p> <p>(k) The employer and employee's superannuation number upon payments of superannuation for the employee.</p> <p>(l) The amount of superannuation contribution paid by the employer for the employee.</p>	
<p><u>16. - UNDER-RATE EMPLOYEES</u></p> <p>(1) Any employee who by reason of old age or infirmity is unable to earn the minimum wage may be paid such lesser wage as may from time to time be agreed upon in writing between the union and the employer.</p> <p>(2) In the event of no agreement being arrived at the matter may be referred to the Board of Reference for determination.</p> <p>(3) After application has been made to the Board and pending the Board's decision, the employee shall be entitled to work for and be employed at the proposed lesser rate.</p>	<p><u>17. - SUPPORTED WAGE SYSTEM</u></p> <p>(1) Definitions</p> <p>This clause defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this award. In the context of this clause, the following definitions will apply:</p> <p>(a) approved assessor means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System.</p>

	<p>(b) assessment instrument means the tool provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.</p> <p>(c) disability support pension means the Commonwealth Government pension scheme to provide income security for persons with a disability as provided under the Social Security Act 1991, as amended from time to time, or any successor to that scheme.</p> <p>(d) supported wage system (SWS) means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from the following website: <a href="http://www.jobaccess.gov.au">www.jobaccess.gov.au</a>.</p> <p>(e) SWS wage assessment agreement means the document in the form required by the Department of Social Services that records the employee's productive capacity and agreed wage rate.</p> <p>(2) Eligibility criteria</p> <p>(a) Employees covered by this clause will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a Disability Support Pension.</p> <p>(b) This clause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their current employment.</p> <p>(3) Supported wage rates</p> <p>(a) Employees to whom this clause applies will be paid the applicable percentage of the minimum rate of pay prescribed by this award for the class of work which the person is performing according to the following schedule:</p> <table border="1" style="margin-left: 40px;"> <thead> <tr> <th>Assessed Capacity</th> <th>% of Prescribed Award Rate</th> </tr> </thead> <tbody> <tr><td>10%</td><td>10%</td></tr> <tr><td>20%</td><td>20%</td></tr> <tr><td>30%</td><td>30%</td></tr> <tr><td>40%</td><td>40%</td></tr> <tr><td>50%</td><td>50%</td></tr> <tr><td>60%</td><td>60%</td></tr> <tr><td>70%</td><td>70%</td></tr> <tr><td>80%</td><td>80%</td></tr> <tr><td>90%</td><td>90%</td></tr> </tbody> </table> <p>(b) Provided that the minimum amount payable must</p>	Assessed Capacity	% of Prescribed Award Rate	10%	10%	20%	20%	30%	30%	40%	40%	50%	50%	60%	60%	70%	70%	80%	80%	90%	90%
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	<p>not be less than \$106.00 per week.</p> <p>(c) Where an employee's assessed capacity is 10%, they must receive a high degree of assistance and support.</p> <p>(4) Assessment of capacity</p> <p>(a) For the purpose of establishing the percentage of the award rate to be paid to an employee under this award, the productive capacity of the employee will be assessed in accordance with the SWS by an approved assessor, having consulted the employer and employee and, if the employee so desires, the union.</p> <p>(b) All assessments made under this clause must be documented in a SWS wage assessment agreement and retained by the employer as a time and wages record.</p> <p>(5) Lodgement of SWS wage assessment agreement</p> <p>(a) All SWS wage assessment agreements under the conditions of this clause, including the appropriate percentage of the award wage to be paid to the employee, must be lodged by the employer with the Commission.</p> <p>(b) All SWS wage assessment agreements must be agreed and signed by the employee and employer parties to the assessment. Where the union is not a party to the assessment, the assessment will be referred by the Commission to the union by certified mail and the agreement will take effect unless an objection is notified to the Commission within 10 working days.</p> <p>(6) Review of assessment</p> <p>The assessment of the applicable percentage should be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review will be in accordance with the procedures for assessing capacity under the SWS.</p> <p>(7) Other terms and conditions of employment</p> <p>Where an assessment has been made, the applicable percentage will apply to the wage rate only. Employees covered by the provisions of this clause will be entitled to the same terms and conditions of employment as all other employees covered by this award paid on a pro-rata basis.</p> <p>(8) Workplace adjustment</p> <p>An employer wishing to employ a person under the provisions of this clause must take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve redesign of job duties, working time arrangements and work organisation in consultation with other employees in the area.</p> <p>(9) Trial period</p>
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	<ul style="list-style-type: none"> <li>(a) In order for an adequate assessment of the employee’s capacity to be made, an employer may employ a person under the provisions of this clause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.</li> <li>(b) During the trial period the assessment of capacity will be undertaken and the proposed wage rate for a continuing employment relationship will be determined.</li> <li>(c) The minimum amount payable to the employee during the trial period must be no less than \$106.00 per week.</li> <li>(d) Work trials should include induction or training as appropriate to the job being trialled.</li> <li>(e) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of assessment under subclause (4) – Assessment of capacity.</li> </ul>
<p style="text-align: center;"><u>28. - SUPERANNUATION</u></p> <p>The superannuation provisions contained herein operate subject to the requirements of the hereinafter prescribed provision titled – Compliance, Nomination and Transition.</p> <p>(1) Application:</p> <ul style="list-style-type: none"> <li>(a) Subject to the provisions of subclause (4) Exemptions of this clause, each employer to whom this Award applies shall execute an agreement to become a contributor to an approved Occupational Superannuation Scheme, within one month of the enactment of this clause.</li> <li>(b) For the purpose of this Award an approved Occupational Superannuation Scheme means any scheme which complies with the standards for occupational superannuation schemes under the Occupational Superannuation Standards Act 1987 and Regulations made thereunder.</li> </ul> <p>(2) Contributions:</p> <ul style="list-style-type: none"> <li>(a) Subject to the provisions of subclause (4) Exemptions of this clause, each employer shall make monthly contributions to the fund in respect of all eligible employees at the rate of 9% of ordinary time earnings.</li> <li>(b) Eligible employees are full-time and part-time employees to whose</li> </ul>	<p style="text-align: center;"><u>18. – SUPERANNUATION</u></p> <ul style="list-style-type: none"> <li>(1) The <i>Superannuation Guarantee (Administration) Act 1992</i> (Cth), the <i>Superannuation Guarantee Charge Act 1992</i> (Cth), the <i>Superannuation Industry (Supervision) Act 1993</i> (Cth) and the <i>Superannuation (Resolution of Complaints) Act 1993</i> (Cth) deals with the superannuation rights and obligations of employers and employees.</li> <li>(2) The employer must make superannuation contributions to a superannuation fund for the benefit of an employee as will avoid the employer being required to pay the superannuation guarantee charge under superannuation legislation with respect to that employee.</li> <li>(3) The employer must notify the employee of the entitlement to nominate a complying superannuation fund or scheme to which contributions in respect of the employee may be made.</li> <li>(4) The employer must make contributions to a complying fund or scheme nominated by the employer until the employee nominates such a fund or scheme.</li> <li>(5) The employer and the employee are bound by the employee’s nomination unless the employer and employee agree to change the complying superannuation fund or scheme to which contributions are to be made.</li> <li>(6) An employer must not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by an employee.</li> </ul>

<p>employment this Award applies and whose length of employment with the employer exceeds one month.</p> <p>(c) Subject to the provisions of subclauses (3) Employee Entry into Fund and (4) Exemptions of this clause, contributions shall be made in respect of each current eligible employee from the date the employer executes the fund trust deed. Contributions in respect of all other eligible employees shall be made from commencement of employment with the employer but in no case prior to the date the employer executes the fund trust deed.</p> <p>(d) “Ordinary time earnings” (which for the purposes of the <i>Superannuation Guarantee (Administration) Act 1992</i> will operate to provide a notional earnings base) shall mean the actual ordinary rate of pay the employee receives for ordinary hours of work leading hand where applicable. The term includes any regular over-award pay as well as casual rates received, and additional rates and allowances paid for work undertaken during ordinary hours of work excluding fares and travel and other reimbursement allowances.</p> <p>(e) No contributions shall be made for periods of unpaid leave, or unauthorised absences in excess of 38 ordinary hours or for periods of workers’ compensation in excess of 26 weeks. No shall be made in respect of annual leave paid out on termination or any other payments on termination.</p> <p>(3) Employee Entry into Fund:</p> <p>(a) On executing the fund trust deed the employer shall provide each current employee with an application form and documentation explaining the fund.</p> <p>(b) If an employee fails to return to the employer a completed application form to join the fund within two weeks of receipt, the employer shall provide a reminder notice together with an application form and documentation explaining the fund to the employee.</p> <p>(c) If the employee fails to complete and return the application to join the fund within two weeks of receipt of the second form, no contribution need be made in respect of that employee until such time as a completed application form is received by the employer.</p>	
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- (d) It shall be the responsibility of the employer to ensure that all new employees complete an application to join the fund during the first month of employment. Provided that where an eligible employee refuses to complete an application to join the fund the employer shall notify the union in writing of the employee's refusal to do so.

(4) Exemptions:

- (a) Employers of eligible employees who are covered by a Superannuation Order or Award made pursuant to the Industrial Relations Act 1979 shall be exempted from the provisions of this clause in respect of those employees to whose employment the said Order or Award applies.
- (b) Employers of eligible employees who are contributing to a Superannuation Fund in accordance with an Order or Award made pursuant to the Industrial Relations Act 1979, the Conciliation and Arbitration Act 1904 or the Industrial Relations Act 1988 for a majority of employees and, at the date of issue of this Order, make payment for eligible employees covered by this Award in accordance with that Order or Award shall be exempt from the provisions of this clause.

An employer may make an application to the Western Australian Industrial Relations Commission for exemption from the provisions of this clause and until proceedings before the Western Australian Industrial Relations Commission are finalised, the provisions of this clause shall be deemed to have been complied with.

Compliance, Nomination and Transition

Notwithstanding anything contained elsewhere herein which requires that contribution be made to a superannuation fund or scheme in respect of an employee, on and from 30 June 1998 -

- (a) Any such fund or scheme shall no longer be a complying superannuation fund or scheme for the purposes of this clause unless -
- (i) the fund or scheme is a complying fund or scheme within the meaning of the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth; and
- (ii) under the governing rules of

<p style="text-align: center;">the fund or scheme, contributions may be made by or in respect of the employee permitted to nominate a fund or scheme;</p> <p>(b) The employee shall be entitled to nominate the complying superannuation fund or scheme to which contributions are to be made by or in respect of the employee;</p> <p>(c) The employer shall notify the employee of the entitlement to nominate a complying superannuation fund or scheme as soon as practicable;</p> <p>(d) A nomination or notification of the type referred to in paragraphs (b) and (c) of this subclause shall, subject to the requirements of regulations made pursuant to the Industrial Relations Legislation Amendment and Repeal Act 1995, be given in writing to the employer or the employee to whom such is directed;</p> <p>(e) The employee and employer shall be bound by the nomination of the employee unless the employee and employer agree to change the complying superannuation fund or scheme to which contributions are to be made;</p> <p>(f) The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by a employee;</p> <p style="text-align: center;">Provided that on and from 30 June 1998, and until an employee thereafter nominates a complying superannuation fund or scheme -</p> <p>(g) if one or more complying superannuation funds or schemes to which contributions may be made be specified herein, the employer is required to make contributions to that fund or scheme, or one of those funds or schemes nominated by the employer;</p> <p style="text-align: center;">or</p> <p>(h) if no complying superannuation fund or scheme to which contributions may be made be specified herein, the employer is required to make contributions to a complying fund or scheme nominated by the employer.</p>	
	<p>Insert the following as a heading before clause 19 'Personal Leave':</p> <p style="text-align: center;">PART 5 – LEAVE</p>
<p><u>17. - ABSENCE THROUGH SICKNESS OR</u></p>	<p><u>19. - PERSONAL LEAVE</u></p>

BEREAVEMENT

Paid and unpaid personal leave, including carer's leave, is as provided for in the  
*Minimum Conditions of Employment Act 1993 (WA)*.

- (1) An employee shall be entitled to payment for non-attendance at work during ordinary hours on the ground of personal ill-health or injury at the rate of one-sixth of a week's pay at the rate prescribed for his/her classification by Clause 13. – Wages for each completed month of service.
- (2) Payment hereunder may be adjusted at the end of each calendar year or at the time the employee leaves the service of the employer, in the event of the employee being entitled by service subsequent to the sickness or injury to a greater allowance than that made at the time the sickness or injury occurred.
- (3) This clause shall not apply to employees who are entitled to payment under the Workers' Compensation and Assistance Act nor to employees whose injury or illness is the result of the employee's own misconduct.
- (4) (a) The employee shall, where possible, within 24 hours of the commencement of such absence, inform the employer of his/her inability to attend for duty, and, as far as practicable state the nature of the injury or illness and the estimated duration of the absence.
- (b) No employee shall be entitled to the benefits of this clause unless he/she produces proof satisfactory to his/her employer of sickness or injury, but the employer shall not be entitled to a medical certificate unless the absence is for three days or more.
- (5) Notwithstanding the provisions of subclause (4) hereof, an employee, who in any calendar year, has already been allowed paid sick leave on one occasion for one day only shall not be entitled to payment for any further absence of one day only unless he/she produces to the employer a medical certificate stating that he/she was unable to attend for duty on account of personal ill-health or injury.
- (6) Sick leave shall accumulate from year to year so that any balance of the period specified in subclause (1) of this clause which has in any year not been allowed to any employee by his/her employer as paid sick leave may be claimed by the employee and, subject to the conditions hereinbefore prescribed, shall be allowed by his/her employer in any subsequent year without diminution of the sick leave prescribed in respect of that year. Provided that an employee shall not be entitled to claim payment for any period exceeding ten weeks in any one year of service.

An employee shall, on the death within Australia of a wife, husband, father, mother, brother, sister, child or stepchild, be entitled on notice of leave up to and including the day of

<p>the funeral of such relation and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in two ordinary days of work. Proof of such death to be furnished by the employee to the satisfaction of his/her employer.</p> <p>Provided that this subclause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave.</p> <p>For the purposes of this subclause the words "wife" and "husband" shall include a person who lives with the employee as a de facto wife or husband.</p>	
	<p style="text-align: center;"><u>20. - BEREAVEMENT LEAVE</u></p> <p>Bereavement leave is as provided for in the <i>Minimum Conditions of Employment Act 1993</i> (WA).</p>
	<p style="text-align: center;"><u>21. - FAMILY AND DOMESTIC VIOLENCE LEAVE</u></p> <p>Family and Domestic Violence leave is provided for in Division 7 Part 2-2 of the <i>Fair Work Act 2009</i> (Cth) and the <i>Minimum Conditions of Employment Act 1993</i> (WA).</p>
<p style="text-align: center;"><u>18. - HOLIDAYS AND ANNUAL LEAVE</u></p> <p>(1) (a) The following days, or the days observed in lieu shall, subject to this subclause be allowed as holidays without deduction of pay, namely – New Year’s Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign’s Birthday, Christmas Day and Boxing Day. Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in this subclause.</p> <p>(b) Where any of the days mentioned in paragraph (a) hereof falls on a Saturday or a Sunday, the holiday shall be observed on the next succeeding Monday, provided that when a Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday. In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.</p> <p>(2) (a) All employees required to work on the days named in subclause (1)(a) hereof shall be paid at the rate of double time and a half for all time worked.</p> <p>(b) All employees required to work on any Sunday shall be paid double time rate for all time worked on any such day.</p> <p>(3) On any public holiday not prescribed as a holiday under this award the employer’s establishment or place of business may be closed in which case an employee need not</p>	<p style="text-align: center;"><u>22. - PUBLIC HOLIDAYS</u></p> <p>(1) (a) The following days, or the days observed in lieu shall, subject to this subclause be recognised as public holidays for the purpose of this award namely - New Year’s Day, Australia Day, Good Friday, Easter Sunday, Easter Monday, Anzac Day, Labour Day, Western Australia Day, Sovereign’s Birthday, Christmas Day and Boxing Day. Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in this subclause.</p> <p>(b) An employee is entitled to be absent from work without loss of pay on a day or part of a day that is a public holiday for the purpose of this award, or a public holiday as defined in the <i>Minimum Conditions of Employment Act 1993</i>(WA).</p> <p>(c) Where any of the days mentioned in paragraph (a) hereof, other than Easter Sunday, falls on a Saturday or a Sunday, the holiday shall be observed on the next succeeding Monday, provided that when a Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday. In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.</p> <p>(2) The employer may request that an employee work on a day or part of a day that is a public holiday if the request is reasonable.</p> <p>(3) If the employer makes a request, the employee may refuse the request if -</p> <p>(a) the request is not reasonable; or</p> <p>(b) the refusal is reasonable.</p>

<p>present himself for duty and payment may be deducted, but if work be done ordinary rates of pay shall apply.</p> <p>(4) Except as hereinafter provided a period of four consecutive weeks' leave with payment of ordinary wages as prescribed shall be allowed annually to an employee by his/her employer after a period of twelve months' continuous service with such employer.</p> <p>(5) (a) During a period of annual leave an employee shall be paid a loading of 17½ per cent, calculated on his/her ordinary wage as prescribed.</p> <p>(b) The loading prescribed by this subclause shall not apply to proportionate leave on termination.</p> <p>(6) If any prescribed holiday falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day there shall be added to that period one day being an ordinary working day for each such holiday observed as aforesaid.</p> <p>(7) If after one month's continuous service in any qualifying twelve monthly period an employee leaves his/her employment on or after the 1 st day of January, 1984 or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid 2.932 hours pay at his/her ordinary hourly rate of wage in respect of each completed week of service from January 1, 1984 up until the date of termination. Should an employee leave his/her employment before the 1 st day of January 1984, he/she shall be paid one-third of a week's pay at his/her ordinary rate of wage in respect of each completed month of service in any qualifying twelve monthly period up until January 2, 1984.</p> <p>(8) Any time in respect of which an employee is absent from work except time for which he/she is entitled to claim sick pay or time spent on holidays or annual leave as prescribed by this award shall not count for the purpose of determining his/her right to annual leave.</p> <p>(9) In the event of an employee being employed by an employer for portion only of a year, he/she shall only be entitled, subject to subclause (7) of this clause to such leave on full pay as is proportionate to his/her length of service during that period with such employer, and if such leave is not equal to the leave given to the other employees he/she shall not be entitled to work or pay whilst the other employees of such employer are on leave on full pay.</p> <p>(10) (a) In addition to any payment to which he/she may be entitled under subclause (7) of this clause, an employee, whose employment terminates after he/she has completed a twelve monthly qualifying period and who has not</p>	<p>(4) In determining whether a request or refusal is reasonable, the following must be taken into account -</p> <p>(a) the nature and conduct of the employer's business or operations;</p> <p>(b) the nature of the employee's work;</p> <p>(c) the employee's personal circumstances, including family responsibilities</p> <p>(d) whether the employee could reasonably expect that the employer might request work on the public holiday;</p> <p>(e) whether the employee is entitled to receive overtime payments, penalty rates or other compensation (including compensation in the form of an annualised salary) for, or a level of remuneration that reflects an expectation of, work on the public holiday;</p> <p>(f) the type of employment of the employee (for example, whether full time, part time, casual or shift work);</p> <p>(g) the amount of notice in advance of the public holiday given</p> <p>(i) by the employer when making the request; or</p> <p>(ii) by the employee when refusing the request.</p> <p>(5) All employees required to work on a public holiday shall be paid at the rate of double time and a half for all time worked.</p> <p>(6) Where a day is proclaimed as a public holiday or public half-holiday under section 7 of the <i>Public and Bank Holidays Act 1972</i> (WA), either throughout the State or within a district or locality as specified in the proclamation, that day will be a public holiday or public half-holiday for the purposes of this award within the area specified in the proclamation.</p>
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<p>been allowed leave prescribed under this award in respect of that qualifying period shall be given payment in lieu of that leave or, in a case to which paragraph (b) of this subclause or subclause (13) of this clause applies, in lieu of so much of that leave as has not been allowed unless -</p> <p>(i) he/she has been justifiably dismissed for misconduct; and</p> <p>(ii) the misconduct for which he/she has been dismissed occurred prior to the completion of that qualifying period.</p> <p>(b) In special circumstances and by mutual consent of the employer, the employee and the union concerned, annual leave may be taken in not more than two periods.</p> <p>(11) For the purpose of this clause “double time” rate shall be the rate which is payable to the employee on any ordinary working day (including all allowances paid in accordance with the provisions of Clause 13. – Wages) multiplied by two.</p> <p>(12) The provisions of this clause shall not apply to casual employees.</p> <p>(13) Notwithstanding anything else herein contained an employer who observes a Christmas closedown for the purpose of granting annual leave may require an employee to take his/her annual leave in not more than two periods but neither of such periods shall be less than one week.</p>	
	<p style="text-align: center;"><u>23. - ANNUAL LEAVE</u></p> <p>(1) Annual leave is as provided for in the <i>Minimum Conditions of Employment Act 1993</i> (WA).</p> <p>(2) (a) During a period of annual leave an employee shall be paid a loading of 17½%, calculated on their ordinary wage as prescribed.</p> <p>(b) The loading prescribed by this subclause shall not apply to proportionate leave on termination.</p> <p>(3) The provisions of this clause shall not apply to casual employees.</p>
<p style="text-align: center;"><u>25. - LONG SERVICE LEAVE</u></p> <p>The Long Service Leave provisions published in Volume 60 of the “Western Australian Industrial Gazette” at pages 1 to 6 inclusive are hereby incorporated in and shall be deemed to be part of this award.</p>	<p style="text-align: center;"><u>24. - LONG SERVICE LEAVE</u></p> <p>The Long Service Leave provisions of the <i>Long Service Leave Act 1958</i> (WA) are hereby incorporated in and shall be deemed to be part of this award.</p>
<p style="text-align: center;"><u>27. - MATERNITY LEAVE</u></p> <p>(1) Eligibility for Maternity Leave:</p> <p>An employee who becomes pregnant shall, upon production to her employer of a certificate</p>	<p style="text-align: center;"><u>25.- PARENTAL LEAVE</u></p> <p>Parental leave is provided for in accordance with Division 5 of Part 2-2 of the <i>Fair Work Act 2009</i> (Cth).</p>

from a duly qualified medical practitioner stating the presumed date of her confinement, be entitled to maternity leave provided that she has had not less than 12 months' continuous service with that employer immediately proceeding the date upon which she proceeds upon such leave.

For the purpose of this clause:

- (a) An employee shall include a part-time employee but shall not include an employee engaged upon casual or seasonal work.
- (b) Maternity leave shall mean unpaid maternity leave.

(2) Period of Leave and Commencement of Leave.

- (a) Subject of subclauses (3) and (6) hereof, the period of maternity leave shall be for an unbroken period of from 12 to 52 weeks and shall include a period of six weeks' compulsory leave to be taken immediately following confinement.
- (b) An employee shall, not less than 10 weeks prior to the presumed date of confinement, give notice in writing to her employer stating the presumed date of confinement.
- (c) An employee shall give not less than four weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave, stating the period of leave to be taken.
- (d) An employer by not less than 14 days' notice in writing to the employee may require her to commence maternity leave at any time within the six weeks immediately prior to her presumed date of confinement.
- (e) An employee shall not be in breach of this order as a consequence of failure to give the stipulated period of notice in accordance with paragraph (c) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

(3) Transfer to a Safe-Job. Where in the opinion of a duly qualified medical practitioner, illness or risks arising out of the pregnancy of hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

<p>If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to take leave for such period as is certified necessary by a duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (7), (8), (9) and (10) hereof.</p> <p>(4) Variation of Period of Maternity Leave.</p> <p>(a) Provided the addition does not extend the maternity leave beyond 52 weeks, the period may be lengthened once only, save with the agreement of the employer, by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened.</p> <p>(b) The period of leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.</p> <p>(5) Cancellation of Maternity Leave.</p> <p>(a) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.</p> <p>(b) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.</p> <p>(6) Special Maternity Leave and Sick Leave.</p> <p>(a) Where a pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then -</p> <p>(i) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, or</p> <p>(ii) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which</p>	
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<p>she is then entitled and which a duly qualified medical practitioner certifies as necessary before her return to work.</p> <p>(b) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed 52 weeks.</p> <p>(c) For the purposes of subclauses (7), (8) and (9) hereof, maternity leave shall include special maternity leave,</p> <p>(d) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (3), to the position she held immediately before such transfer.</p> <p>Where such position no longer exists but there are other positions available, for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wages to that of her former position.</p> <p>(7) <b>Maternity Leave and Other Leave Entitlements:</b></p> <p>Provided the aggregate of leave including leave taken pursuant to subclauses (3) and (6) hereof does not exceed 52 weeks:</p> <p>(a) An employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is then entitled.</p> <p>(b) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.</p> <p>(8) <b>Effect of Maternity Leave on Employment:</b></p> <p>Notwithstanding any award, or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in</p>	
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<p>calculating the period of service for any purposes of the award.</p> <p>(9) Termination of Employment.</p> <p>(a) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.</p> <p>(b) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.</p> <p>(10) Return to Work After Maternity Leave.</p> <p>(a) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.</p> <p>(b) An employee, upon the expiration of the notice required by paragraph (a) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (3), to the position which she held immediately before such transfer. Where such position no longer exists but there are other positions available for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.</p> <p>(11) Replacement Employees.</p> <p>(a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.</p> <p>(b) Before an employer engages a replacement employee under this subclause, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.</p> <p>(c) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the</p>	
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<p>employee who is being replaced.</p> <p>(d) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.</p> <p>(e) A replacement employee shall not be entitled to any of the rights conferred by this clause except where her employment continues beyond the 12 months' qualifying period.</p>	
	<p>Insert the following as a heading before clause 26 'Right of Entry and Inspection of Records.</p> <p>PART 6 – OTHER</p>
<p style="text-align: center;"><u>19. - RECORDS</u></p> <p>(1) In addition to the requirements of the Industrial Relations (General) Regulations 1997, each employer shall keep a record, on a separate page for each employee, from which can be readily ascertained the following:</p> <p>(a) the name of each employee and his/her classification;</p> <p>(b) each day worked, the hours worked each day, including time of starting and finishing work each day, overtime hours worked and meal breaks taken;</p> <p>(c) the gross amount of ordinary wages, overtime wages, special rates and specific allowances paid each week;</p> <p>(d) the amount of each deduction and the nature thereof;</p> <p>(e) the net amount of wages and allowances paid each week;</p> <p>(f) any relevant records which detail taxation deductions and remittances to the Australian Taxation Office, including those payments made as PAYE tax whether under a Group Employer's Scheme or not;</p> <p>(g) where an employer is required to make payments to the Construction Industry Long Service Leave Board, a certificate or other documentation from the Board which will confirm the employer's registration, the date of the last payment, and the period for which that payment applies;</p> <p>(h) the employer's and the employee's Occupational Superannuation Scheme number and the contribution returns by the employer to the Scheme on behalf of the employee, where such benefit applies; and</p> <p>(2) In addition, the employer shall record the</p>	<p style="text-align: center;"><u>26. - RIGHT OF ENTRY AND INSPECTION OF RECORDS</u></p> <p>Conditions regarding the right of entry by authorised representatives of the union for the purpose of inspection of records are dealt with in Part II of Division 2G 'Right of Entry and Inspection by authorised representatives' of the <i>Industrial Relations Act 1979</i> (WA).</p>

<p>location of the job if it is outside the Perth Metropolitan area.</p> <p>(3) The employer shall provide evidence of the employer's current Workers Compensation Policy or other satisfactory proof of insurance such as a renewal certificate.</p> <p>(4) Subject to subclause (6) of this clause, all records and documentation referred to in subclauses (1), (2) and (3), or copies thereof, shall be available for inspection by a duly accredited official under the rules of an organisation of employees bound by this Award during the usual office hours, at the employer's office or other convenient place. If desired, the official may take extracts from the records and documentation.</p> <p>Before exercising the power of inspection, reasonable notice of not less than 24 hours of the intention to inspect the records must be given to the employer by the union or duly accredited union official.</p> <p>(5) If the secretary of the union reasonably suspects that a breach of the award has occurred, copies of the appropriate records may, by agreement, be provided to the official for retention, or sent to the union office within seven days of notification of the suspected breach.</p> <p>(6) The employer may refuse the representative access to the records if the employer:</p> <p>(a) is of the opinion that access to the records by a duly accredited official of the organisation of employees would infringe the privacy of persons who are not members of the union;</p> <p>(b) undertakes to produce the records to an Industrial Inspector within 48 hours of being notified of the requirements to inspect by the Union official; and</p> <p>(c) complies with the undertaking to produce the records to an Industrial Inspector.</p>	
<p><u>21. - REPRESENTATIVE INTERVIEWING EMPLOYEES</u></p> <p>Consistent with the terms of the Labour Relations Legislation Amendment Act 1997 and S.23(3)(c)(iii) of the Industrial Relations Act a representative of the Union shall not exercise the rights under this clause with respect to entering any part of the premises of the employer unless the employer is the employer, or former employer of a member of the Union.</p> <p>(1) The Secretary or any authorised officer of the union or association shall be allowed free access to any job or shop at any time during the meal period and, with the consent of the employer or his/her foreperson at any other time, to interview any of the employees if he/she desires to do so.</p>	<p><u>CLAUSE DELETED</u></p>

<p>(2) The Secretary or any authorised representative of the union or association shall have the right to visit and inspect any factory or works or any part thereof during the time that work is being carried on outside the ordinary working hours and to interview employees therein.</p>	
<p><u>20. - POSTING COPY OF AWARD AND UNION NOTICES</u></p> <p>(1) No employer shall prevent an official of the employees' union from posting a copy of this award, or any union notice, not exceeding fourteen inches by nine inches in a suitable place on any job.</p> <p>(2) Liberty to apply to amend this clause is reserved in the event of any objectionable notice being posted.</p>	<p><u>27. - POSTING COPY OF AWARD AND UNION NOTICES</u></p> <p>No employer shall prevent an official of the employees' union from posting a copy of this award, or any union notice, not exceeding 36 cm by 23cm in a suitable place on any job.</p>
<p><u>26. - GRIEVANCE AND DISPUTES PROCEDURE</u></p> <p>All parties (employers, employees and the Union – including all of its officers and officials) accept and provide a commitment to abide by the following to prevent dispute:</p> <p>(1) An employee (or shop steward) shall immediately refer any grievance, or other matter which may lead to a dispute, to the foreperson or immediate supervisor.</p> <p>(2) If the grievance, or other such matter likely to lead to dispute, is not resolved following the procedures outlined in subclause (1), it shall be immediately referred to the appropriate officer nominated by the employer to deal with such matters.</p> <p>(3) If any grievance, or other such matter is not resolved through the procedures outlined in subclause (2) it shall be immediately referred to the appropriate full- time official of the Union.</p> <p>(4) The aforementioned Union official shall take all steps necessary to resolve the matter and the Union official and the Union, its officers and members, shall, at all times, act in accordance with the rules of the Union and the provisions of the Industrial Relations Act, 1979.</p> <p>(5) If any grievance or other matter is not resolved through the procedures outlined in subclauses (3) and (4) it shall be immediately referred to the Commission for determination.</p> <p>(6) Nothing shall prevent any party from immediately referring any grievance, or other such matter which is likely to lead to a dispute, to the Commission.</p> <p>(7) There shall be no bans, limitations or any other form of industrial action and normal uninterrupted work shall continue at the direction of the employer whilst any matters are processed through this Grievance and Disputes Procedure.</p>	<p>RENUMBERED AND RENAMED:</p> <p><u>28. - DISPUTE RESOLUTION PROCEDURE</u></p>
<p><u>29. - INTRODUCTION OF CHANGE</u></p>	<p><u>NO VARIATIONS</u></p>

<p>(1) Where an employer has made a definite decision to introduce major changes in production, programme, organisation, structure or technology that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and their union or unions.</p> <p>(2) The employer shall discuss with its employees affected and their union, the introduction of the changes referred to in subclause (1) hereof, the effects the changes are likely to have on employees, measures to avert or mitigate the adverse effects of such changes on employees and shall give prompt consideration to matters raised by the employees and their union in relation to the changes.</p> <p>(3) For the purposes of such discussion, the employer shall provide in writing to the employees concerned and their union, all relevant information about the changes including the nature of the changes proposed; the expected effects of the changes on employees and any other matters likely to affect employees provided that any employer shall not be required to disclose confidential information the disclosure of which would be inimical to the employer's interests.</p> <p>(4) In the event of disagreement over the proposed changes the parties shall consult to resolve the problematic issue(s) and work shall continue normally while the matter is discussed.</p>			
<p style="text-align: center;"><u>30. - REDUNDANCY</u></p> <p>(1) Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone and this is not due to the ordinary and customary turnover of labour and that decision may lead to termination of employment, the employer shall hold discussions with the employee directly affected and with his/her union.</p> <p>(2) Transfer to Lower Paid Duties:  Where an employee is transferred to lower paid duties for reasons set out in subclause (1) hereof the e same period of notice of transfer as he/she would have been entitled to if his/her employment had been terminated, and the employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former ordinary time rate of pay and the new lower ordinary time rates for the number of weeks of notice still owing.</p> <p>(3) Severance Pay:  In addition to the period of notice prescribed for ordinary termination in Clause 8. – Contract of Service, and subject to further order of the Commission, an employee whose employment is terminated for se (1) hereof shall be entitled</p>	<p style="text-align: center;"><u>30. - REDUNDANCY</u></p> <p>(1) Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone and this is not due to the ordinary and customary turnover of labour and that decision may lead to termination of employment, the employer shall hold discussions with the employee directly affected and with their union.</p> <p>(2) Transfer to Lower Paid Duties:  Where an employee is transferred to lower paid duties for reasons set out in subclause (1) hereof the employee shall be entitled to the same period of notice of transfer as they would have been entitled to if their employment had been terminated, and the employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former ordinary time rate of pay and the new lower ordinary time rates for the number of weeks of notice still owing.</p> <p>(3) Severance Pay:  In addition to the period of notice prescribed for ordinary termination in Clause 7. – Termination of Employment, and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in subclause (1) hereof shall be entitled to the following minimum amount of severance pay in respect of a continuous period of service.</p> <table style="width: 100%; border: none;"> <tr> <td style="text-align: right; width: 50%;">Period of Continuous Service</td> <td style="text-align: left; width: 50%;">Severance Pay</td> </tr> </table>	Period of Continuous Service	Severance Pay
Period of Continuous Service	Severance Pay		

to the following minimum amount of severance pay in respect of a continuous period of service.		Weeks
Period of Continuous Service	Severance Pay Weeks	
1 year or less	Nil	1 year or less Nil
1 year and up to the completion of 2 years	4	1 year and up to the completion of 2 years 4
2 years and up to the completion of 3 years	6	2 years and up to the completion of 3 years 6
3 years and up to the completion of 4 years	7	3 years 7
4 years and over	8	3 years and up to the completion of 4 years 7
		4 years 8
		4 years and less than 5 years 8
		5 years and less than 6 years 10
		6 years and less than 7 years 11
		7 years and less than 8 years 13
		8 years and less than 9 years 14
		9 years and less than 10 years 16
		10 years and over 12
(4) Employee Leaving During Notice	An employee whose employment is terminated for reasons set out in subclause (1) hereof may terminate his/her employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had he/she remained with the employer until the expiry of such notice. Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.	(4) Employee Leaving During Notice:  An employee whose employment is terminated for reasons set out in subclause (1) hereof may terminate their employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had they remained with the employer until the expiry of such notice. Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.
(5) Alternative Employment:	An employer, in a particular redundancy case, may make application to the Western Australian Industrial Relations Commission to have the general severance pay prescription varied if the employer obtains acceptable alternative employment for an employee.	(5) Alternative Employment:  An employer, in a particular redundancy case, may make an application to the Western Australian Industrial Relations Commission to have the general severance pay prescription varied if the employer obtains acceptable alternative employment for an employee. This subclause does not apply in circumstances involving a transfer of business as set out in clause 4.7 of the Termination, Change and Redundancy General Order [2005] WAIRC 01715.
(6) Time Off During Notice Period:	(a) During the period of notice of termination given by the employer an employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.  (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or he/she shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.	(6) Time Off During Notice Period:  (a) During the period of notice of termination given by the employer an employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.  (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or they shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.
(7) Subject to further order of the Western Australian Industrial Relations Commission where an employee who is terminated receives a benefit from a superannuation scheme, he/she shall only receive under subclause (3) hereof the difference between the severance pay specified in that subclause and the amount of the superannuation benefit he/she receives which is attributable to employer contributions only.	(7) Employees with Less than One Year's Service:  This clause shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.  Note: Clause 4.2 – Consultation Before Termination of the Termination, Change and Redundancy General Order applies to all employees regardless of their length of continuous service.	

<p>If the superannuation benefit is greater than the amount due under subclause (3) hereof then he/she shall receive no payment under that subclause.</p> <p>(8) Employees with Less than One Year's Service:</p> <p>This clause shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable by the employees of suitable alternative employment.</p> <p>(9) Employees Exempted:</p> <p>This clause shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty, or in the case of casual employees, apprentices, or employees engaged for a specific period of time or for a specific task or tasks.</p> <p>Incapacity to Pay:</p> <p>An employer, in a particular redundancy case, may make application to the Western Australian Industrial Relations Commission (to have the general severance pay prescription varied) on the basis of the employer's incapacity to pay.</p>	<p>(8) Employees Exempted:</p> <p>This clause shall not apply where employment is terminated as a consequence of conduct that justifies summary dismissal, or in the case of casual employees, apprentices, or employees engaged for a specific period of time or for a specific task or tasks.</p> <p>(9) Incapacity to Pay:</p> <p>An employer, in a particular redundancy case, may make an application to the Western Australian Industrial Relations Commission to have the general severance pay prescription varied on the basis of the employer's incapacity to pay.</p>
<p><u>22. - BOARD OF REFERENCE</u></p> <p>(1) The Commission hereby appoints, for the purposes of this award, a Board of Reference consisting of a Chairman and two other members who shall be appointed pursuant to Regulation 16 of the Industrial Commission Regulations, 1980.</p> <p>(2) The Board of Reference is hereby assigned the function of allowing, approving, fixing, determining or dealing with any matter of difference between the parties in relation to any matter which, under this award, may be allowed, approved, fixed, determined or dealt with by a Board of Reference.</p>	<p><u>CLAUSE DELETED</u></p>
<p><u>31. - ENTERPRISE AGREEMENT</u></p> <p>(1) (a) Where an agreement is reached between the employer, the employees and the union concerning the working arrangements to be followed within the respondent employer's factory, workshop, department or section thereof the provisions of this award may be varied in any manner as agreed.</p> <p>(b) The union will not unreasonably withhold agreement to the alternative working arrangements.</p> <p>(2) (a) An enterprise agreement shall not act to increase the ordinary hours of work beyond an average of 38 hours per week; reduce the quantum of annual leave, sick leave, maternity</p>	<p><u>CLAUSE DELETED</u></p>

<p>leave, public holidays and long service leave.</p> <p>(b) Where any agreement concluded under subclause (1) hereof affects award conditions the parties shall jointly support such agreement before the Western Australian Industrial Relations Commission for registration as an appendix to the award.</p> <p>(3) The following procedures shall apply in the formation of any agreement negotiated under the terms of this clause:</p> <p>(a) The proposed variations for each workplace or part thereof shall be explained to the employees concerned and written notification of proposals will be placed on the notice board at the worksite and sent to the union.</p> <p>(b) The employer and affected employees will then consult with each other on the changes with a view to reaching agreement.</p> <p>The union will be notified in writing of the proposed variations prior to any change taking place.</p>	
<p><u>APPENDIX - RESOLUTION OF DISPUTES REQUIREMENTS</u></p> <p>(1) This Appendix is inserted into the award/industrial agreement as a result of legislation which came into effect on 16 January 1996 (Industrial Relations Legislation Amendment and Repeal Act 1995) and further varied by legislation which came into effect on 23 May 1997 (Labour Relations Legislation Amendment Act 1997).</p> <p>(2) Any dispute or grievance procedure in this award/industrial agreement shall also apply to any questions, disputes or difficulties which may arise under it.</p> <p>With effect from 22 November 1997 the dispute or grievance procedures in this award/industrial agreement is hereby varied to include the requirement that persons involved in the question, dispute or difficulty will confer among themselves and make reasonable attempts to resolve questions, disputes or taking those matters to the Commission.</p>	<p><u>APPENDIX DELETED</u></p>
<p><u>SCHEDULE 1 - PARTIES TO THE AWARD</u></p> <p>The following organisation is a party to this award:</p> <p>The Construction, Forestry, Mining and Energy Union of Workers</p>	<p><u>NO VARIATIONS</u></p>
<p><u>SCHEDULE 2 - RESPONDENTS</u></p> <p>Anderson Industries Pty. Ltd., 3 Roydhouse Street, Subiaco.</p> <p>E.D.U. Concrete Co., 97 Guildford Road, Bassendean.</p>	<p><u>SCHEDULE 2 - RESPONDENTS</u></p> <p>Anderson Industries Pty. Ltd. (now deregistered).</p> <p>E.D.U. Concrete Co., 97 Guildford Road, Bassendean.</p> <p>Formica Ceilings Pty Ltd (defunct state company).</p>

Formica Ceilings, 195 Welshpool Road, Queens Park.	Geraldton Building Co. Pty. Ltd. (now deregistered).
Geraldton Building Co. Pty. Ltd., Ocean Street, Geraldton.	H.B. Brady Co. Pty Ltd. (now deregistered).
H.B. Brady Co. Pty Ltd., Bayswater Henderson Modelling Workers,	Henderson Modelling Workers, Bourke Street, Bunbury.
Bourke Street, Bunbury.	Wallis Enterprises Pty Ltd formerly known as Lite-Ceil Pty Ltd t/as Lite-Ceil Plaster Works, McCoy Street, Melville.
Lite-Ceil Modelling Works, McCoy Street, Melville.	Mid-ceil Moulding Supplies, 19 Wildon Street, Bellevue.
Midceil Moulding Supply, 19 Wildon Street, Bellevue	Fording Bridge Nominees Pty Ltd formerly known as Modern Ceilings Pty Ltd t/a Modern Ceilings, Victoria Road, Malaga.
Modern Ceilings, Victoria Road, Malaga.	New Cement Co.Pty Ltd (now deregistered).
New Cement Co., 78 Goodwood Parade, Rivervale.	Placor Plaster Products, 288 Gnangara Road, Landsdale.
Placor Plaster Products, 288 Gnangara Road, Landsdale.	Plasterceil Pty Ltd t/as Plasterceil Modelling Workers (now deregistered).
Plasterceil Modelling Workers, Beechboro Road, Bayswater.	Plasterline Industries, 16 King Edward Road, Osborne Park.
Plasterline Industries, 16 King Edward Road, Osborne Park.	R. Galvin (decd).
R. Galvin, Sundercombe Street, Osborne Park.	Regal Cement Manufacturers Pty Ltd t/as Regal Cement Works, 22 Sussex Street, Maylands.
Regal Cement Works, 22 Sussex Street, Maylands.	Savage Plaster Pty Ltd (now deregistered).
Savage Plaster Pty Ltd, 10 Collingwood Street, Osborne Park.	Superb Ceilings Pty Ltd, 19 Winchester Road, Spearwood. Swan Concrete Works Pty Ltd (now deregistered).
Superb Ceilings, 19 Winchester Road, Spearwood.	Hydraplant Equipment Pty Ltd previously known as Welshpool Concrete Products Pty Ltd (now deregistered).
Swan Concrete Works, 22 Hines Road, Hilton Park.	
Welshpool Concrete Products , 21 Kew Street, Welshpool.	

## AWARDS/AGREEMENTS AND ORDERS—Interpretation of—

2025 WAIRC 00244

### INTERPRETATION OF THE DEPARTMENT OF JUSTICE PRISON OFFICERS' INDUSTRIAL AGREEMENT 2022

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**CITATION** : 2025 WAIRC 00244  
**CORAM** : COMMISSIONER T B WALKINGTON  
**HEARD** : WEDNESDAY, 25 SEPTEMBER 2024  
**DELIVERED** : MONDAY, 14 APRIL 2025  
**FILE NO.** : APPL 1 OF 2024  
**BETWEEN** : MINISTER FOR CORRECTIVE SERVICES

Applicant

AND

WESTERN AUSTRALIAN PRISON OFFICERS' UNION OF WORKERS

Respondent

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**CatchWords** : Agreement - Interpretation of - Relevant principles to be applied - Industrial Relations Act 1979 (WA) s 46  
**Legislation** : *Prisons Act 1981 (WA) ss 36 and 37;*  
*Industrial Relations Act 1979 (WA) s46.*  
**Result** : Declaration issued

**Representation:**

Counsel:

Applicant : Mr M McIlwaine  
 Respondent : Mr D Stojanoski

**Case(s) referred to in reasons:**

*City of Wanneroo v Holmes* [1989] FCA 369; (1989) 30 IR 36  
*Director General, Department of Education v United Voice WA* [2013] WASCA 287  
*Fedec v The Minister for Corrective Services* [2017] WAIRC 00828; 97 WAIG 1595  
*Re Harrison; Ex parte Hames* [2015] WASC 247  
*Workpac v Skene* [2018] FCAFC 131

*Reasons for Decision***Background**

- 1 The Minister for Corrective Services (**Minister**) applies to the Commission for a declaration of the true meaning of clause 28 of the *Department of Justice Prison Officers' Industrial Agreement 2022 (Agreement)*.
- 2 The question submitted by the Minister is:
 

*Does Clause 28 of the Industrial Agreement, read in its entirety, require the Applicant to provide Officers a 12 hour break where they have worked overtime following a 12 hour shift? (the Interpretation Question).*
- 3 The Western Australian Prison Officers' Union of Worker (**Union**) submits the answer to this is in the affirmative, and the Minister argues the answer is 'no'.
- 4 The Prison Officers employed by the Minister, engaged on a full-time basis, work in rostered patterns of either 8, 10 or 12 hours shifts.
- 5 Clause 31.7 states:
 

Rosters shall provide for at least eight hours between the ceasing of one shift and the commencement of the next shift except in the case of Officers working 12 hour shifts where the break shall be 12 hours.
- 6 There is a requirement for all Officers working full-time, except those undergoing Entry Level Training Program (ELTP), to work reasonable overtime in addition to their rostered ordinary hours (see clause 26.3).
- 7 The requirement to work overtime in addition to rostered ordinary hours is subject to clause 28 which sets out minimum time off duty when overtime is worked:

**28. Minimum Time off Duty when Overtime is Worked**

- 28.1 *Subject to subclause 28.2, an Officer required to work a 12 hour shift shall be entitled to 12 hours off duty between successive shifts.*
- 28.2 *In an extreme emergency, an Officer who works a 12 hour shift may be required to perform 2 hours Overtime, requiring at least 10 hours off duty before returning to work.*
- 28.3 *All other Officers required to perform Overtime shall be entitled to have at least ten hours off duty between the hours of successive rostered shifts.*
- 28.4 (a) *An Officer who has not had at least 10 hours off duty before their next rostered shift is due to commence shall, without loss of pay for ordinary hours of work for which they are absent, not be required to commence the shift until the Officer has had 10 hours off duty.*  
 (b) *If the Officer resumes or continues work on the instruction of the Employer without 10 successive hours off duty, the Officer shall be granted time off in lieu for the hours worked until the Officer has had 10 consecutive hours off duty without loss of pay for ordinary hours of work for which they are absent.*
- 28.5 *Subclauses 28.2 and 28.4 are to be read in conjunction with the Department's Fatigue Management Guidelines, as amended from time to time.*

- 8 The Minister says that Officers rostered for successive twelve hour shifts who choose to work overtime between their shifts are required to have a ten hour break before returning to work. The Union asserts that the minimum break must be twelve hours.

**The Minister's Submissions**

- 9 The Minister submits that clause 28.2 of the Agreement does not set out the only circumstance in which a break of less than 12 hours is permitted for an Officer rostered for successive 12 hours shifts and works overtime.
- 10 The Minister says that clause 28.2 properly understood provides for the only circumstance where the Minister can *compel* an Officer, working a 12-hour shift pattern, to work overtime if the working of the overtime will result in the Officer having less than a 12 hour break off duty between successive shifts.
- 11 The Minister says that clause 28.2 does not restrict the amount of overtime (subject to clause 29.4 of the Agreement) an Officer, working a 12-hour shift pattern, can *voluntarily* work if authorised to work overtime.

- 12 The Minister says that it would be an overly narrow interpretation of clause 28.2 of the Agreement to say that it provides that an Officer working consecutive 12 hour shifts can only work overtime in circumstances of an 'extreme emergency', and then, only a maximum of two hours.
- 13 The Minister submits that the absence of any express restriction on overtime following a 12 hour shift in clause 29 – Restrictions on Overtime indicates that the parties did not intend clause 28.2 as providing a strict limit on overtime that can be worked
- 14 The Minister contends that the parties intended that Officers working a 12 hour shift pattern would be required to have a 10 hour break before returning to work because 28.4(a) refers only to a requirement for a 10 hour break. That is, Officers who have completed a 12 hour shift, and choose to do overtime, are then only entitled to a 10 hour break without loss of pay, not a 12 hour break without loss of pay.
- 15 The applicant argues that due to clause 28.4 only referring to a 10 hour break, it points to there being no intention by the parties to provide a 12 hour break after an Officer chooses to do overtime.

#### **The Union's submissions**

- 16 The Union argues that the plain meaning embodied in the heading of the clause: 'Minimum time off duty when overtime is worked' is self-evident and in accordance with principles of construction, that it was the objectively ascertained intention of the parties, as expressed in the heading and a plain reading of clauses 28.1, 28.2 and 28.3, that a reasonable person would understand the provision to deal with how much time a worker gets off in between shifts when they did overtime.
- 17 The Union also submits that 'all other Officers' referred to in clause 28.3 means 'not those Officers that worked a 12 hour shift', and argues that any other meaning would be to strain for meaning that is not there.
- 18 The Union submits that the Minister seeks the Commission to declare an overly complicated construction to the clause, reading into it something that is not there. It argues that no reasonable person would read the clause in the way the applicant would seek the clause be read.
- 19 The Union also refers to the final provision of clause 28 which states that:
 

Subclauses 28.2 and 28.4 are to be read in conjunction with the Department's Fatigue Management Guidelines, as amended from time to time.
- 20 The Union argues that it is apparent that the intention of the parties as embodied in the words used in the Agreement at this part is that the purpose of the clause is to ensure that an Officer's fatigue is managed properly and that an Officer have the required amount of break to recuperate, otherwise it could, for example, be a safety issue, and would go against the '*good government, good order, and security of the prison*' pursuant to the *Prisons Act 1981* (WA) ss 36 and 37, and an Officer's '*responsibility to maintain the security of the prison where he is carrying out his duties*' pursuant to s12(b) of the same Act. This intention, the respondent argues, results in an interpretation of the clause providing that an Officer only be *required* to do no more than two hours overtime due to an 'extreme emergency'.
- 21 At the hearing, the Union agreed with the Minister's construction that clause 28.2 does not place a restriction on clause 28.1, and that Officers may voluntarily complete overtime beyond a 12-hour shift. They argued however that regardless of how much overtime has been done and whether the Officer voluntarily undertakes overtime, if the Officers have completed a 12 hour shift they *must* be given a 12 hour break, and, *except* in the case of an 'extreme emergency', the Officer must receive a 12 hour break.
- 22 The Union submits, by way of example, that Officers who work overtime for three hours between successive shifts and take a 12 hour break then commence their successive shift three hours late after the due time, will be paid for the full shift, despite only working nine hours of the rostered shift, because the payment arrangements provide for annualised salaries.

#### **Principles to be applied when interpreting an Industrial Instrument**

- 23 The parties agree that the relevant principles in interpreting industrial agreements are those set out in the principles were also set out in *Re Harrison; Ex parte Hames* [2015] WASC 247, where principles of contractual interpretation were held to apply to the interpretation of industrial agreements. In that case, Beech J outlined six principles to apply to the interpretation of industrial instruments, in a matter regarding a nurses' industrial agreement. He said: [50]
  - (1) the primary duty of the court in construing an instrument is to endeavour to discover the intention of the parties as embodied in the words they have used in the instrument;
  - (2) it is the objectively ascertained intention of the parties, as it is expressed in the instrument, that matters; not the parties' subjective intentions. The meaning of the terms of an instrument is to be determined by what a reasonable person would have understood the terms to mean;
  - (3) the objectively ascertained purpose and objective of the transaction that is the subject of a commercial instrument may be taken into account in construing that instrument. This may invite attention to the genesis of the transaction, its background and context;
  - (4) the apparent purpose or object of the relevant transaction can be inferred from the express and implied terms of the instrument, and from any admissible evidence of surrounding circumstances;
  - (5) an instrument should be construed so as to avoid it making commercial nonsense or giving rise to commercial inconvenience. However, it must be borne in mind that business common sense may be a topic on which minds may differ; and
  - (6) an instrument should be construed as a whole. A construction that makes the various parts of an instrument harmonious is preferable. If possible, each part of an instrument should be construed so as to have some

operation (*Electricity Generation Corporation v Woodside Energy Ltd* [2014] HCA 7; (2014) 251 CLR 640 [35] (French CJ, Hayne, Crennan & Kiefel JJ); *Kidd v The State of Western Australia* [2014] WASC 99 [122]; *Red Hill Iron Ltd v API Management Pty Ltd* [2012] WASC 323 [106] - [112]; *Primewest (Mandurah) Pty Ltd v Ryom Pty Ltd* [2014] WASCA 28 [55] (Martin CJ, Pullin & Murphy JJA agreeing)).

24 The respondent submits that the principles in *Fedec v The Minister for Corrective Services* [2017] WAIRC 00828; 97 WAIG 1595, are also relevant, as stated by Scott CC and Smith AP said [21]:

- (a) Industrial agreements are usually not drafted with careful attention to form by persons who are experienced in drafting documents that have legal effect.
- (b) The task of construction of an industrial agreement is to be approached in a way that allows for a generous construction: *City of Wanneroo v Holmes* [1989] FCA 369; (1989) 30 IR 362.
- (c) Industrial agreements are made for industries in light of the customs and working conditions of each industry and must not be interpreted in a vacuum divorced from industrial realities: *George A Bond & Co Ltd (in liq) v McKenzie* [1929] AR (NSW) 498; *City of Wanneroo v Holmes* (378 - 379) (French J).

25 In *City of Wanneroo v Holmes* [1989] FCA 369; (1989) 30 IR 36, the respondent refers the Commission to [83]:

The words of a clause in a written agreement are to be given the most appropriate meaning which they can legitimately bear. A court must have regard to all of the provisions of the agreement with a view to achieving harmony among them. See *Australian Broadcasting Commission v Australasian Performing Right Association Ltd [1973] HCA 36; 129 CLR 99*. 109-110 (Gibbs J). These propositions are applicable to instruments generally, subject to any particular rules of construction which have been developed in relation to a particular kind of provision or instrument.

26 The respondent also points to the observations of Buss JA in *Director General, Department of Education v United Voice WA* [2013] WASCA 287, applying the court's observations in *Kucks v CSR Ltd* [1996] IRCA 166; (1996) 66 IR 182, about interpreting industrial instruments, citing Madgwick J in that case:

It is trite that narrow or pedantic approaches to the interpretation of an award are misplaced. The search is for the meaning intended by the framer(s) of the document, bearing in mind that such framer(s) were likely of a practical bent of mind: they may well have been more concerned with expressing an intention in ways likely to have been understood in the context of the relevant industry and industrial relations environment than with legal niceties or jargon. Thus, for example, it is justifiable to read the award to give effect to its evidence purposes, having regard to such context, despite mere inconsistencies or infelicities of expression which might tend to some other reading. [82]

27 In *Workpac v Skene* [2018] FCAFC 131 the Federal court summarised the principles of interpretation also [197]:

The starting point for interpretation of an enterprise agreement is the ordinary meaning of the words, read as a whole and in context: *City of Wanneroo v Holmes* (1989) 30 IR 362 at 378 (French J). The interpretation "... turns on the language of the particular agreement, understood in the light of its industrial context and purpose ...": *Ancor Ltd v Construction, Forestry, Mining and Energy Union (2005) 222 CLR 241* at [2] (Gleeson CJ and McHugh J). The words are not to be interpreted in a vacuum divorced from industrial realities (*Holmes* at 378); rather, industrial agreements are made for various industries in the light of the customs and working conditions of each, and they are frequently couched in terms intelligible to the parties but without the careful attention to form and draftsmanship that one expects to find in an Act of Parliament (*Holmes* at 378-9, citing *Geo A Bond & Co Ltd (in liq) v McKenzie [1929] AR(NSW) 498* at 503 (Street J)). To similar effect, it has been said that the framers of such documents were likely of a "practical bent of mind" and may well have been more concerned with expressing an intention in a way likely to be understood in the relevant industry rather than with legal niceties and jargon, so that a purposive approach to interpretation is appropriate and a narrow or pedantic approach is misplaced: see *Kucks v CSR Ltd (1996) 66 IR 182* at 184 (Madgwick J); *Shop Distributive and Allied Employees' Association v Woolworths SA Pty Ltd [2011] FCAFC 67* at [16] (Marshall, Tracey and Flick JJ); *Ancor* at [96] (Kirby J).

28 I adopt these principles in this matter.

## Consideration

### The Text of the Agreement

29 Clause 26 of the Agreement requires Officers to work overtime:

26. Requirement to Perform Overtime
- 26.1 Subject to clause 28 – Minimum Time off Duty when Overtime is Worked, all Officers, other than those employed on a part time basis or undertaking ELTP, are required to work reasonable Overtime in addition to their ordinary hours of work.
- 26.2 Officers employed on a part time basis or undertaking ELTP shall not be required to perform Overtime but may volunteer to perform Overtime.
- 26.3 Officers required to perform Overtime may be given advance or immediate notice to report for, return to, or remain on duty to perform Overtime.
- 26.4 If an Officer of the same Classification as the role to be filled in Overtime is not available, then any available Officer may be required to perform the Overtime.
- 26.5 An Officer required to return to duty to perform Overtime shall be paid for a minimum period of three hours Overtime.

- 26.6 Where an Officer is required to return to duty to perform Overtime more than once, each duty period will stand alone in respect to the application of the minimum payment of three hours; except where the second or subsequent return to duty occurs within three hours of commencement of the most recent return to duty.
- 26.7 Neither the Union nor an Officer shall in any way whether directly or indirectly be a party to, or be concerned with, any ban, limitation, or restriction on the working of Overtime in accordance with this Agreement.
- 30 Clearly the requirement to work overtime is subject to Clause 28 – Minimum Time Off Duty when Overtime is Worked:
28. Minimum Time off Duty when Overtime is Worked
- 28.1 Subject to subclause 28.2, an Officer required to work a 12 hour shift shall be entitled to 12 hours off duty between successive shifts.
- 28.2 In an extreme emergency, an Officer who works a 12 hour shift may be required to perform 2 hours Overtime, requiring at least 10 hours off duty before returning to work.
- 28.3 All other Officers required to perform Overtime shall be entitled to have at least ten hours off duty between the hours of successive rostered shifts.
- 28.4 (a) An Officer who has not had at least 10 hours off duty before their next rostered shift is due to commence shall, without loss of pay for ordinary hours of work for which they are absent, not be required to commence the shift until the Officer has had 10 hours off duty.
- (b) If the Officer resumes or continues work on the instruction of the Employer without 10 successive hours off duty, the Officer shall be granted time off in lieu for the hours worked until the Officer has had 10 consecutive hours off duty without loss of pay for ordinary hours of work for which they are absent.
- 28.5 Subclauses 28.2 and 28.4 are to be read in conjunction with the Department’s Fatigue Management Guidelines, as amended from time to time.
- 31 There are restrictions on overtime and these are set out in in clause 29, and sub-clause 29.4 provides that :
- No Officer, other than an Officer employed in a Work Camp Classification, shall work more than a total of 16 hours continuous hours except in a Declared Major Emergency or Natural Disaster.
- 32 The Minister submits that it is an overly narrow interpretation of clause 28.2 to say that the only circumstances in which an Officer rostered for 12 hour shifts can work overtime between successive shifts is in circumstances of an “extreme emergency”. The Minister submits that Officers on 12 hours shift rosters can undertake overtime.
- 33 The Union agrees that clause 28.2 does not place a restriction on overtime worked. The Union asserts that clause 28 read as a whole means that Officers working a 12 hour shift roster who work overtime between successive shifts must have a break of 12 hours, except where there is an extreme emergency, and then the required break is 10 hours.
- 34 The Minister and the Union disagree on the effect that working of overtime subsequently has on the requirement for a break and the payment of Officers during subsequent successive shifts. The Minister submits that clause 28.4 preserves the payment of Officers from the commencement of the successive rostered shift where the Officer has a 10 hour break.
- 35 The Minister contends that it would be an industrial absurdity to construe clause 28.1 as providing an Officer recalled for overtime between successive 12 hour shifts with a 12 hour break where there are no provisions similar to clause 28.4(a) to protect the Officer’s ordinary pay, even when the Officer does not work the full hours of their next shift.
- 36 The Minister says that without a similar sub-clause for Officer working 12 hours shifts and requiring a break of twelve hours following overtime worked, they should be required to use leave or not be paid for their absence during the successive shift.
- 37 In contrast, the Union says Officers are entitled to have their ordinary pay protected from the commencement of their rostered successive shift where the Officer has a 12 hour break. The union contends that the Agreement’s annualised salary arrangements effectively protect the Officers’ pay in these circumstances.
- 38 The Union says that the omission of a clause like 28.4 specifically referencing 12 hour shifts is not important, relevant nor informative because the terms of the Agreement prescribe annualised salaries, and therefore the Officer would be paid for their successive rostered shift regardless of when the Officer commenced that shift. That is, they would not have their pay withheld for their absence for part of their rostered shift.
- 39 It is not evident how the annualised salary arrangements preserve an Officer’s entitlement to pay in circumstances where the Officer has a 12 hour break, and therefore commences their successive rostered shift sometime into that shift. The Union’s submissions do not account for an Officer who is absent for part of their rostered shift without paid leave, and consequently works less hours than their rostered hours, but still receive their full pay.
- 40 The Agreement does not specifically provide for the preservation of pay where an Officer is absent for a period of their successive rostered shifts because they have worked overtime and have had a twelve hour break before returning to duty.
- 41 The inclusion of clause 28.4 which provides for the preservation of pay for Officers who have not had ten hours off duty before their next rostered shift indicates that the parties considered it necessary to make this provision to ensure that Officers who undertake overtime are not penalised for being absent for part of their subsequent shift.
- 42 The parties have not made a similar provision for Officers who have not had 12 hours off duty before their next rostered shift.
- 43 The Union’s contention that Officers who return to duty following a break of 12 hours are entitled to have their pay preserved for the period of their absence is not sustainable.
- 44 Given this, there are, then, two possible interpretations:

- a) The parties considered it was not necessary to make such a provision because they did not intend that Officers engaged in 12 hour shift patterns would work any additional hours of overtime between successive shifts, except in an extreme emergency.
- b) Alternatively, the parties intended to require only a 10 hour break regardless of rostered shift length, specifically addressing the preservation of pay to accommodate the required break.

### Industrial Absurdity of Overtime Limitation

- 45 The Minister says that an interpretation that results in Officers working 12 hours shift patterns only undertaking overtime in extreme emergencies is an overly narrow interpretation and results in an industrial absurdity.
- 46 The Union submits that the reference in clause 28.5 to fatigue management policies and guidelines is an important indication of the purpose of the clause prescribing minimum breaks between shifts. Acknowledging the Union submits that Officers on 12 hours shift rosters are able to work overtime between successive shifts, there is no evidence before me on the question of the adequacy, or otherwise, of breaks of 10 hours nor 12 hours. It is not possible to draw an inference that the reference to fatigue management policies and guidelines favours the interpretation advanced by the Union.
- 47 The Agreement restricts overtime in certain circumstances:
- 29.1 Overtime will not be available in the following circumstances:
- (a) after a period of Personal Leave where the prescribed application form and required evidence has not been provided to the nominated authority at the Officer's Headquarters;
  - (b) where an Officer has taken a single day's Annual Leave as a Repay Day under a Repay Agreement but is yet to commit to an alternative work date;
  - (c) when an Officer is undergoing a period of rehabilitation or is subject to a return to work program; or
  - (d) when an Officer as a result of secondment becomes bound by a different award or industrial agreement.
- 29.2 An Officer working a training roster will not be permitted to work Overtime on a day that interrupts their attendance at or active participation on the course.
- 48 Further, Officers in a job share arrangement have limits on the overtime they may undertake.
- 49 If the parties intended that Officers rostered on 12 hour shift patterns were to be denied access to overtime or have limits on the overtime they may access, it would have been consistent with this intention to specify such restrictions in this clause.
- 50 Given there are no restrictions set out in this clause, I find the parties did not intend to preclude Officers on 12 hours shifts from undertaking overtime between successive shifts.
- 51 Applying *Workpac v Skene* [2018] FCAFC 131, and avoiding a narrow and pedantic approach and taking the Agreement as a whole, I find that the Agreement cannot be read to say that the only time overtime can be undertaken by an Officer rostered on 12 hours shifts is in an extreme emergency, and that the limitation is two hours.

### Entitlements and Voluntary Overtime

- 52 Clause 28.1 provides those Officers required to work a 12 hour shift shall be entitlement to 12 hours off duty between successive shifts. Whereas clause 28.3 says "all other Officers" required to perform overtime shall be entitled to have at least 10 hours off duty between successive shift rosters. Both parties agree that "all other Officers" means Officers rostered on 8 hour or 10 hour shift patterns.
- 53 The Union contends that Officers on 12 hours shift pattern must have a break of 12 hours off duty because clause 28.2 is the only circumstance in which the break may be reduced to 10 hours off duty.
- 54 The Minister contends that when an Officer elects to work available overtime, then clause 28.4 of the Agreement applies. That is, an Officer may waive their entitlement set out in clause 28.1 for twelve hours off duty if they elect or choose to work overtime. Where this occurs, an Officer is required to have a 10 hour break before returning to duty and their pay is preserved if this means the Officer returns to duty after the commencement of their subsequent shift.
- 55 The Minister submits that clause 28.2 provides for a limited circumstance in which an Officer on a 12 hour shift pattern may be compelled to work overtime.
- 56 The Minister contends that the omission of a similar clause concerning entitlements to pay for offices working successive 12 hours shifts who undertake overtime that is not compelled by the Minister in an extreme emergency means that clause 28.4 **should be taken** to apply to Officers who work 12 hour shifts. That is, a 10 hour break is required, and if a break of 10 hours is not taken, then the Officer has an entitlement to time in lieu.
- 57 Essentially, I understand the Minister's contentions to be that clause 28.1, prescribing an entitlement of a 12 break between shifts for Officers on 12 hours shifts, cannot operate to prevent Officers on 12 hours shifts from undertaking overtime between successive shifts, because that would be an overly narrow interpretation. It is, then, accepted that Officers working 12 hours shifts will voluntarily undertake available overtime between successive shifts, and when this occurs, clause 28.4 applies — and requires a ten hour break between successive shifts.
- 58 The Minister's interpretation is that the words of clause 28 can be construed to mean that the minimum break for Officers rostered on a 12 hour shift pattern is 10 hours where they volunteer to work overtime.
- 59 The use of the term "entitlement" in clauses 28.1 and 28.3 favour the Minister's contentions. An "entitlement" may be waived by the beneficiary, however an employer may not compel the waiver.

- 60 The parties agree that Officers rostered on 12 hours shift patterns can and do undertake overtime in addition to their ordinary rostered hours. The overtime worked may take place in between successive shifts.
- 61 The parties consequently identified the Agreement needed to address the mandatory minimum breaks before returning to duty and the preservation of pay. The Agreement provides that by clauses 28.4(a) and (b), which provide for the entitlement to rostered hours off duty between successive shifts. The prescribed entitlement may be waived in circumstances where an Officer chooses to undertake overtime, provided there is a mandatory 10 hours off duty before returning to duty with preservation of pay for any absence, and where an Officer is instructed to continue or return to duty without a 10 hour break, the Officer is granted time off in lieu.
- 62 Clause 28.1 refers to an ‘entitlement’ to take a 12 hour break between successive shifts. The Minister says this entitlement can be set aside in circumstances where an Officer is compelled to work overtime because there is an extreme emergency in accordance with clause 28.2 and when an Officer volunteers to undertake overtime between successive shifts.
- 63 The Minister says clause 28.1 prescribes an entitlement which an Officer may voluntarily forsake.
- 64 Applying the principles in *Fedec v The Minister for Corrective Services* [2017] WAIRC 00828; 97 WAIG 1595 I find that the construction recognises the Agreement may not have been drafted with careful attention to its form and legal effect, and that I ought to adopt a generous construction in light of the customs and working conditions of prisons as that advanced by the Minister.
- 65 A rigid adherence to clause 28.1, without consideration of other parts of the clause and Agreement, effectively results in an Officer rostered on a 12 hour shift and volunteering to undertake overtime having part of their pay protected or preserved. That is, clause 28.4 preserves their full pay for the successive shift when they return after a 10 hour break, but not at all on return from a 12 hour shift. This is an absurd result.
- 66 I find that the parties did not intend for clause 28.1 and 28.2 to preclude an Officer rostered on 12 hour shift patterns from working overtime on a voluntary basis. Further, in circumstances where Officers on 12 hour shift rosters voluntarily worked overtime, then clause 28.4 applies to require an Officer to have 10 hours off duty without loss of pay.
- 67 The answer to the question posed by the Minister is “no”.

2025 WAIRC 00243

**INTERPRETATION OF THE DEPARTMENT OF JUSTICE PRISON OFFICERS' INDUSTRIAL AGREEMENT 2022**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

MINISTER FOR CORRECTIVE SERVICES

**APPLICANT**

-v-

WESTERN AUSTRALIAN PRISON OFFICERS' UNION OF WORKERS

**RESPONDENT****CORAM** COMMISSIONER T B WALKINGTON**DATE** MONDAY, 14 APRIL 2025**FILE NO.** APPL 1 OF 2024**CITATION NO.** 2025 WAIRC 00243

<b>Result</b>	Declaration issued
<b>Representation</b>	
<b>Applicant</b>	Mr M McIlwaine (of counsel)
<b>Respondent</b>	Mr D Stojanoski (of counsel)

*Declaration*

HAVING heard from Mr McIlwaine on behalf of the applicant and Mr Stojanoski on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979* (WA), hereby declares —

THAT on its true interpretation the overtime provisions in clause 28, titled “Minimum Time off Duty when Overtime is Worked”, of the *Department of Justice Prison Officers’ Industrial Agreement 2022*, do not require the Applicant to provide Officers a 12 hour break where they have voluntarily worked Overtime following a 12 hour shift.

(Sgd.) T B WALKINGTON,  
Commissioner.

[L.S.]

## CANCELLATION OF—Awards/Agreements/Respondents—Under Section 47—

2025 WAIRC 00258

### TRANSPORT WORKERS (MOBILE FOOD VENDORS) AWARD 1987

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

COMMISSION'S OWN MOTION

**APPLICANT**

-v-

(NOT APPLICABLE)

**RESPONDENT**

**CORAM**

SENIOR COMMISSIONER R COSENTINO

**DATE**

TUESDAY, 29 APRIL 2025

**FILE NO/S**

APPL 7 OF 2025

**CITATION NO.**

2025 WAIRC 00258

**Result**

Award cancelled

*Order*

WHEREAS, the Commission initiated this matter of its own motion, considering there may be no employee to whom the *Transport Workers (Mobile Food Vendors) Award 1987* applies.

AND WHEREAS the Registrar has made such enquiries that the Commission considers are necessary, and the Registrar has reported on the result of those enquiries to the Commission.

AND WHEREAS after receiving the Registrar's report, the Commission caused the Registrar to:

1. Give general notice by publication in the required manner of the intention of the Commission to cancel the *Award*, such notice being published on 25 February 2025; and
2. Serve copies of such notice on:
  - a. UnionsWA;
  - b. The Minister for Industrial Relations;
  - c. The Chamber of Commerce and Industry WA;
  - d. Transport Workers' Union of Australia, Industrial Union of Workers, Western Australia Branch;
  - e. Baking Industry Employers Association of WA; and
  - d. Dongara Bakery.

AND WHEREAS no objections have been received by the Commission to the making of an order cancelling the *Award* within 30 days of the general notice being published.

AND WHEREAS the Commission is of the opinion that there is no employee to whom the *Award* applies.

NOW THEREFORE the Commission pursuant to the powers conferred by s 47 of the *Industrial Relations Act 1979* (WA) hereby orders –

THAT the *Transport Workers (Mobile Food Vendors) Award 1987* is cancelled.

(Sgd.) R COSENTINO,  
Senior Commissioner.

[L.S.]

## NOTICES—Application for General Order—

2025 WAIRC 00264

THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Level 17, 111 St Georges Terrace, Perth

Ph: (08) 9420 4444

Application No. CICS 2 of 2025

### NOTICE

**REVIEW OF LOCATION ALLOWANCE GENERAL ORDER 2 OF 2024 PURSUANT TO SECTION 50 OF THE  
*INDUSTRIAL RELATIONS ACT 1979***

Notice is given of an application on the motion of the Western Australian Industrial Relations Commission to review the Location Allowance General Order with a view to rescinding Location Allowance General Order 2 of 2024 and issuing a new Location Allowance General Order pursuant to section 50 of the *Industrial Relations Act 1979*.

A copy of the draft schedules, including a list of all awards to which the proposed General Order will have application and the proposed rates, may be inspected by appointment at Level 17, 111 St Georges Terrace, Perth by any interested person without charge.

This matter will be heard by the Commission in Court Session: On: Thursday, 12 June 2025

At: 10:00 AM  
 At: Western Australian Industrial Relations Commission  
 Level 18, 111 St Georges Terrace,  
 Perth WA 6000

Any person wishing to appear at this hearing should provide notice to the Registrar by no later than Wednesday, 11 June 2025. For further information, please contact the Associate to Senior Commissioner Cosentino by email at [jacky.smith@wairc.wa.gov.au](mailto:jacky.smith@wairc.wa.gov.au).

(Sgd.) S KEMP,  
 Registrar (Designate).

[L.S.]  
 2 May 2025

**Form 17 – Notice of Hearing**

Application No. CICS 2 of 2025

This Notice of Hearing is issued by the Western Australian Industrial Relations Commission

<b>Parties:</b>	Commission’s Own Motion	Applicant
	(Not Applicable)	Respondent
<b>Nature of matter:</b>	Rescind Location Allowance General Order 2 of 2024 and issue a new General Order	
<b>Hearing Type:</b>	Hearing	

**DETAILS OF PROCEEDINGS:**

<b>Commission Constituted by:</b>	Senior Commissioner R Cosentino, Commissioner T B Walkington, Commissioner C Tsang
<b>Date:</b>	Thursday, the 12th day of June 2025
<b>Time:</b>	10:00AM
<b>Address:</b>	Level 18, 111 St Georges Terrace, Perth WA 6000

Please inform the Commission as soon as possible if you require an interpreter or if you or any person attending the Commission with you require any special assistance; (*such as wheelchair access or audio hearing loop*).

Any enquiries in relation to this Notice of Hearing should be directed to Jacky Smith, Associate to Senior Commissioner R Cosentino, (08) 9420 4455 or [chambers-cosentino@wairc.wa.gov.au](mailto:chambers-cosentino@wairc.wa.gov.au).

**NOTICES—Award/Agreement matters—**

2025 WAIRC 00285

**WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

Application No. AG 36 OF 2025

**APPLICATION FOR A NEW AGREEMENT TITLED  
 “CITY OF MELVILLE INSIDE WORKFORCE INDUSTRIAL AGREEMENT 2025”**

NOTICE is given that an application has been made to the Commission by the *City Of Melville* 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

This Agreement is called the City of Melville Inside Workforce Industrial Agreement 2025 (**Agreement**).

### 2. PARTIES TO THE AGREEMENT, AREA AND COVERAGE

2.1 The Parties to this Agreement are:

- (a) City of Melville (ABN 81 152 433 900) (the **City**); and
- (b) The Western Australian Municipal, Administrative, Clerical and Services Union of Employees (**WASU**).

2.2 This Agreement applies in the State of Western Australia.

2.3 This Agreement will cover and apply to the City and its Employees who are covered by the positions set out in the classifications in Schedules 2, 3 and 4 (**Employees**), however the Agreement does not cover or does not apply to any of the following positions:

- (a) The Chief Executive Officer, Directors, Managers and, other Senior Professional positions above the Level 9 classification of this Agreement; and
- (b) Outside Workforce Employees.

2.4 At the time this Agreement was made the number of employees to be covered by the Agreement terms and conditions is approximately 630.

### 3. TERM OF THE AGREEMENT

3.1 This Agreement will commence from the date the Agreement is registered by the WAIRC (**Commencement Date**).

3.2 This Agreement will have a nominal expiry date of three (3) years from the Commencement Date but no later than 30 June 2028 and will continue to operate unless varied by agreement or terminated (retired) in accordance with the Act.

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

(Sgd.) S KEMP,  
Registrar (Designate).

[L.S.]  
12 MAY 2025

2025 WAIRC 00290

## WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Application No. AG 37 OF 2025

### APPLICATION FOR A NEW AGREEMENT TITLED “CITY OF SUBIACO INSIDE STAFF INDUSTRIAL AGREEMENT 2025”

NOTICE is given that an application has been made to the Commission by the *City Of Subiaco* 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.

#### 2.1 Parties and coverage of agreement

2.1 This Agreement shall be known as the City of Subiaco Inside Staff Industrial Agreement 2025.

2.2 The parties to this Agreement are:

- (a) the City of Subiaco (ABN 84 387 702 890); and
- (b) The Western Australian Municipal, Administrative, Clerical and Services Union of Employees (WASU).

2.3 The Agreement will apply to and bind the City and its approximately 353 Employees who are members or eligible to be members of WASU and are employed under the classifications in Appendix A. The Agreement does not apply to and does not bind the City’s Chief Executive Officer.

2.4 If any provision of this Agreement is declared or determined to be illegal or invalid by final determination of any court or tribunal of competent jurisdiction, the validity of the remaining parts, terms or provisions of this Agreement shall not be affected, and the illegal or invalid part, term or provision shall be deemed not to be part of this Agreement.

#### 3. Operation and award exclusion

3.1 This Agreement shall operate from the date of registration by the WAIRC and, in accordance with section 41 of the IR Act, will nominally expire 3 years from the date of registration.

3.2 This Agreement replaces in its entirety the *Local Government Industry Award 2020* (which applied to Employees as a New State Instrument).

3.3 This Agreement excludes:

- (a) the *Municipal Employees’ (Western Australia) Award 2021*;
- (b) the *Local Government Officers’ (Western Australia) Award 2021*;

- (c) The *Restaurant, Tearoom and Catering Workers' Award*;
- (d) any other award made under the IR Act that otherwise extends to and binds the Employees and the City.
- 3.4 Other than statutory entitlements (for instance those contained in the MCE Act) this Agreement is intended to set out all the Employees' terms and conditions of employment.
- 3.5 To the extent that an award provides for an entitlement that is different to or not otherwise referred to in this Agreement (including where the Agreement is silent on a matter provided for in an award), any such award entitlement will be inconsistent with this Agreement and this Agreement shall prevail.
- 3.6 The parties undertake that for the duration of this Agreement there shall be no further claims, including salary or wages bought or granted, except where specifically provided for in this Agreement.
- A copy of the proposed Agreement may be inspected at my office at 111 St. Georges Terrace, Perth.

(Sgd.) S BASTIAN,  
Registrar.

[L.S.]  
13 MAY 2025

2025 WAIRC 00272

**WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

Application No. AG 25 OF 2025

**APPLICATION FOR A NEW AGREEMENT TITLED**  
**"OVIS COMMUNITY SERVICES ENTERPRISE AGREEMENT 2025"**

NOTICE is given that an application has been made to the Commission by the *Pat Thomas House Inc.* 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 agreement is the Ovis Community Services Enterprise Agreement 2025.

**2. Relevant Industrial Agreement**

- 2.1 This agreement shall be read as a stand-alone agreement instead of the Crisis Assistance, Supported Housing Industry – Western Australian Interim Award 2011.

**3. Commencement and Expiry**

- 3.1 This agreement operates from the date of registration and has a nominal expiry date of 30 June 2027.

At least three months prior to the nominal expiry date the parties will commence negotiations with the aim of formulating a new Agreement.

- 3.2 If, at the nominal expiry date of this new Agreement, no agreement has been reached as to its renewal or replacement, this Agreement will continue in force until cancelled or replaced.

**4. Application, Area, Scope and Parties Bound**

- 4.1 The parties to this Agreement are:

- (a) Pat Thomas House Inc. T/A Ovis Community Services; and  
(b) Western Australian Municipal, Administrative, Clerical and Services Union of Employees.

This Agreement covers, extends to and binds the parties and all employees who are employed by Ovis Community Services who are members of or are eligible to be members of the Western Australian Municipal, Administrative, Clerical and Services Union of Employees.

- 4.2 This Agreement will operate at each and every workplace within the State of Western Australia in pursuit of the Employer's business.

- 4.3 There are an estimated 46 employees covered by this Agreement as at the date of registration.

- 4.4 This Agreement shall not apply to the Chief Executive Officer or any person who is designated to act in or employed temporarily as the Chief Executive Officer.

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

(Sgd.) S BASTIAN,  
Registrar.

[L.S.]  
24 MARCH 2025

**INDUSTRIAL MAGISTRATE—Claims before—**

2025 WAIRC 00280

**INDUSTRIAL MAGISTRATES COURT OF WESTERN AUSTRALIA**

**CITATION** : 2025 WAIRC 00280  
**CORAM** : INDUSTRIAL MAGISTRATE R. COSENTINO  
**HEARD** : ON THE PAPERS  
**DELIVERED** : MONDAY, 12 MAY 2025  
**FILE NO.** : M 139 OF 2024  
**BETWEEN** : ROBERT ARNOLD

**CLAIMANT**

AND

BENALE PTY LTD ATF THE FLETCHER UNIT TRUST T/A FLETCHER  
INTERNATIONAL WA

**RESPONDENT**

**CatchWords** : INDUSTRIAL LAW – Costs – s 570(2) of *Fair Work Act 2009* (Cth) – small claims procedure – whether claimant instituted proceedings vexatiously or without reasonable cause for purpose of s 570(2)(a) – whether claimant engaged in an unreasonable act or omission which caused the respondent to incur costs for purpose of s 570(2)(b) – application for costs dismissed

**Legislation** : *Fair Work Act 2009* (Cth)

**Instrument** : *Meat Industry Award 2020*

**Case(s) referred to in reasons:** : *Arnold v Benale Pty Ltd atf The Fletcher Unit Trust* [2025] WAIRC 185  
*Australian Workers Union v Leighton Contractors Pty Limited (No 2)* [2013] FCAFC 23; (2013) 232 FCR 428  
*Saxena v PPF Asset Management Ltd* [2011] FCA 395  
*Baker v Patrick Projects Pty Ltd (No 2)* [2014] FCAFC 166; (2014) 145 ALD 548  
*Australian and International Pilots Association v Qantas Airways Ltd (No 3)* [2007] FCA 879; (2007) 162 FCR 392  
*Messenger v Commonwealth of Australia (Represented by the Department of Finance) (No 2)* [2023] FCA 20  
*Williams v Spautz* [1992] HCA 34; (1992) 174 CLR 509  
*Sivwright v St Ives Group Pty Ltd* [2022] FCA 136  
*Construction, Forestry, Mining and Energy Union v Corinthian Industries (Australia) Pty Ltd (No 2)* [2014] FCA 351  
*Bywater v Appco Group Australia Pty Ltd* [2019] FCA 799  
*Shea v EnergyAustralia Services Pty Ltd (No 2)* [2015] FCAFC 14  
*Arnold v Fletcher International WA* [2025] WAIRC 30  
*Construction, Forestry, Mining and Energy Union v Clarke* [2008] FCAFC 143; (2008) 170 FCR 574

**Result** : Application dismissed

**Representation:**

Claimant : Self-represented

Respondent : Mr D. Bates (representative)

**REASONS FOR DECISION**

- The claimant, Robert Arnold (**Mr Arnold**), commenced this underpayment claim against his employer, Benale Pty Ltd atf the Fletcher Unit Trust t/a Fletcher International WA (**Fletcher International**), by way of the small claims procedure under s 548 of the *Fair Work Act 2009* (Cth) (**FW Act**). His claim had two components. First, he claimed payment of weekend penalty rates ‘for the last six years’<sup>1</sup> under clause 24.1 of the *Meat Industry Award 2020* (**Weekend Penalty Claim**). Second, Mr Arnold claimed that he had been underpaid \$5.70 per hour because Fletcher International decreased, rather than increased, his base rate of pay in 2023 (**Wage Underpayment Claim**).
- I dismissed Mr Arnold’s claim following a hearing on 19 March 2025. My reasons for dismissing the claim are set out in *Arnold v Benale Pty Ltd atf The Fletcher Unit Trust* [2025] WAIRC 185 (**Substantive Decision**).

- 3 Fletcher International now seeks an order for the claimant to pay the entirety of its legal costs incurred in the proceedings, totalling \$24,007.50 pursuant to s 570 of the FW Act. Fletcher International says the proceedings were commenced vexatiously and without reasonable cause, and that the claimant's conduct in the proceedings was unreasonable and caused it to incur costs.
- 4 Fletcher International states in its application that it relies on s 570(2)(a) and (b), but its grounds for invoking those subsections differed in relation to the Weekend Penalty Claim and the Wage Underpayment Claim. In neither case did Fletcher International's submissions seek to substantively demonstrate that the proceedings were commenced vexatiously, as that word is properly understood (see [12] below).
- 5 The application for costs therefore involves consideration of the following issues:
- (a) Whether the Weekend Penalty Claim was instituted without reasonable cause.
  - (b) Whether the Wage Underpayment Claim was instituted without reasonable cause.
  - (c) Whether Mr Arnold acted unreasonably for the purpose of s 570(2)(b) in maintaining his Wage Underpayment Claim after the Response was filed.
  - (d) Whether Mr Arnold acted unreasonably for the purpose of s 570(2)(b) in failing to disclose particular information to the Fair Work Ombudsman (FWO) and to Fletcher International's Human Resources manager before commencing these proceedings.
  - (e) If the answer to (c) or (d) is yes, whether that conduct caused Fletcher International to incur costs.
- 6 If the threshold for an award of costs is reached and I am inclined to exercise the discretion to award costs, I must also consider whether there is some special or unusual feature which would justify an award of indemnity costs.

### Principles

- 7 The law concerning orders for costs is settled. The limited power to award costs is found in s 570 of the FW Act. It says:
- 570 Costs only if proceedings instituted vexatiously etc.**
- (1) A party to proceedings (including an appeal) in a court (including a court of a State or Territory) in relation to a matter arising under this Act may be ordered by the court to pay costs incurred by another party to the proceedings only in accordance with subsection (2) or section 569 or 569A.  
Note: The Commonwealth might be ordered to pay costs under section 569. A State or Territory might be ordered to pay costs under section 569A.
  - (2) The party may be ordered to pay the costs only if:
    - (a) the court is satisfied that the party instituted the proceedings vexatiously or without reasonable cause; or
    - (b) the court is satisfied that the party's unreasonable act or omission caused the other party to incur the costs; or
    - (c) the court is satisfied of both of the following:
      - (i) the party unreasonably refused to participate in a matter before the FWC;
      - (ii) the matter arose from the same facts as the proceedings.
- 8 Section 570 confers a discretion to order costs where a pre-condition of s 570(2) is met. This discretion must be exercised judicially according to the terms defining it. It must also be exercised with caution because of the exceptional nature of the power in an otherwise non-costs jurisdiction.<sup>2</sup>
- 9 This means that the case for a costs order must be clearly demonstrated by the party seeking the costs order.<sup>3</sup>
- 10 In relation to the precondition in s 570(2)(a), the relevant question is whether the proceedings had reasonable prospects of success at the time it was instituted, not whether it ultimately failed.<sup>4</sup>
- 11 That can be tested by asking whether the party bringing the action, on the facts apparent to the party, properly advised, should have known the claim had no reasonable prospects of success.<sup>5</sup> A distinction can be drawn between cases where success depends on resolution in the claimant's favour of one or more arguable points of law, and cases which are misconceived, unsupportable, incompetent or hopeless.<sup>6</sup> Pursuit of cases in the latter category can be characterised as unreasonable.
- 12 A respondent who submits that a proceeding was brought vexatiously must demonstrate that the predominant purpose in instituting it was to harass or embarrass, or to gain a collateral advantage unrelated to the vindication of the rights, privileges or immunities in respect of which it was instituted.<sup>7</sup> If a proceeding is instituted by a claimant who does not intend to prosecute it to conclusion; but instead seeks to use it as a means of obtaining some advantage for which it was not designed or some collateral advantage that is beyond what the law offers, then it might be said to have been instituted vexatiously.<sup>8</sup>
- 13 Whether a party has engaged in an 'unreasonable act or omission' for the purposes of s 570(2)(b) turns on the facts and circumstances of the case.<sup>9</sup>
- 14 Even if the Court is satisfied of a s 570(2) precondition, it retains a discretion not to order costs.<sup>10</sup>
- 15 Once the power to award costs is enlivened under s 570(2) of the FW Act, the Court can make an order for costs to be paid on an indemnity basis, with the general law principles as to the award of such costs applying.<sup>11</sup>
- 16 The test as to whether indemnity costs should be awarded is whether the justice of the case might so require or, whether there exists some special or unusual feature of the case to justify the Court departing from the ordinary practice.<sup>12</sup>

### Was the Weekend Penalty Claim instituted unreasonably or vexatiously?

- 17 Fletcher International's basis for seeking costs was that Mr Arnold has, on five prior occasions, sought to agitate his claim for weekend penalty rates. Fletcher International submitted that:
- Responding to Mr Arnold's six (6) claims or complaints regarding payment of Weekend Penalty Rates has, for the Respondent, been exhausting, time-consuming, costly, and unreasonable in circumstances where:
- (a) on each and every occasion, it has ultimately been determined that the Claimant is not entitled to payment of the Weekend Penalty Rates;

- (b) on each and every occasion, the Claimant has wilfully and unreasonably refused to accept the conclusion that he is not entitled to payment of Weekend Penalty Rates. To that end, the Respondent notes that at the conclusion of the Hearing in the Current Matter - and while still on the record - the Claimant asked the Court who he should complain to next given the Court's dismissal of his application;
- (c) on each and every occasion, the Claimant has failed to properly particularise and prosecute his claim, despite the onus of proof resting solely on him. For example, in the Current Claim - as was the case in his five (5) previous and nearly-identical claims - the Claimant:
  - (i) failed to present any evidence of any kind whatsoever regarding the proper interpretation and application of the applicable industrial instrument; and
  - (ii) failed to present any evidence of any kind whatsoever regarding any precedent or other authority in support of his claim for payment of Weekend Penalty Rates;
- (d) the Claimant was informed, in writing, by a qualified Fair Work Inspector at the FWO as recently as December 2023 that he was unequivocally not entitled to payment of Weekend Penalty Rates;
- (e) there have been no changes made to the Award in the fifteen (15) years since its commencement which could have resulted in the Claimant reasonably apprehending that he had become entitled to payment of Weekend Penalty Rates despite all the previous and consistent determinations to the contrary;
- (f) the Claimant has plainly initiated all six (6) of his nearly identical claims on the grounds that he "believes" he should be paid more for the work he performs despite that "belief", regardless of how genuinely it may be held;
  - (i) having no valid legal basis; and
  - (ii) being unenforceable by any court, tribunal, or statutory authority; and
- (g) made demonstrably false statements - both verbally and in writing - in support of the Current Claim...<sup>13</sup>

- 18 The five prior claims or complaints Fletcher International rely upon span an eleven-year period from May 2013 to May 2024.
- 19 In May 2013 Mr Arnold made a complaint to the FWO about his rate of pay. The complaint was resolved by mediation. It pre-dates the period that is the subject of the current claim. There is nothing before me which establishes that, by the mediated agreement, Mr Arnold agreed to forego his right to make any claims which might arise in the future. Neither the fact that Mr Arnold made this complaint in the past, nor that he agreed to compromise it, shows that the current claim was made vexatiously or without reasonable cause.
- 20 In December 2020 Mr Arnold's union, the Australasian Meat Industry Employees' Union (AMIEU), sent a short email to Fletcher International. The email stated:

**Hello Matthew**

**Mr Arnold informs me that has not been paid the appropriate rate for working on public holidays.**

**He also informs me that he has never been paid the shift loadings either.**

**Could you please advise accordingly?**



**And could you confirm whether Mr Arnold's pay conditions are governed by the Meat Industry Award or the Security Services Industry Award.**

**Regards,**

**John Da Silva**  
**Assistant Secretary**  
*AMIEU South & Western Australian Branch*

- 21 The email relates to issues other than weekend penalty rates. It relates to payment for work on public holidays and shift loadings.
- 22 The AMIEU then requested copies of Mr Arnold's weekly payslips and employment contract, which Fletcher International provided. The AMIEU made no subsequent contact with Fletcher International.
- 23 Fletcher International suggest that the fact the AMIEU did not press any claim on behalf of Mr Arnold means that the AMIEU 'apprehended the Claimant was not entitled to payment of weekend penalty rates.'<sup>14</sup> There is just no basis for me to form such a conclusion. The fact that the union made the enquiries it did on behalf of Mr Arnold does nothing to demonstrate that Mr Arnold's present claim was instituted unreasonably.
- 24 In October 2022 Mr Arnold engaged MKI Legal to act on his behalf. By letter dated 10 October 2022, MKI Legal requested copies of Mr Arnold's employment records for the past seven years. The letter made no claim or complaint, and did not allude to any legal cause of action against Fletcher International. It did no more than purport to exercise the right under s 535 of the FW Act and the *Fair Work Regulations 2009* (Cth) to inspect employee records.
- 25 It is more than a stretch to describe this correspondence as a 'complaint' as Fletcher International has done. In any event, the request to inspect employee records does nothing to show that the present claim was instituted unreasonably.
- 26 In July 2023 Mr Arnold contacted the FWO concerning Fletcher International's non-payment of weekend penalty rates. I accept that the substance of his claim in this respect was the same as his Weekend Penalty Claim in these proceedings.

- 27 The FWO undertook an investigation of Mr Arnold's complaint. The FWO Inspector concluded that Mr Arnold: [I]s not entitled to any penalty rates as identified in clause 24.1(a) or 24.1(b) of [the Award] unless the Company and Mr Arnold by agreement enter into the conditions of clause 24.1 and clause 14.3(b) by altering the ordinary hours worked.<sup>15</sup>
- 28 The investigation was concluded with no further action by the FWO.
- 29 The Inspector's email contains the Inspector's opinion as to the correct construction and application of the Award. Those conclusions are not binding on the Industrial Magistrates Court of Western Australia (IMC). The Inspector's conclusions were not supported by any detailed reasoning and were also somewhat equivocal, being conditioned on there being an absence of an agreement under clause 24.1 and clause 14.3(b). I do not agree with Fletcher International's description of the FWO Inspector's email as informing Mr Arnold that he was 'unequivocally not entitled to payment of Weekend Penalty Rates.'<sup>16</sup> I note that the Inspector's construction of the Award does not accord with my reasons at [70] of the Substantive Decision.
- 30 Mr Arnold commenced these proceedings because the FWO did not take further action in relation to his weekend penalty rates complaint. In doing so, he was not acting unreasonably. Rather, it was the natural next step in circumstances where he disagreed with, or was unpersuaded by, the Inspector's conclusions.
- 31 The fifth complaint Fletcher International relies upon is an application for a Stop Bullying Order Mr Arnold made to the Fair Work Commission in May 2024. In its written submissions, Fletcher International represented 'the substance' of this claim as: [O]nce again, that he was not being paid correctly by the Respondent for his weekend night shifts.<sup>17</sup>
- 32 Mr Arnold's Stop Bullying Order application was attached to Fletcher International's Human Resources Manager, Matthew Nelson's witness statement,<sup>18</sup> filed for the purpose of the hearing of Mr Arnold's claim. I did not accept it into evidence during the hearing, as it was not relevant to the issues then before me. I have had regard to it in relation to this costs application, given that it has been referred to and is relied upon by Fletcher International.
- 33 Contrary to Fletcher International's submissions, the application is not in substance about not being paid correctly for weekend night shifts. The application says:

Form F72 – Application for an order to stop bullying at work

## Tell us what happened

### 11. How were you bullied at work?

Briefly describe the behaviour. Tell us:

- What happened?
- Where did it happen?
- Who was involved?
- How many times has this behaviour happened?
- How long ago did it start happening?
- When was the last time it happened?
- Are you worried about it happening again?
- What else do you want us to know?

Attach extra pages if necessary.

PAY SLIPS NOT CORRECT OR NOT SENT TO CENTRELINK. NEED THESE FOR MY FORTNIGHTLY PENSION CLAIM WHICH ALSO AFFECTS MY PARTNER. HAS BEEN HAPPENING FOR THE LAST SIX MONTHS.

Leave request for six hours paid at nine hours to stuff up m pension. Try to reduce hours before Xmas 7/12/23 Christmas pay short hours 27/12/23 New Year correction to stuff up centrelink again. Request to reduce hours on doctors advice to one shift refused on grounds of not correct certificate. Got new doctors certificate for two days to use up sick leave and told I would still have to work Sundays.4/1/24 Sick pay short of promised loading in previous letter 11/1/24 Promised letter about TOIL days never received 4/01/24 Pay sheet 18/01/24 does not have any toll or leave days listed. Pay details not sent to centrelink 25/1/24 C/L paid short 11/2/24 c/l pay short 16/2 no pay to c/l 23/2 no pay to c/l 2/3 no P?H pay to C/l 20/3 no sent to c/l 27/3 Easter pay all wrong to c/l 21/5/24 sick pay advised as leave without pay and no correction received for c/l . Any time there is a change my paper work is messed up. Need to remember this is my money and not the companys!

**12. Tell us how the behaviour you have described in question 11 creates a risk to health and safety.**

Any time centrelink does not receive my details I have to deliver them by hand to the Albany office so they can be inputted manually. This involves my time, driving fuel both ways (100kms) and upset for my partner.

- 34 Self-evidently, the application is unrelated to Mr Arnold's Weekend Penalty Claim in these proceedings.
- 35 Fletcher International tacked onto its submissions additional reliance on proceedings brought by Mr Arnold in Fair Work Australia in 2010. There was scant evidence before me of the nature of these proceedings, although the March 2010 agreement<sup>19</sup> which Mr Arnold relied upon in the substantive hearing, may have been connected with those proceedings.
- 36 Any such application to Fair Work Australia must necessarily be irrelevant to Mr Arnold's initiation of, and conduct in these proceedings, for the same reasons stated at [19] above and because Mr Arnold's work patterns in 2010 were not the same as his work pattern that is the subject of the claim in these proceedings.
- 37 Fletcher International's assertion that on each and every one of the above five (or six) occasions it was ultimately determined that Mr Arnold is not entitled to payment of weekend penalty rates is wrong. No binding or authoritative determination to that effect was ever made. These proceedings are the first occasion that Mr Arnold's claim about weekend penalty rates has been determined.
- 38 Accordingly, it follows that Fletcher International has not made out its assertion that Mr Arnold has wilfully and unreasonably refused to accept the conclusion that he is not entitled to weekend penalty rates.
- 39 It also follows that Fletcher International's complaint that Mr Arnold has failed to particularise and prosecute his prior claims leads nowhere, as the claims other than the 2023 FWO complaint, cannot be described as 'nearly-identical'.<sup>20</sup> There is no evidence to suggest the 2023 FWO complaint was not particularised or prosecuted. To the contrary, it was investigated and concluded.
- 40 Fletcher International argues that Mr Arnold's making of false statements verbally and in writing, justifies a finding that he instituted the proceedings unreasonably or vexatiously. I assume Fletcher International is meaning statements that were made to the IMC. It relies in this regard on two 'statements'.
- 41 Both statements were contained in a typed document titled 'Saturday & Sunday Nights'.<sup>21</sup> It is undated. It was a document that Mr Arnold attached to his Originating Claim. Although Mr Arnold identified it during his evidence as a document he had created, it was not tendered into evidence by him. Rather, it was Fletcher International's representative who sought that it be accepted into evidence.<sup>22</sup>
- 42 Fletcher International's representative then cross-examined Mr Arnold on the document. It says '[a]t present I work weekends and only get paid \$24.54 day shift wage.'<sup>23</sup> Mr Arnold readily accepted in cross-examination that this statement was not correct, and that he was paid above that amount.<sup>24</sup> But even before cross-examination, Mr Arnold confirmed his rates of pay in his evidence-in-chief, as being reflected in payslips which he put into evidence.<sup>25</sup>
- 43 In this context, I do not regard the document in question to be a statement to the IMC by which Mr Arnold misrepresents his rate of pay.
- 44 The second 'statement' in the document is 'I have been told there is no weekend rate available.'<sup>26</sup> That Fletcher International characterises this as a misrepresentation might seem surprising, given it defended Mr Arnold's Weekend Penalty Claim on the basis that Mr Arnold was not entitled to weekend penalty rates. It says that its unchallenged evidence was that Mr Arnold had never 'been told' that 'no weekend rate was available', but that he had been told – repeatedly and consistently by multiple people in multiple forums – that he is not legally entitled to payment of weekend penalty rates because he is a shift worker.
- 45 Articulating Fletcher International's argument is enough to reveal its pedantry. In the context of the document, the proceedings and the substance of the dispute, it is simply not open to understand Mr Arnold's statement to mean that he was told there is no weekend rate available to any person anywhere at any time. A sensible reading of the statement is that he understood that Fletcher International considered he was not entitled to weekend penalty rates. This was nothing but true.
- 46 Fletcher International have not demonstrated that the Weekend Penalty Claim was instituted vexatiously or without reasonable cause. None of the evidence concerning the previous things Mr Arnold did shows that his present claim had no reasonable prospects of success, was misconceived or incompetent. Mr Arnold's claim failed because I found, on a proper construction of the Award, that clauses 23 and 24 of the Award are mutually exclusive. At no point had Mr Arnold been so advised by the FWO. Fletcher International had not even articulated this as being the basis for defending Mr Arnold's claim in its Response filed in these proceedings, or at any time prior to the hearing of the claim.

**Was the Wage Underpayment Claim instituted vexatiously or without reasonable cause?**

- 47 My reasons for dismissing this component of Mr Arnold's claim were set out at [37] to [48] of the Substantive Decision. This component of Mr Arnold's claim was illogical and broadly inconsistent with the evidence that Mr Arnold knew or ought to have been aware of. It can be said of this component that it lacked any reasonable prospects of success. Mr Arnold should have known this, had he considered the Wage Underpayment Claim properly.
- 48 Although the hearing involved some evidence about this component of the claim, it was not the focus of the hearing, nor of submissions. Mr Nelson's witness statement dealt with the issue in seven paragraphs (mirroring the Response) and one

annexure of his Witness Statement, which totalled 83 paragraphs, and about 30 annexures. The key facts about Mr Arnold's rate of pay were uncontentious.

- 49 A Response was filed by Fletcher International before it was granted leave to be represented. It clearly and comprehensively set out the factual basis of its defence to the Wage Underpayment Claim.
- 50 When I granted Fletcher International leave to be represented in these proceedings, it was for the principal reason that the Weekend Penalty Claim involved a question of the construction of the Award.<sup>27</sup> There was no suggestion that the Wage Underpayment Claim involved any legal or factual complexity.
- 51 The conduct of the defence of the Wage Underpayment Claim did not alter significantly after leave was granted for representation. The evidence filed took things no further than the Response had done.
- 52 I indicated at the hearing that Fletcher International's representative need not make closing submissions about the Wage Underpayment Claim, and Mr Arnold made none.
- 53 Before the hearing concluded, I gave Mr Arnold an opportunity to consider whether he wanted to withdraw this component of his claim. He did not take up that opportunity.
- 54 Mr Arnold claimed \$2,872.80 in relation to this component of the claim. It represented just over 3% of the total quantum Mr Arnold was claiming.
- 55 While I agree with Fletcher International that this component of the claim was instituted without reasonable cause, I am also mindful that the claim was prosecuted under the small claims procedure. The default position in small claims procedure claims is that legal representation is assumed to be unnecessary. This component of the claim was so obviously unmeritorious that it did not necessitate legal representation or the incurring of legal costs.
- 56 As Lee J stated in *Bywater v Appco Group Australia Pty Ltd* [2019] FCA 799 at [11], the Court retains a discretion as to whether it will award costs, even if the preconditions specified by s 570(2) exist. This component of the claim was relatively insignificant in terms of its quantum, the time taken to determine it, and the resources needed for its determination. These factors lead me, as a matter of discretion, not to award costs on the basis that the costs relating exclusively to this component of the claim were or ought to have been relatively insignificant. Further, it would in any event be difficult to identify those costs related solely to the Wage Underpayment Claim.<sup>28</sup>

**Has Mr Arnold's unreasonable act or omission caused Fletcher International to incur costs?**

- 57 Fletcher International says Mr Arnold acted unreasonably by:
- (a) not immediately discontinuing the Wage Underpayment Claim once its Response was filed; and
  - (b) relying on the 10 March 2010 agreement (exhibit C1) as an agreement for the purpose of clause 14.3(b) of the Award, and therefore in support of the Weekend Penalty Claim, without having disclosed that document during the FWO's investigation into the 2023 complaint, and without raising it with Mr Nelson, (despite the fact that Mr Nelson was aware of the document's existence since 2010).<sup>29</sup>
- 58 Dealing first with (a), I refer to what I said in relation to the unreasonable institution of the Wage Underpayment Claim. Just as it was unreasonable for Mr Arnold to have instituted the claim, it was also unreasonable to maintain it. However, Fletcher International has not demonstrated that Mr Arnold's conduct in this regard caused it to incur costs. The Wage Underpayment Claim was a relatively insignificant part of the overall proceedings.
- 59 Turning to (b), when s 570(2)(b) refers to an unreasonable act or omission, it is directed at a party's conduct in the litigation.<sup>30</sup> The points raised by Fletcher International do not go to Mr Arnold's conduct in litigation. Its reliance on s 570(2)(b) in this instance is misplaced.

**Orders and Disposition**

- 60 The conditions of s 570(2) for an award of costs is not reached in relation to Mr Arnold's Weekend Penalty Claim. There is therefore no call for me to consider whether the circumstances warrant an order for indemnity costs. While the threshold is reached for the Wage Underpayment Claim, I would not exercise the discretion to award costs in light of the relative insignificance of that claim.
- 61 There will be no order as to costs. Fletcher International's application will be dismissed.

**R. COSENTINO**

**INDUSTRIAL MAGISTRATE**

<sup>1</sup> Originating Claim

<sup>2</sup> *Australian Workers Union v Leighton Contractors Pty Ltd (No 2)* [2013] FCAFC 23; (2013) 232 FCR 428 (*AWU v Leighton Contractors*) per Dowsett, McKerracher and Katzmann JJ at [8].

<sup>3</sup> *Saxena v PPF Asset Management Ltd* [2011] FCA 395 at [6].

<sup>4</sup> *AWU v Leighton Contractors* at [7].

<sup>5</sup> *Baker v Patrick Projects Pty Ltd (No 2)* [2014] FCAFC 166; (2014) 145 ALD 548 at [9] - [10].

<sup>6</sup> *Australian and International Pilots Association v Qantas Airways Ltd (No 3)* [2007] FCA 879; (2007) 162 FCR 392 (*Australian and International Pilots Association*) at [36]; *Construction, Forestry, Mining and Energy Union v Clarke* [2008] FCAFC 143; (2008) 170 FCR 574 at [29].

<sup>7</sup> *Messenger v Commonwealth of Australia (No 2)* [2023] FCA 20 (*Messenger*) at [14].

- <sup>8</sup> *Messenger* citing *Williams v Spautz* [1992] HCA 34; (1992) 174 CLR 509, 526-527.
- <sup>9</sup> *Sivwright v St Ives Group Pty Ltd* [2022] FCA 136 per Jackson J at [9].
- <sup>10</sup> *Construction, Forestry, Mining and Energy Union v Corinthian Industries (Australia) Pty Ltd (No 2)* [2014] FCA 351 per Pagone J at [12]; *Bywater v Appco Group Australia Pty Ltd* [2019] FCA 799 at [11].
- <sup>11</sup> *Shea v EnergyAustralia Services Pty Ltd (No 2)* [2015] FCAFC 14 at [10].
- <sup>12</sup> *Australian and International Pilots Association*.
- <sup>13</sup> Respondent's submissions [34].
- <sup>14</sup> Respondent's submissions [20].
- <sup>15</sup> Respondent's submissions [28].
- <sup>16</sup> Respondent's submissions [34](d).
- <sup>17</sup> Respondent's submissions [31].
- <sup>18</sup> Exhibit R1.
- <sup>19</sup> Exhibit C1.
- <sup>20</sup> Respondent's submissions 34(c).
- <sup>21</sup> Exhibit C4.
- <sup>22</sup> ts 13.
- <sup>23</sup> Exhibit C4.
- <sup>24</sup> ts 24.
- <sup>25</sup> Exhibit C3.
- <sup>26</sup> Exhibit C4.
- <sup>27</sup> *Arnold v Fletcher International WA* [2025] WAIRC 30 at [10] - [11].
- <sup>28</sup> *Construction, Forestry, Mining and Energy Union v Corinthian Industries (Australia) Pty Ltd (No 2)* [2014] FCA 351 at [12].
- <sup>29</sup> ts 56.
- <sup>30</sup> *Construction, Forestry, Mining and Energy Union v Clarke* (2008) 170 FCR 574 at [28] - [29].

## UNFAIR DISMISSAL/CONTRACTUAL ENTITLEMENTS—

2025 WAIRC 00273

### CONTRACTUAL BENEFIT CLAIM

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

#### PARTIES

ABADDON QUINN

APPLICANT

-v-

AUSTRALIAN NURSING FEDERATION INDUSTRIAL UNION WORKERS PERTH

RESPONDENT

CORAM COMMISSIONER T EMMANUEL

DATE WEDNESDAY, 7 MAY 2025

FILE NO/S B 55 OF 2024

CITATION NO. 2025 WAIRC 00273

<b>Result</b>	Matter discontinued
<b>Representation</b>	
<b>Applicant</b>	On his own behalf
<b>Respondent</b>	Mr C Young (as agent)

#### Order

WHEREAS this is an application under s 29(1)(d) of the *Industrial Relations Act 1979* (WA);

AND WHEREAS on 23 April 2025 the applicant emailed the Commission indicating that he would like to discontinue application B 55 of 2024;

AND WHEREAS the respondent confirmed on 30 April 2025 that he consents to the application being discontinued;

NOW THEREFORE the Commission, having heard from the parties and pursuant to the powers conferred by the *Industrial Relations Act 1979* (WA), orders –

THAT application B 55 of 2024 be, and by this order is, discontinued.

[L.S.]

(Sgd.) T EMMANUEL,  
Commissioner.

2025 WAIRC 00278

**UNFAIR DISMISSAL APPLICATION**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

RICHARD STUART BROWN

**APPLICANT**

-v-

CITY OF JOONDALUP

**RESPONDENT**

**CORAM**

SENIOR COMMISSIONER R COSENTINO

**DATE**

THURSDAY, 8 MAY 2025

**FILE NO/S**

U 126 OF 2024

**CITATION NO.**

2025 WAIRC 00278

**Result**

Application dismissed

**Representation**

**Applicant**

No appearance

**Respondent**

Mr S Pack (of counsel)

*Order*

HAVING heard from Mr Pack on behalf of the respondent and there being no appearance on behalf of the applicant, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), and for reasons given ex tempore on 6 May 2025, hereby orders –

1. THAT the application be and is hereby dismissed for want of jurisdiction; and
2. THAT the Act's s 35(1) requirement to publish reasons for decision be dispensed with.

[L.S.]

(Sgd.) R COSENTINO,  
Senior Commissioner.

**UNIONS—Matters dealt with under Section 66**

2025 WAIRC 00255

**ORDER PURSUANT TO S.66**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**CITATION**

: 2025 WAIRC 00255

**CORAM**

: CHIEF COMMISSIONER S J KENNER

**HEARD**

: MONDAY, 17 MARCH 2025

**DELIVERED**

: MONDAY, 28 APRIL 2025

**FILE NO.**

: PRES 3 OF 2025

**BETWEEN**

: THE CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION OF WORKERS;  
THE PLUMBERS AND GASFITTERS EMPLOYEES' UNION OF AUSTRALIA, WEST  
AUSTRALIAN BRANCH, INDUSTRIAL UNION OF WORKERS

Applicants

AND

BUILDING TRADES ASSOCIATION OF UNIONS OF WESTERN AUSTRALIA  
(ASSOCIATION OF WORKERS)

Respondent

Catchwords	:	Industrial law (WA) – Application under s 66 for appointment of Interim Management Committee – Prior orders under s 66 – Quorum requirement of organisation’s Rules – Whether officeholders continue to hold office – Application to alter Rules and whether valid – Compliance with r 14 and r 18 of the BTA Rules – Order issued to re-establish Interim Management Committee
Legislation	:	<i>Industrial Relations Act 1979</i> (WA) s 62, s 66, s 66(1)(a)
Result	:	Order issued
<b>Representation:</b>		
Applicants	:	Ms Fraser Hardy of counsel
Respondent	:	No appearance

**Case(s) referred to in reasons:**

CFMEUW, PGEU v BTA [2018] WAIRC 00909; (2019) 99 WAIG 28

CFMEUW, PGEU v BTA [2022] WAIRC 00233; (2022) 102 WAIG 471

CFMEUW v BTA [2023] WAIRC 00013; (2023) 103 WAIG 22

Stacey v Civil Service Association of Western Australia (Incorporated) [2007] WAIRC 00568; (2007) 87 WAIG 1229

*Reasons for Decision*

**The application**

- 1 The applicants in these proceedings have standing to seek orders under s 66(1)(a) of the *Industrial Relations Act 1979* (WA) as the members of the Building Trades Association of Unions of Western Australia (Association of Workers) as a result of orders made by the Commission in 2018 and 2022: **CFMEUW, PGEU v BTA** [2018] WAIRC 00909; (2019) 99 WAIG 28 and **CFMEUW, PGEU v BTA** [2022] WAIRC 00233; (2022) 102 WAIG 471.
- 2 As set out in the particulars of the application, on 10 January 2025, an application was made by the BTA under s 62 of the *Act* to alter its rules in APPL 1 of 2025. In response to that application, by letter dated 28 January 2025, the Registrar informed the solicitors for the BTA that there was a difficulty in progressing the proposed alterations to the BTA Rules as the requirements of r 18 of the Rules, in relation to a meeting of the ‘full Executive’ of both applicants, had not been met at a Special Meeting of the BTA held on 6 June 2023, to authorise the proposed alterations. As a result, the Registrar suggested, to overcome the issues raised, that an application be made under s 66 of the *Act* for an Interim Management Committee of the BTA to be established, along with other necessary supplementary orders, to progress and finalise the alterations to the Rules and related matters. That application is before me now.
- 3 The application for orders under s 66 of the *Act* is supported by an affidavit of Mr Michael Buchan, the Secretary of the Construction, Forestry, Mining and Energy Union of Workers made on 10 April 2025. Additionally, the applicants and the respondent filed a joint outline of submissions in support of the orders sought.

**Brief background**

- 4 The matters arising and related to the application have a considerable history. The history is set out in some detail in Mr Buchan’s affidavit and I do not need to recite it at any length. A number of applications under s 66 of the *Act* have been brought before the Commission. At [6] of Mr Buchan’s affidavit he refers to the relevant procedural history in these matters between December 2018 and June 2022, which was set out by me in **CFMEUW, PGEU v BTA** (2022). In that matter, I observed at [1] - [9] as follows:

- [1] This application under s 66 of the *Industrial Relations Act 1979* (WA) has some history. In application PRES 4 of 2018 the applicants sought and obtained orders under s 66 of the *Act* for the appointment of an interim Management Committee of the respondent, in order that steps could be taken to enable the election of office bearers and to make necessary changes to the respondent’s Rules. On 20 December 2018 Smith AP made orders to this effect, which were to continue to 14 June 2019.
- [2] On 13 June 2019, Scott CC extended the operation of a part of the original order so that necessary steps could be completed. A further extension order was made on 28 November 2019. Those extension orders had the effect of waiving compliance with rule 6(e) of the respondent’s Rules, dealing with the quorum required for a meeting of the respondent’s Management Committee.
- [3] By letter of 29 March 2022, the Secretary of the respondent wrote to my Chambers seeking a further extension of the order to waive compliance with rule 6(e). Given that the most recent order made on 28 November 2019 expired on 27 January 2020, I formed the view that the Commission was then *functus officio* and was unable to further deal with application PRES 4 of 2018.
- [4] Accordingly, the current application was made. The grounds in support of the application note that the applicants are the only members of the respondent. A meeting of the Management Committee of the respondent is required under rule 18 of the respondent’s Rules, to approve proposed amendments to the Rules. As rule 6(e) of the respondent’s current Rules requires a quorum of seven members of the Management Committee, or a representative of four affiliated unions at any meeting of the Management Committee, a quorum is currently

impossible to form. This is because the applicants are the only two affiliated members. Accordingly, a further waiver of rule 6(e) is requested, to finalise the rule amendment process.

- [5] In support of the application, an affidavit of Mr Stephen Catania was filed. Mr Catania is employed by the Construction, Forestry, Mining and Energy Union, Construction and General Division, WA Divisional Branch, as its Coordinator – Political and Industrial. Mr Catania referred to the history of application PRES 4 of 2018, as I have recited it above. Mr Catania gave evidence that on 11 June 2019, the respondent’s interim Management Committee was replaced by an elected Management Committee under rule 14 of the respondent’s Rules. On 24 January 2020, a special meeting was convened to approve the proposed amendments to the Rules of the respondent.
- [6] However, it transpired that the meeting that took place on 24 January 2020 did not constitute a special meeting of the Management Committee in accordance with rule 18 of the respondent’s Rules. On Mr Catania’s evidence, what in fact occurred was two separate meetings of the CFMEUW Executive and the Executive of the Plumbing and Gasfitters Union of Australia, West Australian Branch, Industrial Union of Workers. Accordingly, as there was no special meeting of the Management Committee of the respondent to approve the proposed rule amendments, they could not proceed.
- [7] The difficulty remains that as the only two members of the respondent, the applicants are unable to form a quorum for a special meeting of the Management Committee of the respondent, under the current Rules, to consider and approve the proposed rule amendments. Mr Catania indicated that if this application is granted and orders made, it is anticipated that such a special meeting of the respondent’s Management Committee could be conducted within two to four weeks.
- [8] I am satisfied that the applicants have standing to bring these proceedings under s 66(1)(a) of the *Act*. I am further satisfied on the evidence that as presently constituted, a special meeting of the Management Committee of the respondent cannot be held, as there are an inadequate number of members of the respondent to achieve a quorum for a special meeting under rule 6(e) of the respondent’s Rules. I am further satisfied on the evidence that whilst an attempt was made to conduct such a meeting on 24 January 2020, it was not a valid meeting in accordance with rule 18 of the respondent’s Rules. No proposed changes to the respondent’s Rules can be progressed until such time as a special meeting of the Management Committee can be conducted.
- [9] Given the terms of s 66 of the *Act*, and the powers conferred on me under it, I am satisfied that the order sought by the applicants should be made. This will enable a properly constituted special meeting of the Management Committee of the respondent to be held to deal with the proposed amendments to the respondent’s Rules, and any other necessary business.
- 5 The difficulty with the quorum requirement of the BTA’s Rules for the purposes of a special meeting of the Management Committee was addressed by waiving the requirements of r 6(e) of the BTA’s Rules by my order: [2022] WAIRC 00245. Subsequently, in further proceedings in PRES 14 of 2022, I made an order largely in the same terms as the order in PRES 4 of 2022, waiving other requirements and compliance with r 6(e), with such order having effect until 30 June 2023: *CFMEUW v BTA* [2023] WAIRC 00013; (2023) 103 WAIG 22.
- 6 A little later in February 2023, the BTA conducted an election for officeholders at a meeting of the Management Committee, leading to the persons set out in Mr Buchan’s affidavit at [10]-[13] being elected.
- 7 Whilst my order in PRES 14 of 2022 remained on foot, on 6 June 2023, a purported Special Meeting of the full Executives of both applicants was held to consider and approve the proposed alterations to the BTA Rules. As set out in Mr Buchan’s affidavit, and his Statutory Declaration made in support of APPL 1 of 2025, at the meeting on 6 June 2023, whilst the full Executive of the PGEU were present at the meeting, three members of the Executive of the CFMEUW were unable to attend the meeting. Only seven of the 10 members of the Executive of the CFMEUW were in attendance.
- 8 Following the meeting, on 30 June 2023, my order in PRES 14 of 2022, waiving the quorum requirement in r 6(e), ceased to have effect. No further orders were sought or made. Accordingly, being unable to form a quorum, no valid meetings of the BTA Management Committee have been able to be held since that time.

#### The issues

- 9 Two issues are raised in relation to the application and the seeking of orders under s 66 of the *Act*. The first issue relates to compliance with r 18 of the Rules of the BTA. That issue is whether reference to ‘any Special Meeting, of the full Executive of the member Unions’, means the entire Executive of the member unions or whether a quorum of members of the Executive of the CFMEUW under its Rules was sufficient for these purposes. Secondly, whether, under r 14 of the BTA’s Rules, there is the necessity for two Vice President positions to be elected. There is presently only one Vice President holding office.
- 10 For the purposes of these proceedings, whilst the joint written submissions canvassed alternative approaches to the interpretation of the CFMEUW Rules, it is not necessary for me to determine either of these issues. Nor should I attempt to do so in the absence of a contradictor. However, based upon the affidavit evidence before me, which I have carefully considered, and the issues raised in the joint written outline of submissions, I am satisfied that there is sufficient uncertainty in connection with these issues, such that I should waive compliance with r 18 of the BTA Rules in relation to the 6 June 2023 meeting of the Management Committee. It is clear on the evidence before me that the proposed alterations had the unanimous support of all of those present, being 15 of 18 of the members of the Executives of the applicants. I also agree with the applicants that a waiver of r 18 will facilitate the resolution of the quorum issue, which has bedevilled the BTA for some years now.
- 11 As to the issue of two Vice President offices, there may be some conflict in the current Rules in rr 14(a) and (b), compared to r 14(2). However, the proposed alterations to the Rules will ultimately resolve the matter.

- 12 Additionally, as set out in Mr Buchan's affidavit, the Rules of the BTA in r 14(a) and (b) require that elections of officeholders be conducted annually. Given that since 30 June 2023, on the expiry of my order in PRES 14 of 2022, meetings of the Management Committee have not been able to occur, there must now be considerable doubt as to whether those persons earlier elected to office in the BTA continue to hold office. Additionally, an issue also arises from this same point as to whether APPL 1 of 2025, seeking the alteration to the Rules of the BTA, has been validly commenced. I note that on the evidence before me, those persons as referred to at [10] of Mr Buchan's affidavit, previously elected, have held and are prepared to continue to hold office and act accordingly.

### Conclusion

- 13 I will exercise my discretion under s 66 of the *Act* to make orders establishing an Interim Management Committee of the BTA in the terms as sought in the application. It is hoped that in making the orders that I now propose to make, the issues that have arisen can now be promptly resolved and the organisation be placed on a stable footing to conduct its affairs, and to 'keep it on track': *Stacey v Civil Service Association of Western Australia (Incorporated)* [2007] WAIRC 00568; (2007) 87 WAIG 1229.
- 14 As to the operative date of the order, it was originally proposed in the application that the orders operate until 27 June 2025. That date was extended to 27 September 2025 in the joint written submissions. However, given the history of the matters that have come before me in the earlier s 66 proceedings, I consider that the prudent course would be to specify that the order operate until 31 October 2025, with a liberty to apply. A minute of proposed order now issues.

2025 WAIRC 00263

### ORDER PURSUANT TO S.66

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

#### PARTIES

THE CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION OF WORKERS;  
THE PLUMBERS AND GASFITTERS EMPLOYEES' UNION OF AUSTRALIA, WEST  
AUSTRALIAN BRANCH, INDUSTRIAL UNION OF WORKERS

APPLICANTS

-v-

BUILDING TRADES ASSOCIATION OF UNIONS OF WESTERN AUSTRALIA  
(ASSOCIATION OF WORKERS)

RESPONDENT

**CORAM** CHIEF COMMISSIONER S J KENNER  
**DATE** THURSDAY, 1 MAY 2025  
**FILE NO/S** PRES 3 OF 2025  
**CITATION NO.** 2025 WAIRC 00263

**Result** Order issued

#### Appearances

**Applicants** Ms Fraser Hardy of counsel

**Respondent** No appearance

#### Order

HAVING HEARD Ms Fraser Hardy of counsel on behalf of the applicants and there being no appearance on behalf of the respondent, the Chief Commissioner, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), hereby orders –

- (1) THAT an Interim Management Committee of the Building Trades Association of Western Australia (Association of Workers) (BTA) be established and constituted by the following officers:
  - a. Bradley Upton, President (from CFMEUW);
  - b. Brian Bintley, Vice President (from PGEU);
  - c. Michael Buchan, Secretary/Treasurer (from CFMEUW);
  - d. Robert Pearson, Trustee (from CFMEUW);
  - e. Troy Smart, Trustee (from PGEU); and
  - f. Robert Plumstead, Trustee (from PGEU).
- (2) THAT the Interim Management Committee shall exercise all of the powers, functions and duties of the Management Committee of the BTA, and each of the officers shall have the authority to exercise all of the powers, duties and functions of the office/s held by each of them.

- (3) THAT the requirements of rule 6(e) of the Rules of the BTA in relation to quorum for meetings of the Management Committee are waived, and at any meeting of the Interim Management Committee, quorum shall be four officers.
- (4) THAT APPL 1 of 2025 be deemed to have been lodged with the authority of the BTA.
- (5) THAT the requirement to comply with rule 18 in respect of the 6 June 2023 meeting of the Management Committee as a procedural precondition to the alteration of the Rules of the BTA the subject of APPL 1 of 2025 be waived.
- (6) THAT the officers are to hold office until such time that replacement officers are appointed or elected in accordance with the Rules of the BTA as altered by APPL 1 of 2025.
- (7) THAT unless otherwise varied, these orders will operate until 31 October 2025.
- (8) THAT the parties have liberty to apply on short notice.

[L.S.]

(Sgd.) S J KENNER,  
Chief Commissioner.

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## CORRECTIONS—

2025 WAIRC 00247

### PUBLIC TRANSPORT AUTHORITY/ARTBIU (TRANSWA) INDUSTRIAL AGREEMENT 2025

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

PUBLIC TRANSPORT AUTHORITY OF WESTERN AUSTRALIA

**APPLICANT**

-v-

AUSTRALIAN RAIL, TRAM AND BUS INDUSTRY UNION OF EMPLOYEES, WESTERN  
AUSTRALIA BRANCH**RESPONDENT****CORAM** COMMISSIONER T KUCERA**DATE** FRIDAY, 17 APRIL 2025**FILE NO/S** AG 21 OF 2025**CITATION NO.** 2025 WAIRC 00247**Result** Correction order issued**Representation****Applicant** Public Transport Authority of Western Australia**Respondent** Australian Rail, Tram and Bus Industry Union of Employees, Western Australia Branch

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#### *Correction Order*

WHEREAS on 7 April 2025, the *Public Transport Authority/ARTBIU (Transwa) Industrial Agreement 2025* (Agreement) was registered as an industrial agreement in the Commission by Order [2025] WAIRC 00219;

AND WHEREAS on 11 April 2025, the Public Transport Authority of Western Australia wrote to the Commission informing that drafting errors had been identified in the Agreement at Schedule 1 and subclause 5.2.4(c);

NOW THEREFORE the Commission, pursuant to the powers conferred under the IR Act, hereby orders —

1. THAT the Order [2025] WAIRC 00219 be corrected by amending the drafting errors raised by the parties on 11 April 2025.

[L.S.]

(Sgd.) T KUCERA,  
Commissioner.

**PROCEDURAL DIRECTIONS AND ORDERS—****2025 WAIRC 00245****SHIRE OF PLANTAGENET OUTSIDE WORKFORCE INDUSTRIAL AGREEMENT 2025**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
SHIRE OF PLANTAGENET

**PARTIES****APPLICANT**

-v-

LOCAL GOVERNMENT, BOTANICAL GARDENS, CEMETERIES AND RACING UNION

**RESPONDENT****CORAM** SENIOR COMMISSIONER R COSENTINO**DATE** MONDAY, 14 APRIL 2025**FILE NO/S** AG 18 OF 2025**CITATION NO.** 2025 WAIRC 00245

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**Result** Order issued  
**Representation** (On the papers)  
**Applicant** Ms M Neal (of counsel)  
**Respondent** Mr A Johnson

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*Order*

The Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979* (WA) hereby orders –

THAT the name of the respondent be amended by deleting the name ‘Local Government, Botanical Gardens, Cemeteries and Racing Union’ and inserting in lieu thereof the name ‘Local Government, Racing and Cemeteries Employees Union (WA)’.

[L.S.]

(Sgd.) R COSENTINO,  
Senior Commissioner.

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**2025 WAIRC 00287****DEPARTMENT OF EDUCATION (SCHOOL SUPPORT OFFICERS) CSA AGREEMENT 2024**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
DEPARTMENT OF EDUCATION

**PARTIES****APPLICANT**

-v-

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED

**RESPONDENT****CORAM** COMMISSIONER C TSANG**DATE** TUESDAY, 13 MAY 2025**FILE NO.** AG 27 OF 2025**CITATION NO.** 2025 WAIRC 00287

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**Result** Order issued  
**Representation**  
**Applicant** Ms O Carey  
**Respondent** Ms S Zuvelek

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*Order*

HAVING heard from Ms O Carey on behalf of the applicant and Ms S Zuvelek on behalf of the respondent, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), and by consent, hereby orders –

THAT the name of the applicant to the application 'Department of Education' be deleted and substituted with 'Director General, Department of Education'.

[L.S.]

(Sgd.) C TSANG,  
Commissioner.

2025 WAIRC 00288

**DEPARTMENT OF EDUCATION (RESIDENTIAL COLLEGE SUPERVISORS) CSA AGREEMENT 2024**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

DEPARTMENT OF EDUCATION

**APPLICANT**

-v-

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED

**RESPONDENT**

**CORAM** COMMISSIONER C TSANG

**DATE** TUESDAY, 13 MAY 2025

**FILE NO.** AG 30 OF 2025

**CITATION NO.** 2025 WAIRC 00288

**Result** Order issued

**Representation**

**Applicant** Ms O Carey

**Respondent** Ms D Shepherdson

*Order*

HAVING heard from Ms O Carey on behalf of the applicant and Ms D Shepherdson on behalf of the respondent, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), and by consent, hereby orders –

THAT the name of the applicant to the application 'Department of Education' be deleted and substituted with 'Director General, Department of Education'.

[L.S.]

(Sgd.) C TSANG,  
Commissioner.

2025 WAIRC 00284

**CONTRACTUAL BENEFIT CLAIM**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

MICHAEL MACBETH

**APPLICANT**

-v-

MACA MINING PTY LTD

**RESPONDENT**

**CORAM** COMMISSIONER C TSANG

**DATE** MONDAY, 12 MAY 2025

**FILE NO.** B 4 OF 2025

**CITATION NO.** 2025 WAIRC 00284

**Result** Direction issued

**Representation**

**Applicant** Mr M Macbeth

**Respondent** Mr K Jarrett (of counsel)

*Direction*

HAVING heard from Mr M Macbeth on his own behalf, and Mr K Jarrett (of counsel) on behalf of the respondent at the Directions Hearing listed on 9 May 2025, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), hereby directs –

**Jurisdictional issue**

1. THAT the issue of whether the Commission has jurisdiction pursuant to s 29AA(4) of the *Industrial Relations Act 1979* (WA) to hear and determine the matter (**jurisdictional issue**) be determined as a preliminary issue.
2. THAT the applicant file **by Friday, 23 May 2025**:
  - a. Any evidence addressing the jurisdictional issue by affidavit made in accordance with s 9 of the *Oaths, Affidavits and Statutory Declarations Act 2005* (WA); and
  - b. Legal submissions addressing the jurisdictional issue.
3. THAT the respondent file **by Friday, 6 June 2025**:
  - a. Any evidence addressing the jurisdictional issue by affidavit made in accordance with s 9 of the *Oaths, Affidavits and Statutory Declarations Act 2005* (WA) (**respondent's affidavit on jurisdiction**); and
  - b. Legal submissions addressing the jurisdictional issue (**respondent's submissions on jurisdiction**).
4. THAT the applicant file **by Friday, 20 June 2025**:
  - a. Any evidence responsive to the respondent's affidavit on jurisdiction by affidavit made in accordance with s 9 of the *Oaths, Affidavits and Statutory Declarations Act 2005* (WA); and
  - b. Any legal submissions responsive to the respondent's submissions on jurisdiction.
5. That subject to further order, the jurisdictional issue be determined on the papers.

**Substantive matter**

Subject to the Commission determining the jurisdictional issue and issuing an Order giving effect to the Commission's jurisdiction (**The Order**):

6. THAT the applicant's application filed on 8 May 2025 for leave to amend the *Form 3 – Contractual Benefit Claim* filed on 29 January 2025, be granted with the applicant having leave to file an amended *Form 3 – Contractual Benefit Claim* **by no later than 2-weeks** following the date of The Order.
7. THAT **by no later than 2-weeks** following the date of Direction 6 above, the respondent file an amended *Form 3A – Employer Response to Contractual Benefit Claim*.

Application for Discovery of Documents

8. THAT the applicant's application filed on 8 May 2025 for discovery of documents that was varied at the Directions Hearing on 9 May 2025 to the discovery of all emails held in the account of [mick.macbeth@maca.net.au](mailto:mick.macbeth@maca.net.au) in the period 1 July 2011 to 30 August 2024 (**Application for Discovery of Documents**) be listed for a half-day hearing **not before 2-weeks** following the date in Direction 10 below.
9. THAT **by no later than 4-weeks** following the date of Direction 7 above, the applicant file in support of the Application for Discovery of Documents:
  - a. Any evidence by witness outline in accordance with *Practice Note 9 of 2021*; and
  - b. An outline of legal submissions.
10. THAT **by no later than 4-weeks** following the date of Direction 9 above, the respondent file in opposition to the Application for Discovery of Documents:
  - a. Any evidence by witness outline in accordance with *Practice Note 9 of 2021*; and
  - b. An outline of legal submissions.

Hearing

Subject to the Commission determining the Application for Discovery of Documents (**Decision on the Application for Discovery of Documents**):

11. THAT the matter be listed for a 3-day hearing (**Hearing**), to be scheduled **not before**:
  - a. The Commission issuing the Decision on the Application for Discovery of Documents); and
  - b. **2-weeks** following the date of Direction 15 below.
12. THAT **by no later than 4-weeks** following the date of the Decision on the Application for Discovery of Documents, the applicant file any witness outlines in accordance with *Practice Note 9 of 2021* that he intends to rely upon at the Hearing.
13. THAT **by no later than 4-weeks** following the date of Direction 12 above, the respondent file any witness outlines in accordance with *Practice Note 9 of 2021* that it intends to rely upon at the Hearing.

14. THAT **by no later than 2-weeks** following the date of Direction 13 above, the applicant file an outline of the legal submissions that he intends to rely upon at the Hearing.
15. THAT **by no later than 2-weeks** following the date of Direction 14 above, the respondent file an outline of the legal submissions that it intends to rely upon at the Hearing.

**Liberty to apply**

16. THAT the parties have liberty to apply.

[L.S.]

(Sgd.) C TSANG,  
Commissioner.

2025 WAIRC 00236

**CONTRACTUAL BENEFIT CLAIM**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

AMANDA JAYNE VARIAN

**APPLICANT**

-v-

FRONT LINE FINANCIAL SOLUTIONS PTY LTD

**RESPONDENT****CORAM**

COMMISSIONER T KUCERA

**DATE**

FRIDAY, 11 APRIL 2025

**FILE NO/S**

B 6 OF 2025

**CITATION NO.**

2025 WAIRC 00236

<b>Result</b>	Order issued
<b>Representation</b>	
<b>Applicant</b>	Ms A Varian
<b>Respondent</b>	Mr A King

*Order*

WHEREAS this is an application pursuant to s 29(1)(d) of the *Industrial Relations Act 1979* (WA) (**The IR Act**);

AND WHEREAS a conciliation conference was held on Thursday 27 March 2025, but the matter was not resolved;

HAVING HEARD from Ms A Varian on her own behalf and Mr A King on behalf of the respondent, the Commission, pursuant to its powers under the IR Act, hereby orders by consent —

1. THAT the parties are to provide informal discovery (exchange of documents relevant to the proceedings) by 17 April 2025.
2. THAT the evidence in chief in this matter is to be adduced by way of signed witness statements which will stand as the evidence in chief of their maker. Evidence in chief other than that contained in the witness statements may only be adduced by leave of the Commission.
3. THAT the applicant is to file her evidence in chief, in the form of witness statements in the manner required by practice note 9 of 2021 together with any documents upon which she intends to rely by 1 May 2025.
4. THAT the respondent is to file its evidence in chief, in the form of witness statements in the manner required by practice note 9 of 2021 together with any documents upon which it intends to rely by 15 May 2025.
5. THAT the matter be listed for a further conciliation conference not before Friday 16 May 2025.
6. THAT there be liberty to apply.

[L.S.]

(Sgd.) T KUCERA,  
Commissioner.

2025 WAIRC 00256

**APPEAL AGAINST A DECISION OF THE COMMISSION IN COURT SESSION IN CICS 5, 8 & 9 OF 2023 GIVEN ON  
28 MARCH 2025**

WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT

**PARTIES**

THE CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION OF WORKERS

**APPELLANT**

-v-

WESTERN AUSTRALIAN MUNICIPAL, ADMINISTRATIVE, CLERICAL AND SERVICES  
UNION OF EMPLOYEES**RESPONDENT**

LOCAL GOVERNMENT, RACING AND CEMETERIES EMPLOYEES UNION (WA)

**FIRST INTERVENOR**

WESTERN AUSTRALIAN LOCAL GOVERNMENT ASSOCIATION

**SECOND INTERVENOR****CORAM**

BUSS J

**DATE**

MONDAY, 28 APRIL 2025

**FILE NO/S**

IAC 2 OF 2025

**CITATION NO.**

2025 WAIRC 00256

**Result**

Programming Order Issued

*Order*

1. The appellant file submissions and a list of legal authorities and serve a copy on the respondent by 4pm on 23 May 2025.
2. The respondent and each intervenor file submissions and a list of legal authorities and serve a copy on the appellant by 4pm on 20 June 2025.
3. The appellant file the appeal book and provide three hard copies and serve a copy on the respondent and each intervenor by 4pm on 18 July 2025.

[L.S.]

(Sgd.) S KEMP,  
Clerk of Court.

2025 WAIRC 00248

**ORDER PURSUANT TO S.66**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

TIM CLARKE

**APPLICANT**

-v-

MEDIA, ENTERTAINMENT AND ARTS ALLIANCE OF WESTERN AUSTRALIA (UNION OF  
EMPLOYEES)**RESPONDENT****CORAM**

CHIEF COMMISSIONER S J KENNER

**DATE**

THURSDAY, 17 APRIL 2025

**FILE NO/S**

PRES 8 OF 2024

**CITATION NO.**

2025 WAIRC 00248

**Result**

Order issued

**Appearances****Applicant**

Mr T Borgeest of counsel

**Respondent**

Mr T Borgeest of counsel

*Order*

WHEREAS on 28 May 2024, orders ([2024] WAIRC 00252) were made establishing an Interim Union Council of the respondent to enable the respondent to continue to operate while amendments to its Rules are being progressed, with such orders to operate until 30 October 2024 unless otherwise varied or revoked;

AND WHEREAS on 29 October 2024, orders ([2024] WAIRC 00929) were made extending the period of operation of the Interim Union Council of the respondent until 28 February 2025;

AND WHEREAS on 28 February 2025, the applicant made a further application for extension of the period of operation of the Interim Union Council of the respondent and orders ([2025] WAIRC 00130) were made extending the period of operation of the Interim Union Council of the respondent until 30 April 2025;

AND WHEREAS this matter was listed for mention on 16 April 2025, and the parties requested that the constitution of the Interim Union Council be altered reflecting changes in the composition of the Branch Council of the Western Australian Branch of the Media, Entertainment and Arts Alliance;

NOW THEREFORE, the Chief Commissioner, pursuant to the powers conferred under s 66 of the *Industrial Relations Act 1979* (WA), hereby orders –

- (1) THAT an Interim Union Council of the respondent is established, constituted by:
  - a. Emma WYNNE,
  - b. Michael McCALL, and
  - c. Helen TUCKEY.
- (2) THAT Michael McCALL is designated Senior President for the purposes of rules 25 and 25AA of the respondent's rules.
- (3) THAT rules 52 and 53 of the respondent's rules have no operative effect.
- (4) THAT the Interim Union Council shall have the authority to exercise all of the powers, duties, and functions of the Council of the respondent and each of the members of the Interim Union Council shall have the authority to exercise all of the powers, duties and functions of the office of member of the Council held by each of them.
- (5) THAT unless otherwise varied, this order will operate until 30 June 2025.
- (6) THAT there be liberty to apply on short notice.

(Sgd.) S J KENNER,  
Chief Commissioner.

[L.S.]

**2025 WAIRC 00283**

**APPEAL AGAINST THE DECISION TO DISMISS GIVEN ON 21 NOVEMBER 2024**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

GORDON MILLER

**APPELLANT**

-v-

DIRECTOR GENERAL, DEPARTMENT OF JUSTICE

**RESPONDENT**

**CORAM**

PUBLIC SERVICE APPEAL BOARD

COMMISSIONER T B WALKINGTON — CHAIRPERSON

MS B CONWAY — BOARD MEMBER

MS S SHAH — BOARD MEMBER

**DATE**

MONDAY, 12 MAY 2025

**FILE NO**

PSAB 31 OF 2024

**CITATION NO.**

2025 WAIRC 00283

**Result**

Direction issued

**Representation**

**Appellant**

Mr Jason Tebbutt

**Respondent**

Mr John Carroll (of counsel)

*Direction*

HAVING heard from Mr Tebbutt on behalf of the appellant and Mr Carroll 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 between the parties;
2. THAT the parties file and serve an agreed statement of facts and agreed bundle of documents by 28 April 2025;
3. THAT the appellant file and serve any outlines of evidence and any documents, not being agreed documents, upon which they intend to rely by 26 May 2025;
4. THAT the respondent file and serve any outlines of evidence and any documents, not being agreed documents, upon which they intend to rely by 16 June 2025;
5. THAT the appellant file and serve an outline of written submissions by 30 June 2025;
6. THAT the respondent file and serve an outline of written submissions by 14 July 2025;
7. THAT the matter be listed for hearing of up to three days on a date to be fixed not before 21 July 2025; and
8. THAT the parties have liberty to apply on short notice.

(Sgd.) T B WALKINGTON,  
Commissioner,

On behalf of the Public Service Appeal Board.

[L.S.]

**2025 WAIRC 00275**

**APPEAL AGAINST THE DECISION OF THE EMPLOYER TAKEN ON 13 DECEMBER 2024**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

STEPHEN BRUCE BURNS

**APPELLANT**

-v-

DIRECTOR GENERAL, DEPARTMENT OF EDUCATION

**RESPONDENT**

**CORAM**

PUBLIC SERVICE APPEAL BOARD  
COMMISSIONER C TSANG – CHAIR  
MR M FINNEGAN – BOARD MEMBER  
MS E HAMILTON – BOARD MEMBER

**DATE**

WEDNESDAY, 7 MAY 2025

**FILE NO.**

PSAB 34 OF 2024

**CITATION NO.**

2025 WAIRC 00275

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<b>Result</b>	Direction issued
<b>Representation</b>	
<b>Appellant</b>	Mr J Tebbutt
<b>Respondent</b>	Mr J Carroll (of counsel)

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*Direction*

WHEREAS on 7 April 2025, the Public Service Appeal Board issued Directions ([2025] WAIRC 00220) programming the appellant's appeal for hearing and determination;

AND WHEREAS on 6 May 2025, the appellant applied for an extension of time to comply with the Directions, and on 7 May 2025, the respondent confirmed that they consented to the appellant's application for an extension of time in which to comply with the Directions issued on 7 April 2025;

NOW THEREFORE, the Public Service Appeal Board pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), and by consent, hereby directs –

1. THAT Directions 2 through 7 of the Directions issued on 7 April 2025 ([2025] WAIRC 00220) be vacated.
2. THAT the parties file **by Friday, 16 May 2025**:
  - (a) An agreed statement that identifies:
    - (i) The agreed facts.
    - (ii) The agreed issues that are to be determined at the hearing.
    - (iii) The agreed legal principles applicable to the issues at 2(a)(ii) above.
  - (b) A bundle of agreed documents.

3. THAT the appellant file outlines of witness evidence and any documents (other than those in the bundle of agreed documents) by **Friday, 30 May 2025**.
4. THAT the respondent file outlines of witness evidence and any documents (other than those in the bundle of agreed documents) by **Friday, 13 June 2025**.
5. THAT the appellant file an outline of legal submissions by **Friday, 27 June 2025**.
6. THAT the respondent file an outline of legal submissions by **Friday, 11 July 2025**.
7. THAT the matter be listed for a 2-day hearing not before **Friday, 18 July 2025**.

[L.S.]

(Sgd.) C TSANG,  
Commissioner,  
On behalf of the Public Service Appeal Board.

2025 WAIRC 00276

**DISPUTE RE ALLEGED CONTRAVENTION OF THE OWNER-DRIVERS (CONTRACTS AND DISPUTES) ACT 2007**

IN THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

SITTING AS

THE ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL

**PARTIES**

JOONDALUP TRANSPORT PTY LTD

**APPLICANT**

-v-

ONSITE RENTAL GROUP OPERATIONS PTY LTD

**RESPONDENT****CORAM** COMMISSIONER T KUCERA**DATE** WEDNESDAY, 7 MAY 2025**FILE NO/S** RFT 1 OF 2025**CITATION NO.** 2025 WAIRC 00276**Result** Order issued**Representation****Applicant** Transport Workers Union of WA**Respondent** Hotchkin Hanly*Order*

HAVING heard from the Transport Workers Union of WA on behalf of the applicant, and Hotchkin Hanly on behalf of the respondent, the Road Freight Industry Tribunal, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), hereby orders by consent –

1. THAT the time for compliance with Order 2 of the Order [2025] WAIRC 00246 dated 17 April 2025 (**Orders**) is extended to 23 May 2025.
2. THAT the time for compliance with Order 3 of the Orders is extended to 30 May 2025.
3. THAT the time for compliance with Order 4 of the Orders is extended to 13 June 2025.
4. THAT the time for compliance with Order 5 of the Orders is extended to 20 June 2025.

[L.S.]

(Sgd.) T KUCERA,  
Commissioner.

2025 WAIRC 00274

**DISPUTE RE ALLEGED CONTRAVENTION OF THE OWNER-DRIVERS (CONTRACTS AND DISPUTES) ACT 2007**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

JOONDALUP TRANSPORT PTY LTD

**APPLICANT**

-v-

ONSITE REANTAL GROUP OPERATIONS PTY LIMITED (ONSITE)

**RESPONDENT****CORAM** COMMISSIONER T KUCERA**DATE** WEDNESDAY, 7 MAY 2025**FILE NO/S** RFT 1 OF 2025**CITATION NO.** 2025 WAIRC 00274**Result** Order issued  
**Representation** (On the papers)**Applicant** Transport Workers Union of WA**Respondent** Hotchkin Hanly*Order*

THE Commission, pursuant to the powers conferred under s 27(1) of the *Industrial Relations Act 1979* (WA), hereby orders by consent –

1. THAT “Onsite Rental Group Operations Pty Ltd” be substituted for “Onsite Reantal Group Operations Pty Limited (Onsite)” as the named respondent.

(Sgd.) T KUCERA,  
Commissioner.

[L.S.]

2025 WAIRC 00246

**DISPUTE RE ALLEGED CONTRAVENTION OF THE OWNER-DRIVERS (CONTRACTS AND DISPUTES) ACT 2007**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

JOONDALUP TRANSPORT PTY LTD

**APPLICANT**

-v-

ONSITE REANTAL GROUP OPERATIONS PTY LIMITED (ONSITE)

**RESPONDENT****CORAM** COMMISSIONER T KUCERA**DATE** FRIDAY, 17 APRIL 2025**FILE NO/S** RFT 1 OF 2025**CITATION NO.** 2025 WAIRC 00246**Result** Order issued**Representation****Applicant** Mr A Dzieciol**Respondent** Mr B Sulaiman*Order*

HAVING heard from Mr A Dzieciol on behalf of the applicant and Mr B Sulaiman on behalf of the respondent, the Road Freight Industry Tribunal (**Tribunal**), pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), hereby orders by consent –

1. THAT discovery is to be informal.

2. THAT the parties are to file any statement of agreed facts and bundle of agreed documents in relation to the issue of whether the Tribunal has the jurisdiction to hear and determined the claim (**jurisdictional issue**) by Friday, 2 May 2025.
3. THAT by Friday, 16 May 2025 the applicant is to file:
  - a. any witness statements in relation to the jurisdictional issue, in the manner required by practice note 9 of 2021; and
  - b. any documents which are not agreed documents upon which the applicant intends to rely on in relation to the jurisdictional issue.
4. THAT by Friday, 30 May 2025 the respondent is to file:
  - a. any witness statements in relation to the jurisdictional issue, in the manner required by practice note 9 of 2021; and
  - b. any documents which are not agreed documents upon which they intend to rely on in relation to the jurisdictional issue.
5. THAT the applicant is to file an outline of written submissions in relation to the jurisdictional issue by Friday, 13 June 2025.
6. THAT the respondent is to file an outline of written submissions in relation to the jurisdictional issue by Friday, 27 June 2025.
7. THAT the appeal is to be listed for a one day hearing on the jurisdictional issue, not before Monday, 30 June 2025.
8. THAT there be liberty to apply.

(Sgd.) T KUCERA,  
Commissioner.

[L.S.]

2025 WAIRC 00282

**UNFAIR DISMISSAL APPLICATION**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

BRADLEY MARK FLAVEL

**APPLICANT**

-v-

DEPARTMENT OF JUSTICE WESTERN AUSTRALIA

**RESPONDENT**

**CORAM** COMMISSIONER T B WALKINGTON

**DATE** MONDAY, 12 MAY 2025

**FILE NO/S** U 18 OF 2025

**CITATION NO.** 2025 WAIRC 00282

---

<b>Result</b>	Order issued
<b>Representation</b>	
<b>Applicant</b>	Mr Bradley Mark Flavel
<b>Respondent</b>	Mr John Carroll (of counsel)

---

*Order*

HAVING heard from the applicant on his own behalf, and Mr Carroll on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, and by consent, hereby orders —

THAT the name of the Respondent be amended to Director General, Department of Justice; and

THAT the application be, and is hereby, accepted out of time.

(Sgd.) T B WALKINGTON,  
Commissioner.

[L.S.]

2025 WAIRC 00254

**UNFAIR DISMISSAL APPLICATION**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

JAN JACOBS

**APPLICANT**

-v-

SOUTH METROPOLITAN HEALTH SERVICES

**RESPONDENT**

**CORAM** COMMISSIONER T EMMANUEL  
**DATE** WEDNESDAY, 23 APRIL 2025  
**FILE NO/S** U 22 OF 2025  
**CITATION NO.** 2025 WAIRC 00254

---

**Result** Programming orders issued  
**Representation**  
**Applicant** On his own behalf  
**Respondent** Mr M Aulfrey (of counsel)

---

*Programming orders*

HAVING heard from the applicant on his own behalf and Mr M Aulfrey (of counsel) on behalf of the respondent, the Commission, pursuant to the powers conferred by the *Industrial Relations Act 1979* (WA), orders –

1. THAT by 4pm on Thursday, 22 May 2025, the respondent file its application to dismiss application U 22 of 2025 under section 27(1)(a) of the *Industrial Relations Act 1979* (WA) (**Dismissal Application**), any material on which it seeks to rely (including outlines of any witness evidence and documents on which it seeks to rely) and written submissions in support of the Dismissal Application;
2. THAT by 4pm on Thursday, 19 June 2025, the applicant file his response to the Dismissal Application, any material on which he seeks to rely (including outlines of any witness evidence and documents on which he seeks to rely) and written submissions opposing the Dismissal Application; and
3. THAT the matter be listed for a part day hearing on a date to be fixed to determine the Dismissal Application.

(Sgd.) T EMMANUEL,  
 Commissioner.

[L.S.]

2025 WAIRC 00296

**UNFAIR DISMISSAL APPLICATION**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

STEVEN ANDREW LLOYD

**APPLICANT**

-v-

GOVERNMENT OF WESTERN AUSTRALIA DEPARTMENT OF JUSTICE OFFICE OF  
DIRECTOR GENERAL**RESPONDENT**

**CORAM** COMMISSIONER T B WALKINGTON  
**DATE** WEDNESDAY, 14 MAY 2025  
**FILE NO.** U 104 OF 2024  
**CITATION NO.** 2025 WAIRC 00296

---

**Result** Order issued  
**Representation**  
**Applicant** Mr Steven Lloyd  
**Respondent** Mr Michael McIlwaine (of counsel)

---

*Order*

HAVING heard from the applicant on his own behalf, and Mr McIlwaine on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979* (WA), and by consent, hereby directs —

THAT the name of the Respondent be amended to Director General, Department of Justice.

(Sgd.) T B WALKINGTON,  
Commissioner.

[L.S.]

### INDUSTRIAL AGREEMENTS—Notation of—

Agreement Name/Number	Date of Registration	Parties		Commissioner	Result
Arts and Culture Trust Venues Management MEAA and UWU Agreement 2024 AG 16/2025	08/05/2025	Arts and Culture Trust	Media, Entertainment and Arts Alliance of Western Australia (Union of Employees), United Workers Union (WA)	Commissioner T B Walkington	Agreement Registered
Disability Services Commission (Social Trainers) CSA Agreement 2024 AG 26/2025	30/04/2025	Disability Services Commission	Civil Service Association of Western Australia Incorporated	Commissioner T B Walkington	Agreement Registered
Public Transport Authority/ARTBIU (Transwa) Industrial Agreement 2025 AG 21/2025	07/04/2025	Public Transport Authority of Western Australia	Australian Rail, Tram and Bus Industry Union of Employees, Western Australian Branch	Commissioner T Kucera	Agreement registered
Shire of Plantagenet Outside Workforce Industrial Agreement 2025 AG 18/2025	29/04/2025	Shire of Plantagenet	Local Government, Racing and Cemeteries Employees Union (WA)	Senior Commissioner R Cosentino	Agreement registered
Shire of Victoria Plains (External Employees) Union Industrial Agreement 2025 AG 28/2025	22/04/2025	Shire of Victoria Plains	The Western Australian Municipal, Administrative, Clerical and Services Union of Employees, The Local Government, Racing and Cemeteries Employees Union (WA)	Senior Commissioner R Cosentino	Agreement registered
WA Health System – United Workers Union (WA) – Enrolled Nurses, Assistants in Nursing, Aboriginal Health Workers, Ethnic Health Workers and Aboriginal Health Practitioners Industrial Agreement 2024 AG 31/2025	14/05/2025	North Metropolitan Health Service, Child and Adolescent Health Service, East Metropolitan Health Service, Health Support Service, Pathwest Laboratory Medicine WA, Quadriplegic Centre, South Metropolitan Health Service, WA Country Health Service, Mental Health Commission	United Workers Union (WA)	Commissioner T Emmanuel	Agreement registered
Western Australia Police Force Industrial Agreement 2024 AG 24/2025	13/05/2025	Western Australia Police Force	Western Australian Police Union of Workers	Commissioner T B Walkington	Agreement registered

**INDUSTRIAL AGREEMENTS—BARGAINING—Matters dealt with—**

2025 WAIRC 00224

**COMMISSION TO MAKE ORDERS AS TO TERMS OF THE CITY OF GREATER GERALDTON INDUSTRIAL AGREEMENT 2023 - 2026**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**CITATION** : 2025 WAIRC 00224  
**CORAM** : COMMISSIONER T KUCERA  
**HEARD** : TUESDAY, 3 DECEMBER 2024, WEDNESDAY, 4 DECEMBER 2024, THURSDAY, 5 DECEMBER 2024  
**DELIVERED** : MONDAY, 7 APRIL 2025  
**FILE NO.** : APPL 124 OF 2024  
**BETWEEN** : CITY OF GREATER GERALDTON, WESTERN AUSTRALIAN MUNICIPAL, ADMINISTRATIVE, CLERICAL AND SERVICES UNION OF EMPLOYEES  
 Applicant  
 AND  
 (NOT APPLICABLE)  
 Respondent

**CatchWords** : Industrial Law (WA) – *City of Greater Geraldton Industrial Agreement 2023 - 2026* – Application for Commission to make orders as to specified matters under s 42G – Section 42G Principles – Cost of living increases – Competitive rates of pay – Staff attraction and retention – Employer capacity to pay  
**Legislation** : *Industrial Relations Act 1979* (WA)  
**Result** : Orders to issue  
**Representation:**  
**Counsel:**  
**First Applicant** : Mr C Beetham, of counsel  
**Second Applicant** : Mr C Fogliani & Mr Z Doherty, of counsel

**Case(s) referred to in reasons:**

*City of Albany, Western Australian Municipal, Administrative, Clerical and Services Union of Employees* [2024] WAIRC 00210  
*City of Swan, Local Government, Racing and Cemeteries Employees Union (WA) and Western Australian Municipal, Administrative, Clerical and Services Union of Employees* [2024] WAIRC 00989

*Reasons for Decision*

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## Introduction

- 1 The City of Greater Geraldton (**COGG**) and the Western Australian Municipal, Administrative, Clerical and Services Union of Employees (**WASU**) have reached agreement on all but one of the terms of a proposed industrial agreement to apply to its workforce.
- 2 The title of the proposed industrial agreement is the *City of Greater Geraldton Industrial Agreement 2023 (new agreement)*. The new agreement has a three-year term, commencing on the date it is registered by the Commission and expiring on 30 June 2026.
- 3 The COGG's employees to which the terms of the new agreement apply are engaged in both 'inside' and 'outside' classifications. The employees who work in the 'inside' roles, include the COGG's administrative and library staff.
- 4 The 'outside roles' include employees who maintain parks, pathways, shelters and other facilities in Geraldton, Mullewa and other localities within the COGG's boundaries.
- 5 The COGG and the WASU have agreed to the payment of a 6 percent wage increase in the first year of the new agreement to apply from 1 July 2023.
- 6 For the second and third years of the new agreement, the COGG and the WASU were not able to agree upon the quantum of the wage increases that will apply. As a result, the only matter that remains outstanding between the parties is the amount by which wage rates under the new agreement are to be increased, effective on 1 July 2024 and 1 July 2025.
- 7 To break the impasse over this issue, the COGG and the WASU (**parties**) have applied to the Commission under s 42G of *the Industrial Relations Act 1979 (IR Act)* to register the new agreement in the terms the parties have agreed, together with any other provision the Commission may order on the quantum of the pay increases to apply in the second and third years of the new agreement.
- 8 In the reasons that follow, I have determined the quantum of the percentage increases that are to apply from 1 July 2024 and 1 July 2025.

## Section 42G principles

- 9 Section 42G provides:
  - (1) This section applies where —
    - (a) negotiating parties have reached agreement on some, but not all, of the provisions of a proposed agreement; and
    - (b) an application is made to the Commission for registration of the agreement as an industrial agreement, the agreement to include any further provisions specified by an order referred to in subsection (2); and
    - (c) an application is made to the Commission by the negotiating parties for an order as to specified matters on which agreement has not been reached.
  - (2) When registering the agreement, the Commission may order that the agreement include provisions specified by the Commission.
  - (3) An order referred to in subsection (2) may only be made in relation to matters specified by the negotiating parties in an application referred to in subsection (1)(c).
  - (4) In deciding the terms of an order, the Commission may have regard to any matter it considers relevant.
  - (5) When an order referred to in subsection (2) is made, the provisions specified by the Commission are, by force of this section, included in the agreement registered by the Commission.
  - (6) Despite section 49, no appeal lies from an order referred to in subsection (2).
- 10 The approach to be taken by the Commission in an application to resolve a dispute under s 42G and the principles to be applied, were recently summarised in two recent decisions Senior Commissioner Cosentino issued:
  - i. *City of Albany, Western Australian Municipal, Administrative, Clerical and Services Union of Employees 2024* WAIRC 00210 (*City of Albany*); and

- ii. *City of Swan, Local Government, Racing and Cemeteries Employees Union (WA) and Western Australian Municipal, Administrative, Clerical and Services Union of Employees* 2024 WAIRC 00989 (*City of Swan*).

- 11 I have extracted below the summary of these principles as set out by the Senior Commissioner in *City of Swan* at [5] – [7].
5. In s 42G proceedings, there is no onus in the usual sense. The parties put their respective cases and the Commission decides the matter in accordance with equity and good conscience: *Western Australian Police Union of Workers v Commissioner of Police* [2021] WAIRC 00047; (2021) 101 WAIG 293 (*WA Police Union of Workers v Commissioner of Police*) at [14].
6. However, the assessment of the competing proposals advanced by each party requires that there be a firm evidentiary basis to justify any orders the Commission makes. Though the Commission is not bound by the rules of evidence, this does not mean the Commission is able to act without any evidence. This has been a longstanding principle of industrial arbitration. In *Re Tramways Employees (Melbourne) Award 1949* [1951] CthArbRp 528; (1951) 72 CAR. 26, the Commonwealth Court of Conciliation and Arbitration stated at 27 - 28:
- Although the Court is not bound by rules of evidence, this had never been held to mean that the Court would act without evidence. If a tribunal were to so act, obvious injustices and insecurities could result...
- The industrial system has been functioning for so long that even an inexperienced advocate should know that an industrial claim is not to be had for the asking, but is necessarily dependent upon the quality of the relevant evidence produced...
7. In determining a dispute under s 42G, the Commission:
- a. has a broad discretion to reach a conclusion based on the evidence before it;
  - b. can and should consider a range of elements including the IR Act's objects set out in s 6, and any other matter it considers relevant;
  - c. is subject to the requirements of s 26; and
  - d. is not bound to take into account the Statement of Principles made under s 50A(1)(d)(i) of the IR Act: *Fire and Emergency Services Authority of Western Australia and Anor v (Not Applicable)* [2007] WAIRC 00469; (2007) 87 WAIG 1283 at [377]; *WA Police Union of Workers v Commissioner of Police* at [37], [61].
- 12 Having described the principles that I am required to follow when deciding this matter, it is necessary to provide in order:
- i. some further background to the matters giving rise to the dispute;
  - ii. a description of the parties' evidence; and
  - iii. a summary of the parties' submissions on the quantum of the increases the Commission should order.

### Background to the matters in dispute

- 13 The COGG includes the City of Geraldton, which is in the Mid West of Western Australia (WA). As a result of council amalgamations, the COGG also takes in the town of Mullewa and the localities of Greenough and Walkaway. Covering an area of 12,625 square kilometres, land in the COGG, is used for residential, commercial, industrial, and agricultural purposes: *Strategic Workforce Plan 2019-2022 (Strategic Workforce Plan)* p 1.
- 14 The Mid West is one of nine regions that make up WA. The region extends approximately 200 km north and south of the administrative centre of Geraldton as well as inland to the border of the Goldfields-Esperance Region, an area of close to 472,300 square kilometres: *Strategic Workforce Plan* p 1.
- 15 More than 41,000 people live in the COGG. While mining is now the main industry in the Mid West, other significant industries include agriculture, tourism, and fishing. Geraldton, which is a port town, also exists as regional service centre for the entire Mid West Region: *Strategic Workforce Plan* p 1.
- 16 More than half of the total population in the Mid West region lives in Geraldton. It is estimated that, 16,653 people work in the COGG, which is 66.26% of the 25,132 people who work in the Mid West Region: *Strategic Workforce Plan* p 1.
- 17 The COGG's total workforce is comprised of close to 400 people, including 285 permanent employees (full time and part time) 88 casual and 34 temporary contract staff. The COGG's workforce is comprised of 54% females and 46% males. The 'outside' workforce is predominately male and much older: *Strategic Workforce Plan* p 5.
- 18 Women occupy most of the administrative positions within the COGG. In 2019 it was estimated that as many as 25% of the COGG's employees will be eligible for retirement, the bulk of whom work in 'outside' roles: *Strategic Workforce Plan* pp 5-7.
- 19 The COGG has acknowledged that if it does not focus on career and succession planning, the COGG could encounter a situation where the service delivery to its communities and customers, may be impacted due to a loss of corporate knowledge and experience: *Strategic Workforce Plan* p 10.
- 20 In addition to the challenge an ageing workforce presents, the COGG has acknowledged that it faces other challenges in attracting and retaining staff including:
- i. competition with the mining and construction industries;
  - ii. higher wages that are paid to, employees above the 26<sup>th</sup> parallel; and
  - iii. incentives and allowances that are being offered by, local councils further north. (see *Strategic Workforce Plan* p 10).

- 21 The COGG has accepted that attracting and retaining employees to work in the COGG's Mullewa District Office, which is approximately 100km east of Geraldton, presents its own unique challenges: Strategic Workforce Plan p 10.

#### Previous Industrial Agreements

- 22 The new industrial agreement will be the first industrial instrument between the WASU and the COGG, following the transition of industrial regulation for the local government sector, from the federal to the state industrial relations system. This happened on 1 January 2023.
- 23 The previous enterprise agreements that were made in the period 2008-2023 were approved by the Fair Work Commission under the provisions of the *Fair Work Act 2009* (**previous EBAs**). During this time the COGG and the WASU made five EBAs as follows:
- The City of Geraldton-Greenough Combined Union Collective Agreement 2008;
  - The City of Greater Geraldton Enterprise Collective Agreement 2012;
  - The City of Greater Geraldton Enterprise Agreement 2015-2018;
  - The City of Greater Geraldton Enterprise Agreement 2018-2021; (**2018 Agreement**)
  - The City of Greater Geraldton Enterprise Agreement 2021-2023 (**2021 Agreement**).
- 24 The previous EBAs are relevant in as much as they not only demonstrate the existence of a long-standing industrial relationship between the COGG and the WASU, but they also provide an important historical context, to the way in which the parties have approached the payment of wage increases under the previous EBAs.

#### The new industrial agreement

- 25 It is estimated that the new agreement will apply to approximately 386 employees on registration: cl 14.3.
- 26 The new agreement will operate from the date of its registration and have a nominal expiry date of 30 June 2026: cl 1.14. It is agreed the pay increases arbitrated in these proceedings will take effect on 1 July 2024 and 1 July 2025: cl 7.2.3.
- 27 The annual salaries to be paid to the employees who are covered by the agreement depend on an employee's classification level. There are ten classification levels in the classification structure which is set out under Appendix 11 of the new agreement. Within the ten levels of the classification structure, there are also a series of sub-classifications/steps, one to four: Appendix 11.
- 28 Level 1 is the only classification in the structure that has six steps. This is because Level 1 is an 'entry level classification' in respect of which the salaries to be paid are determined by an employee's age.
- 29 Appendix 10 of the new agreement provides a description of the duties, employees must be competent to perform, at each of the respective levels in the classification structure. When classifying an employee, the COGG is required to have regard to an employees' skills, performance and training: cl 7.3.
- 30 There is a minimum salary and a maximum salary for each classification, with the maximum salary for the classification being below the minimum salary for the next higher classification. Progression from minimum salary under a classification to the maximum occurs as an employee climbs each step of the classification structure.

		1 <sup>st</sup> Year Effective 1st July 2023	1 <sup>st</sup> Year Effective 1st July 2023	2 <sup>nd</sup> Year Effective 1st July 2024	2 <sup>nd</sup> Year Effective 1st July 2024	3 <sup>rd</sup> Year Effective 1st July 2025	3 <sup>rd</sup> Year Effective 1st July 2025
LEVEL/STEP	As at 30 June 2022	6% Increase	Hourly Rate	To be determined	Hourly Rate	To be determined	Hourly Rate
LEVEL 1	Salary	Salary	Hourly Rate	Salary	Hourly Rate	Salary	Hourly Rate
Step 1 (16 yrs and under)	\$44,973	\$47,671	\$24.1252				
Step 2 (17 yrs)	\$46,885	\$49,698	\$25.1509				
Step 3 (18 yrs)	\$49,657	\$52,636	\$26.6379				
Step 4 (19yrs)	\$52,439	\$55,585	\$28.1302				
Step 5 (20yrs)	\$55,196	\$58,508	\$29.6092				
Step 6 (Adult)	\$57,276	\$60,713	\$30.7250				
LEVEL 2	Salary	Salary	Hourly Rate				
Step 1	\$59,154	\$62,703	\$31.7324				
Step 2	\$60,160	\$63,770	\$32.2721				
Step 3	\$61,960	\$65,678	\$33.2377				
Step 4	\$63,843	\$67,674	\$34.2478				
LEVEL 3	Salary	Salary	Hourly Rate				

Step 1	\$65,720	\$69,663	\$35.2547				
Step 2	\$66,815	\$70,824	\$35.8421				
Step 3	\$67,909	\$71,984	\$36.4289				
Step 4	\$69,455	\$73,622	\$37.2582				
<b>LEVEL 4</b>	<b>Salary</b>	<b>Salary</b>	<b>Hourly Rate</b>				
Step 1	\$71,206	\$75,478	\$38.1976				
Step 2	\$72,429	\$76,775	\$38.8536				
Step 3	\$73,473	\$77,881	\$39.4137				
Step 4	\$75,059	\$79,563	\$40.2644				
<b>LEVEL 5</b>	<b>Salary</b>	<b>Salary</b>	<b>Hourly Rate</b>				
Step 1	\$76,998	\$81,618	\$41.3046				
Step 2	\$78,116	\$82,803	\$41.9043				
Step 3	\$79,015	\$83,756	\$42.3866				
Step 4	\$80,511	\$85,342	\$43.1891				
<b>LEVEL 6</b>	<b>Salary</b>	<b>Salary</b>	<b>Hourly Rate</b>				
Step 1	\$81,599	\$86,495	\$43.7727				
Step 2	\$83,602	\$88,618	\$44.8472				
Step 3	\$84,971	\$90,069	\$45.5816				
Step 4	\$86,560	\$91,754	\$46.4340				
<b>LEVEL 7</b>	<b>Salary</b>	<b>Salary</b>	<b>Hourly Rate</b>				
Step 1	\$88,132	\$93,420	\$47.2773				
Step 2	\$89,893	\$95,287	\$48.2220				
Step 3	\$91,345	\$96,826	\$49.0009				
Step 4	\$92,383	\$97,926	\$49.5577				
<b>LEVEL 8</b>	<b>Salary</b>	<b>Salary</b>	<b>Hourly Rate</b>				
Step 1	\$94,248	\$99,903	\$50.5581				
Step 2	\$95,700	\$101,442	\$51.3370				
Step 3	\$97,150	\$102,979	\$52.1149				
Step 4	\$98,603	\$104,519	\$52.8943				
<b>LEVEL 9</b>	<b>Salary</b>	<b>Salary</b>	<b>Hourly Rate</b>				
Step 1	\$101,490	\$107,579	\$54.4430				
Step 2	\$103,088	\$109,273	\$55.3002				
Step 3	\$104,967	\$111,265	\$56.3082				
Step 4	\$106,844	\$113,255	\$57.3151				
<b>LEVEL 10</b>	<b>Salary</b>	<b>Salary</b>	<b>Hourly Rate</b>				
Step 1	\$109,391	\$115,954	\$58.6814				
Step 2	\$111,939	\$118,655	\$60.0482				
Step 3	\$114,487	\$121,356	\$61.4151				
Step 4	\$117,035	\$124,057	\$62.7819				

31 The new agreement makes provision for employment on a full-time, part-time and casual basis. In addition, the agreement also makes provision for employment on the terms of specific term contracts which is: cl 2.2.

- 32 Full time employees are required to work an average of 76 ordinary hours over a two-week cycle. The new agreement makes provision for the payment of overtime as time in lieu. Time off in lieu is to be taken at the equivalent hours of overtime worked: cl 3.1.
- 33 The new agreement contains provisions for flexible working arrangements and compressed working weeks. These provisions have been included in the agreement as part of a sweet of terms described as 'Work/Life Balance Initiatives': Section 4 of the new agreement.

#### Current Position

- 34 Most, if not all of the conditions that are contained in the 2021 Agreement, will continue to apply under the new agreement. Although the 2021 Agreement reached its nominal expiry date on 30 June 2023, by operation of s 41(6) of the IR Act, it continues to apply pending the issuance of a final decision this matter.
- 35 Following the expiry of the 2021 Agreement, the COGG has paid two wage increases to the employees who will be covered by the new agreement. The first of these was the 6% wage increase the parties have agreed will apply in the first year of the new agreement. The COGG paid this increase on and from 1 July 2023.
- 36 The second is a 4% wage increase, which the COGG says should apply in the second year of the new agreement. This was paid by the COGG on and from 1 July 2024.
- 37 It is not in dispute the COGG has decided to pay its employees who were previously classified as Level 2s under the 2021 Agreement, at the Level 3 Step 1 rate. The COGG says this occurred from the first full pay period on or after 1 July 2023.

#### The Arbitration

- 38 Lawyers Cory Fogliani and Zack Doherty represented the WASU in this matter. The COGG was represented by Barrister Cheyne Beetham.
- 39 The hearing of the application was conducted across three dates, Tuesday 3 – Thursday 5 December 2024. The COGG's witnesses appeared in person. The WASU's witnesses in the main appeared by video link.
- 40 The Commission received submissions in writing from both parties. The parties' representatives were also given an opportunity to make oral submissions during hearing. Upon the completion of the parties' evidence and submissions, the Commission's decision was reserved.

#### The Issue to be Arbitrated.

- 41 In its Outline of Submissions (**COGG Submissions**), the COGG helpfully produced a table setting out the respective difference in the parties competing positions on the amount of the percentage wage increases to apply, in the second and third years of the new agreement:

Year	COGG	WASU
From 1 July 2024	4%	6%
From 1 July 2025	3%	6%

- 42 For ease of reference, I will respectively define the two different outcomes sought by the parties to the arbitration as the COGG wages proposal and the WASU wages proposal.
- 43 Having now described the issue to be determined, I will first provide a summary of the parties' evidence in the matter, which includes information on the state of the WA economy.

#### Economic evidence

- 44 Expert evidence on the state of the WA economy, was provided by Mr Aaron Morey who is the Chief Economist with the Chamber of Commerce and Industry of WA (CCIWA). He prepared a report with attachments, which was admitted into evidence as Exhibit R1: (**Morey Report**).
- 45 Although Mr Morey was called by the COGG and in order, was the fourth witness in the hearing, it is useful to provide a summary of his evidence first. This is because the effects of the economic trends and the data that were commented upon in Mr Morey's evidence, were very much felt and experienced by the other witnesses in the case.
- 46 In his report, Mr Morey provided his opinion on the economic data the Commission should have regard to, when determining the quantum of the wage increases to be paid in the last two years of the new agreement.
- 47 Commenting first on the overall state of the WA economy, Mr Morey noted the WA domestic economy had grown by 5.3% in annual average terms over 2023-24, which was greater than any other state. He observed that the WA labour force had continued to grow, reaching a record size in September 2024: (Morey Report para 1).
- 48 Mr Morey opined that the strong performance of the WA economy, had been underpinned by strong business investment, that came on the back of some large-scale resources projects that are ramping up. He also attributed WA's economic results to government investment and the performance of the major WA iron producers, which he noted have been operating at close to capacity: (Morey Report para 2).
- 49 Despite the performance of the WA economy Mr Morey noted that household consumption 'has started to slow'. He said this had occurred gradually over the past two years because of the combined effects of inflation and elevated interest rates, which had forced households to reduce their spending: (Morey Report para 3).
- 50 On the issue of housing, Mr Morey observed the WA housing market remained tight. He noted that rents have increased by 11.7 % over the last 12 months and house prices have increased 24.1% over the same period. Mr Morey also noted that rental vacancy rates continue to remain low, sitting at 1.6% as of September 2024: (Morey Report para 4).

- 51 In his report, Mr Morey stated that inflationary pressures continue to affect the WA economy. He noted that inflation as of September 2024, sits at 3.8%. Mr Morey said that while this is below the rate of 8.3%, that was recorded in December 2022, the inflation rate remains above the Reserve Bank of Australia (RBA) target range of 2-3%: (Morey Report para 5).
- 52 Mr Morey confirmed that interest rates remain in what he described as ‘restrictive territory’, with the cash rate sitting at 4.35%, the highest since 2011. He said that while inflationary pressure has eased, households and business would continue to feel the pressure of higher costs: (Morey Report para 5).
- 53 Mr Morey predicted that economic growth in WA, is expected to slow. He attributed this to the effects of higher interest rates. Mr Morey said that he expected that household consumption would pick up by 2025-2026. He anticipates this will occur from a cut in interest rates and reduced inflation, which he considers will increase household purchasing ability: (Morey Report para 6).
- 54 Mr Morey also expects that in 2025-2026, investment in housing will improve. He suggested current difficulties with labour shortages and other pressures would subside. Mr Morey is of the view the risks to WA’s economic fortunes lie in a slowdown to the Chinese property sector, war in the Middle East and persistent inflation: (Morey Report para 7).
- 55 Mr Morey said CCIWA does not provide an economic forecast specific to the Midwest region: (Morey Report para 11). He said his insight on what is happening in the region, largely comes from *CCIWA Business Confidence Survey Report for September 2024* (CCIWA Business Confidence Survey).
- 56 From this survey, Mr Morey observed that businesses in the Midwest were more confident. He identified the barriers that businesses had reported were the most likely to affect their growth: rising operating costs and a shortage of skilled labour: (Morey Report para 13).
- 57 Mr Morey provided data on wage growth in the Midwest region. I have extracted below, the table from the Morey Report that he relies on to suggest that wage growth in the COGG has been greater than in WA generally, in all years over the period 2015-2024, except for 2021, 2022 and (subject to confirmation) 2024.
- 58 The two measures he used were changes in the *Wage Price Index All Industries WA (WPI)* and the *Wage Price Index for the WA Public Sector (Public Sector WPI)*.

Year	WA All Industries WPI	WA Public Sector WPI	WA All Industries WPI Growth	WA Public Sector WPI Growth	City of Greater Geraldton Wage Growth
2015	123.1	126.9	2.1%	3.1%	2.5%
2016	125.3	130.7	1.8%	3.0%	2.5%
2017	127	133.4	1.4%	2.1%	2.5%
2018	128.9	135.1	1.5%	1.3%	1.5%
2019	130.9	136.9	1.6%	1.3%	1.8%
2020	133	138.4	1.6%	1.1%	1.8%
2021	135.1	139.7	1.6%	0.9%	1.5%
2022	138.7	141.3	2.7%	1.1%	1.5%
2023	144.5	146.3	4.2%	3.5%	6.0%
2024	150.5	150.9	4.2%	3.1%	4.0%
<b>Cumulative growth 2015-2024</b>			<b>24.8%</b>	<b>22.6%</b>	<b>28.6%</b>

- 59 In addition to this table, Mr Morey provided data on the cumulative wages growth that was forecast for the period 2023-2026 (the life of the new agreement). He said the wage increases proposed by the COGG are greater than the cumulative wage growth forecast by both the WA Treasury and CCIWA.
- 60 I have extracted this table below:

Year	WA Treasury Forecast	CCIWA Forecast	City of Greater Geraldton Proposed Wage Increases	WASU Proposed Wage Increases
<b>2023-2024</b>	4.2%	4.2%	6.0%	6.0%
<b>2024-2025</b>	3.75%	3.75%	4.0%	6.0%
<b>2025-2026</b>	3.5%	3.25%	3.0%	6.0%
<b>Cumulative growth 2023-24 to 2025-26</b>	<b>11.8%</b>	<b>11.6%</b>	<b>13.5%</b>	<b>19.1%</b>

- 61 Mr Morey included information in his report on movements in the Consumer Price Index (CPI). He noted that CPI measures quarterly changes in the price of a basket of goods and services, which account for a high proportion of household expenditure: (Morey Report para 25).
- 62 He said the metric for CPI commonly relied upon in WA is All Groups CPI - Perth. He said this this measure is traditionally used in economic forecasting by WA Treasury and CCIWA and it provides a better representation of the price changes faced by the average WA household when compared with the national CPI figure: (Morey Report para 35).

- 63 Mr Morey acknowledged that CPI is used to show the rate of inflation: (Morey Report paras 36-38). I have extracted the table below from Mr Morey's report on the movements in CPI in the period 2015 to 2024.

Year	Australia CPI	Perth CPI	Australia CPI Annual Growth	Perth CPI Annual Growth
2015	107.5	107.7	1.5%	1.2%
2016	108.6	108.2	1.0%	0.5%
2017	110.7	109	1.9%	0.7%
2018	113	110.2	2.1%	1.1%
2019	114.8	112	1.6%	1.6%
2020	114.4	112.1	-0.3%	0.1%
2021	118.8	116.8	3.8%	4.2%
2022	126.1	125.4	6.1%	7.4%
2023	133.7	131.5	6.0%	4.9%
2024	138.8	137.6	3.8%	4.6%

- 64 Mr Morey observed that since 2021, CPI has increased at a greater rate than wages have: (Morey Report para 41). His report included a table that illustrated this point, which I have extracted below:

Year	WA All Industries WPI Growth	WA Public Sector WPI Growth	WA CPI Growth
2015	2.1%	3.1%	1.2%
2016	1.8%	3.0%	0.5%
2017	1.4%	2.1%	0.7%
2018	1.5%	1.3%	1.1%
2019	1.6%	1.3%	1.6%
2020	1.6%	1.1%	0.1%
2021	1.6%	0.9%	4.2%
2022	2.7%	1.1%	7.4%
2023	4.2%	3.5%	4.9%
2024	4.2%	3.1%	4.6%

- 65 Mr Morey stated that over the past two years, cost of living pressures have increased over the past two years, throughout WA. He said that high levels of inflation have increased the prices of many essential goods and services at a faster pace than wages have grown, meaning that households have been able to purchase less than they could two years ago, or have been required to draw down on their savings, to maintain the same standard of living: (Morey Report para 44).
- 66 Mr Morey said that while there is no definite measure for the cost of living, a qualitative assessment may be made using the collective forecasts of indicators including CPI and WPI. Mr Morey suggested that with inflation expected to fall, a likely cut in interest rates and with wages growth expected to remain steady, it was anticipated the current cost of living pressures would ease over the coming years: (Morey Report paras 46-48).
- 67 Mr Morey predicted in his report that the significant growth in house prices and rents had shown signs of easing. He suggested a reduction in the growth of house prices was likely to continue over the coming years, which he predicted would also ease cost of living pressures: (Morey Report para 49).
- 68 When commenting on the cost of rents and housing affordability, Mr Morey noted the median weekly rent in Perth in 2023 was \$595 for houses and \$550 per week for units. He said this compares with \$420 per week for houses and \$270 per week for units in Geraldton. For the Mid West Region, he observed the median weekly rent for houses in 2023 was \$430 and \$292 for units, both of which are lower than in Perth: (Morey Report paras 55-56).
- 69 In his report Mr Morey suggested that while rental prices were expected to increase over the coming years, it is likely to be at a slower pace than in 2023. He noted that in the year to October 2024, rents had increased 9.4%, which was down from 13.5% in March 2024: (Morey Report para 59).
- 70 Despite this, Mr Morey considers that as the increase in rental prices remains higher than wage growth, it is likely that rental affordability will continue to worsen across all regions in the next year. Mr Morey said that as long as rent price growth remains stronger than wage growth, rental affordability will continue to worsen: (Morey Report para 66).
- 71 Mr Morey was asked by the COGG to comment on the quantum of the wage increases the COGG had proposed for the last two years of the new agreement. In a separate Response to Request for Clarification (**Clarification Report**) he said the CCIWA's forecast for CPI growth in 2024-25 is 3.25% which is greater than the 3% proposed increase: (Clarification Report para 3).
- 72 He noted the WA Treasury forecast for the same period is 3%, the same as the increase the COGG has suggested should apply, in the final year of the new agreement: (Clarification Report para 3).

#### Cross Examination of Mr Morey

- 73 Mr Morey was briefly cross examined by Mr Fogliani about the contents of his report and the attachments, including the CCIWA Business Confidence Survey and the CCIWA Regional Pulse Business Survey (**Regional Pulse**).
- 74 Mr Morey accepted the respondents to the Regional Pulse, viewed the availability of skilled labour as a significant barrier to business. He also accepted most of the businesses in the Mid West, are expecting their labour costs to increase: (ts p 50).

- 75 Mr Morey was challenged about his view that interest rates were likely to fall. He stood by his assessment, which he said is based on a consensus of views amongst professional economists and those involved in setting the pricing in financial markets: (ts p 55).
- 76 Mr Morey was questioned about the WPI data that was included in his report. He accepted that WPI was not specifically measured for Geraldton and that WPI is only measured at the state and national level: (ts p 56).
- 77 When asked if WPI differentiated between different types of workers or job roles within an organisation, Mr Morey answered by saying WPI was measured by reference to a basket of different job roles: (ts p 56).
- 78 Mr Morey agreed that WPI does not factor in the cost of living experienced by workers. He said WPI only measures movements in wage levels: (ts p57).
- 79 Mr Morey was questioned about, the contents of the *CoreLogic Regional Market Update – August 2024 (CoreLogic Report)*. When asked if he agreed the cost of rents in Geraldton of \$498 per week, that appears in the CoreLogic Report was accurate, Mr Morey said he wasn't sure if this was an average of houses and units. He did however agree that rents had increased annually by 13.5% and 65.1% over the last 5 years: (ts p 59).
- 80 Mr Morey was asked if he was prepared to accept, that the growth in rental prices was three times higher than the CCIWA's WPI projection for 2023-2024 of 4.2%. He agreed with this. Mr Morey also accepted that pressure on rental affordability in Geraldton remains an issue: (ts p 60).
- 81 When questioned about the *CCIWA Business Confidence Survey Report for September 2024, (CCIWA Business Confidence Survey)* Mr Morey agreed with conclusions suggesting that for the majority of people in WA, living standards have stagnated and that the high cost of living continues to place a strain on household cashflows. Mr Morey agreed that his reported concerns regarding the cost of living were consistent with the data contained in the CoreLogic Report: (ts p 60).
- 82 When questioned about skill shortages, Mr Morey agreed that businesses who responded to the CCIWA Business Confidence Survey, had accepted that one of the effective ways to address skill shortages is to upskill/train existing employees and to increase their wages: (ts p 62).

#### Evidence of Wayne Wood

- 83 The WASU called eight witnesses to provide evidence in support of its claim. The first of these was Wayne Wood, who is the WASU's Branch Secretary.
- 84 Mr Wood said the WASU has approximately 150 members who work for the COGG. He said he had been involved in negotiations for enterprise agreements with the COGG going as far back as 2007/2008. He explained that enterprise agreements for the COGG have always applied to both 'inside' and 'outside' workers in the COGG: (ts pp 7-11).
- 85 Mr Wood gave evidence that in around 2005, the Shire of Mullewa, due to council amalgamations, was merged into the COGG. He said that because of the merger, the COGG has depots for 'outside' workers and offices for 'inside' employees, in both Geraldton and Mullewa: (ts p 12).
- 86 Mr Wood then went on to list some the places where the COGG's employees work. He said the WASU has members in Geraldton who work 'inside' at the COGG Library and in the Visitor's Centre and Art Gallery. He said the WASU has members who work in administration at the Geraldton Civic Centre (**civic centre**), which houses the COGG Council Offices: (ts p 12).
- 87 In addition to these 'inside' employees, the WASU has members who work at the Queens Park Theatre (**theatre**) and the aquatic centres in both Geraldton and Mullewa: (ts p 12).
- 88 Mr Wood gave evidence about changes that he had observed over time in both Mullewa and Geraldton. He said previously, Geraldton was more of an agricultural port that handled bulk grain for export. He said the port these days, is now more focused on mining exports: (ts p 14).
- 89 Mr Wood said he thought Geraldton was much busier now and there were far more workers in the town who are involved in the mining industry. He made similar observations about Mullewa, which he described as no longer just an agricultural town, but more involved in mining: (ts p 13).
- 90 Mr Wood said the WASU members who work at the COGG, had reported to him that because of the shift towards mining, it had become harder to rent a home in Geraldton. He said his members had told him the cost of renting in Geraldton had increased substantially and the town had a very competitive real estate market: (ts p 14).
- 91 Mr Wood said his members had reported that they had experienced price rises in the cost of fuel, rent and groceries. He said his members regularly told him that it had become much more difficult to pay their bills: (ts p 17).
- 92 On the issue of workload, Mr Wood said he had noted there were less people working at the COGG's maintenance depots and at the civic centre. He said he was aware the COGG had lost staff and that replacing them had been difficult: (ts p 17).
- 93 Mr Wood said that attracting and retaining new staff has been a problem for the COGG. He said this has been building up over the last five to six years. Mr Wood said that WASU members had reported they were struggling with their workload. He also said some members had complained that they did not know if they had been correctly classified under the enterprise agreement: (ts pp 17-18).
- 94 Mr Wood said that while the COGG was probably looking to fill vacant positions to deal with employee workload, he said the employees who work there now, must still respond to the current demands of the council and the community: (ts p 18).
- 95 Mr Wood explained why the WASU was seeking a 6% increase per annum, for the second and third years of the new agreement. He said although the new agreement is quite reasonable and the WASU's members were satisfied with the balance

of its terms, when it came to pay increases, the members felt that over the last few years, they had been struggling to make ends meet: (ts p 19).

- 96 Mr Wood presented a table that that was accepted into evidence as Exhibit A6. The table shows the annual percentage wage increases under the enterprise agreements between the WASU and the COGG in one column, compared with CPI released for the March Quarter. A copy of this table is extracted below;

Increase Date	CGG Pay Increase	Perth CPI March
1/07/2008	5.50%	4.30%
1/07/2009	4.50%	2.20%
1/07/2010	4.50%	3.40%
1/07/2011	4.50%	2.60%
1/07/2012	4.25%	1.90%
1/07/2013	4.00%	2.40%
1/07/2014	4.00%	3.10%
1/07/2015	2.50%	1.40%
1/07/2016	2.50%	0.70%
1/07/2017	2.50%	1.00%
1/07/2018	1.50%	0.90%
1/07/2019	1.80%	1.10%
1/07/2020	2.10%	2.10%
1/07/2021	1.50%	1.00%
1/07/2022	1.50%	7.60%
1/07/2023	6.00%	5.80%
1/07/2024	4.00%	3.40%

- 97 Mr Wood spoke about the wage increases under the 2018 and 2021 Agreements. He said the WASU had compromised on the quantum of the pay increases in these agreements because members did not want a repeat of redundancies that had occurred in or around 2015/2016: (ts p 19).
- 98 Mr Wood said that despite making concessions on the percentage wage increases that would apply to prevent any redundancies, he believed the WASU's members, were struggling financially: (ts p 19).
- 99 He said that in negotiations for the new enterprise agreement, the WASU's members wanted to secure a decent pay increase to deal with the cost of living. He said there was an anomaly in 2022 when, CPI increased by a large amount to 7.6%: (ts p 19).
- 100 Mr Wood said that in addition to rise in the cost of living, the WASU's members who are paying off mortgages, had to contend with the increases in interest rates that occurred over a 12-month period, 2022 to 2023: (ts p 19).
- 101 Mr Wood explained the WASU had responded to these concerns by initially seeking wage increases of 8% per annum, which was later wound back to 6% for each year of the new agreement. He acknowledged the COGG's agreement to a 6% increase in the first year of the new agreement did help members catch up with the cost of living: (ts p 19).
- 102 Mr Wood then spoke about the COGG wages proposal. He said the resolutions he received from his members confirmed that they did not believe the wage increases the COGG was offering were enough: (ts p 19).
- 103 Mr Wood was briefly cross examined by Mr Beetham, who appeared for the COGG. Mr Beetham questioned Mr Wood about Exhibit A6. He asked Mr Wood if it was correct to say, that except for the pay increase the COGG's employees received in July 2022, each and every other pay increase the COGG had provided was either equal to or greater than CPI. Mr Wood agreed with this suggestion: (ts p 23).
- 104 When asked whether the CPI rise of 7.6% in 2022 was an anomaly when compared with the CPI for the other years in the table, Mr Wood agreed. Mr Wood said he thought the rise in CPI in the March 2022 quarter is what hurt employees the most: (ts p 23).

#### **Evidence of Joel Hoddy**

- 105 The WASU called evidence from four of its members who are employed by the COGG as 'outside' workers. The first of these was Joel Hoddy, who works for the COGG in its Parks and Infrastructure Department. He said he works in a team of two along with WASU member Joey Van Lierop, who also gave evidence in the hearing: (ts p 25).
- 106 Mr Hoddy, who is a carpenter by trade, is employed as a Parks Infrastructure Maintenance Worker/Leading Hand. He said he works on the upkeep and maintenance of the COGG's infrastructure in its open parks and spaces: (ts p 25).
- 107 Mr Hoddy said he commenced in this position in early 2019 and is employed by the COGG on a full-time basis. He said his duties include maintaining 55 playgrounds and all of the shelters, park benches, barbecues, light poles, art installations, decks and walkways, which the COGG owns. Mr Hoddy said that he was required to maintain anything that was installed in any of the COGG's parks or any open spaces: (ts p 26).
- 108 Mr Hoddy explained that in addition to maintaining these facilities, he was (except for major projects) responsible for their installation as well. Mr Hoddy said that during his work, he was constantly putting in new shelters, park furniture, showers and drinking fountains: (ts p 26).
- 109 Mr Hoddy described his work as ongoing and that he rarely pulled anything out that was not replaced. Mr Hoddy said the infrastructure in COGG parks and open spaces was always expanding and never decreasing: (ts p26).

- 110 Mr Hoddy said he was responsible for maintaining over 80 shelters in parks throughout the COGG. He said he conducts an annual audit of shelters and that he is responsible for maintaining them. Mr Hoddy said he conducts audits of playground equipment on a quarterly basis, which involves onsite inspections: (ts p 26).
- 111 Mr Hoddy described the work he does when making repairs or putting in new installations. He said he and his offsider will attend the site, measure up, obtain or prepare quotes on the costs of the work to be done, plan the logistics and order materials, which he said, must be authorised by his supervisor before the work can commence: (ts p 26).
- 112 Mr Hoddy said that in the last three years he had noticed that vandalism and graffiti had increased. He gave evidence to the effect that despite an increase in his workload, there had been no change to the size of his work crew. Mr Hoddy said he has always worked in a team of two: (ts p 26).
- 113 When asked about staff retention, Mr Hoddy said he that he had found the more skilled a worker was, the more likely it was they would move on. He said he was aware of several co-workers who had left employment at the COGG for better wages somewhere else: (ts p 27).
- 114 Mr Hoddy was asked about his previous employment. He said that before his work at the COGG, he had worked in the mining industry and in the residential housing construction sector. Mr Hoddy said he left the mining industry so he could spend more time at home with his family. He said he is married and is paying off a mortgage with his wife, who works as a nurse on a part-time basis: (ts p 29).
- 115 Mr Hoddy said that in or around 2021, he decided to look for extra work outside of his job with the COGG. He said that in addition to working at the COGG, he now works for a residential builder in Geraldton on weekends, after work and on his days off: (ts p 29).
- 116 Mr Hoddy said he took on extra work in 2021 when increases in the cost of living started to chew into his savings. He said he had to take out a loan to purchase a new car after his family vehicle broke down. Mr Hoddy gave evidence to the effect that he knew he was not going to be able to service the car loan and meet his and his wife's day to day living expenses, on the salary he was receiving, so he decided to look for extra work: (ts p 29).
- 117 When asked about the impact this additional work has had on him, Mr Hoddy said it was 'pretty crazy' at first but he was able to utilise flexible work agreements that are in the 2021 Agreement to pick up extra work. Mr Hoddy said he purchased extra leave and described moving on to a 'compressed hours schedule' that allowed him to perform more hours when he was at work, in exchange for additional days off. Mr Hoddy said that he has been able to work for the builder on his days off: (ts p 29).
- 118 Mr Hoddy said that from around October 2021, he has made approximately \$460 net per week from his extra job, in addition to the annual salary he receives from the COGG. He said this money just about services his car loan and has kept his and his wife's heads, 'above water': (ts p 30).
- 119 Mr Hoddy said that his wife in addition to her work as a nurse, travels to Perth once a fortnight to care for her elderly mother. Mr Hoddy said their combined earnings after tax were close to \$4,000 per fortnight. When asked about his earnings from the COGG, Mr Hoddy initially said that he is paid about \$72,000 per annum: (ts p 32).
- 120 Mr Hoddy was asked about his mortgage repayments and how they had changed. He said his interest rates had nearly doubled, going up 4% since he started work at the COGG: (ts p 30).
- 121 Mr Hoddy gave evidence about his other living expenses. He said fuel, groceries, car servicing and other services in Geraldton were more expensive than in the Perth metropolitan area. Mr Hoddy said that without extra work, he was not sure whether he and his wife would have enough money to cover their living expenses: (ts p 30).
- 122 Mr Hoddy provided a wage slip in evidence that confirmed that he is employed as a Level 4, Step 2: (Exhibit A7). In addition to his payslip, Mr Hoddy provided copies of his mortgage statements from December 2020 and June 2024. Both statements were accepted into evidence and marked as exhibits: (ts p 28).
- 123 Mr Beetham asked Mr Hoddy a few clarifying questions in cross-examination but nothing of any real import. Mr Hoddy confirmed the value of the facilities and infrastructure that he installed tended to be for items that were \$5,000 or less in value. He said that installations above this amount were typically put in by contractors. Mr Hoddy confirmed that once a piece of infrastructure was installed by contractors, responsibility for its maintenance was passed onto his team: (ts p 31).
- 124 Mr Hoddy was questioned about the evidence he gave on his fortnightly earnings. He confirmed that his annual salary was more likely in the range of \$79,000 per annum. Mr Hoddy also confirmed that he works an extra hour every day that allows him to take a day off each fortnight. On top of this, Mr Hoddy said he purchases an additional four weeks' annual leave, which is deducted from his salary, which he uses in minimum weekly blocks: (ts pp 32-33).
- 125 Mr Hoddy explained that he uses the leave blocks he purchases so he can take time off to perform larger jobs for the residential builder he works for. He said he uses his days off on weekends and from his flexible work arrangements to perform work in his second job during the week: (ts p 33).
- 126 Mr Hoddy provided a table of expenses, which was accepted into evidence as Exhibit A10. Mr Hoddy said that when preparing his table of expenses, he went through most of his recent bills. Mr Hoddy's mortgage statements reveal that in the period 31 December 2020 until 30 June 2024, his mortgage repayments increased from \$1200 per month to \$1698: (ts p 29).
- 127 Mr Hoddy's list of fortnightly expenses, which did not include payments for power, insurance, council rates and other utilities, but listed expenses for mortgage repayments, groceries, car loan repayments, vehicle registration and servicing, came to \$2660 per fortnight. (Exhibit A10).
- 128 Mr Hoddy's payslip shows an amount of \$517.98 being deducted from his salary, resulting in a taxable income of \$2600.88 for the fortnight. After tax, his take home pay was \$2050.88. While his payslip does not specify what the deduction is for and if it

is made every fortnight, it does help me conclude that Mr Hoddy's evidence regarding his and his wife's combined income, is accurate.

- 129 When the evidence regarding Mr Hoddy's earnings is compared with the evidence he gave regarding his household expenditure, it is reasonable to conclude that Mr Hoddy and his wife's combined income is very close to matching the amount they would have to outlay on household expenses.

#### **Evidence of Christopher McKay**

- 130 Following Mr Hoddy's testimony, the WASU called Christopher Mr McKay to give evidence. Mr McKay said he works as a leading hand in the COGG's Horticulture Department on a full-time basis. He said he has been working at the COGG for approximately eight years. Mr McKay said he previously worked at the COGG as a horticulture maintenance officer for two years before being promoted to a leading hand: (ts p 35).
- 131 Mr McKay explained that his role requires him to maintain the COGG's living spaces: parks, roundabouts, median strips and public access ways. Mr McKay said he is also involved in managing the COGG's annual tree planting season. He said he supervises a team of approximately nine people: (ts p 35).
- 132 When asked about whether there had been any changes in his workload over the last few years, Mr McKay said there had been a major increase in the number of trees that his team were required to plant. Mr McKay said the COGG was moving away from large areas of lawn and replacing them with more gardens. Mr McKay estimated that his team had planted close to or more than 500 trees in the last year: (ts p 35).
- 133 Mr McKay explained that tree planting did not just involve putting trees in the ground. He said that after a new tree is planted, it is placed on a three yearly roster. In the first year the tree is watered weekly. At the end of the first year each tree is watered fortnightly for a further 12 months. In the third year these trees come off the list to be regularly watered. Mr McKay said that during watering rounds, workers from the Horticulture Department also prune (where necessary) and fertilise each tree: (ts p 36).
- 134 Mr McKay was questioned about the work that he is required to perform when replacing turf with garden beds. He said that his team installed some garden beds and that others were established by contractors. Mr McKay said that once garden beds were planted, employees from the Horticulture Department are required to maintain reticulation, spray for weeds and to top up the garden beds with mulch: (ts p 36).
- 135 Mr McKay described his team as having a fortnightly maintenance round. Within this fortnight, his team would try and get into all of the parks and gardens in the COGG to make sure reticulation was working, that pruning was done and the like. He said the COGG had quite a few large areas including the Beresford Foreshore, which he said requires a lot of pruning, hedging and weed spraying: (ts p 36).
- 136 Mr McKay gave evidence about an increase in the number of employees in the Horticulture Department. He said that in the last few years, the number in his team had been increased from five or six employees up to nine or ten workers. Mr McKay said there are now two leading hands and the workforce in the Horticulture Department had been split into two groups: (ts p 37).
- 137 Mr McKay said that despite an increase in the number of workers, his team still only had access to two trucks. Mr McKay said that despite an increase in the number of employees, the team is still stretched a 'little bit thin' in some areas with the equipment they have. He said the team was not getting to every area as fast as they would like to: (ts p 37).
- 138 When asked about staff retention, Mr McKay said the COGG has struggled to attract and retain young, qualified people in the Horticulture Department. He said he had seen a lot of young people come through who did not stay in their jobs with the COGG. Mr McKay said they tended to work for about six months and move on to roles in mining or with Co-operative Bulk Handling, that pay more: (ts p 37).
- 139 Mr McKay said he is classified as a Level 4 Step 2. Mr McKay said he receives approximately \$3,000 gross per fortnight at this level. When asked about his superannuation contributions, Mr McKay referred to the provisions under the 2021 Agreement (cl 11.3) that allow an employee to make additional employee superannuation contributions as a salary sacrifice, that are matched by the COGG. He said he was not able to take advantage of this arrangement because he needed the money for his family's weekly expenses: (ts p 38).
- 140 Mr McKay gave evidence that he lives with his partner and their three children. He said he has a 4-year-old and twins, aged 3. Mr McKay said that in addition to his salary, his partner works on a casual basis as a childcare worker. He said his partner earns approximately \$30,000 per annum. Mr McKay estimated that their joint income was about \$110,000 per annum: (ts p 38).
- 141 Mr McKay gave evidence about his expenses, some of which he itemised in a table that was accepted into evidence as part of a bundle (Exhibit A11). He said his household expenditure over the last 12 months was approximately \$117,000. He said he made this calculation after going through his and his partner's bank statements: (ts pp 38-39).
- 142 Mr McKay said that he currently lives in a property that his parents own in Spalding. He said his parents rent the house to him at a heavily subsidised rate, charging him \$350 per week. Mr McKay said that if he and his partner had to go out on to the open rental market, it would cost them over \$500 per week: (ts p 40).
- 143 Mr McKay said the cost of his utilities and groceries had all gone up. He said the cost of childcare was a significant expense, despite his partner receiving a discount because their children attend the same childcare centre where his partner works. Mr McKay said that if they did not have a subsidised rental from his parents or discounted childcare, he is not sure how he would be able to continue working for the COGG: (ts pp 40-41).

144 When asked about his savings, Mr McKay said that he and his partner had stopped trying to save for a house. He gave evidence to the effect they were not making enough money to put any savings aside for a home deposit: (ts p 41).

#### Evidence of Cosimo Calabrese

145 The WASU called Cosimo Calabrese to give evidence. Mr Calabrese, who commenced employment with the COGG in about 2018, said he works as a Precinct Operations Officer, maintaining gardens, playgrounds and play areas in the Geraldton Foreshore precinct (**Geraldton Foreshore**): (ts p 67).

146 Mr Calabrese said his duties included looking after the lawns and vegetation on the Geraldton Foreshore as well as cleaning and maintaining shower areas by removing a build-up of sand. In addition to his work around the Geraldton Foreshore, Mr Calabrese said he also assists in maintaining the parks and gardens around the civic centre and the theatre: (ts p 67).

147 Mr Calabrese described the weather conditions that he works in. He said that in summer it is very hot and humid as well as windy. He described the range of temperatures as varying between from high 30's to the mid 40's, sometimes up to about 46/47 degrees. He said that when the weather is hot it is necessary to take precautions by having regular breaks to take in fluids and the like, but he said the work still had to be done, which meant working through the heat: (ts p 67).

148 Mr Calabrese said he works with two other maintenance workers, under the supervision of a facilitator. Mr Calabrese said one of his team members operates a small road sweeper which is used to clear all the footpaths in the precinct area. Mr Calabrese gave evidence to the effect that he mostly uses a ride-on mower: (ts p 68).

149 Mr Calabrese said that one vehicle is allocated to his work group. He said his work group is comprised of older employees. He said each of his work colleagues were aged between 65 and 70: (ts p 68).

150 Mr Calabrese said the bulk of his work, is at the Geraldton Foreshore, which he largely maintains on his own. He said his colleagues do help when required, for example after a storm, when strong winds blow beach sand, over barriers and onto footpaths in the precinct: (ts p 68).

151 Mr Calabrese explained that after storms, there is often quite a bit of clean-up work to do, including using shovels or operating a small skid steer or 'Ditch-Witch', to clear sand from footpaths. He said when these situations arise, it is necessary for his team to work together as there is often far too much for one person to do alone: (ts p 68).

152 When asked about changes to the Geraldton Foreshore, Mr Calabrese explained that it has undergone significant changes in the last 10 years. He gave evidence to the effect that a lot more people now go to the Geraldton Foreshore: (ts p 69).

153 Mr Calabrese said there are now four cafes on the Geraldton Foreshore, as well as four playgrounds, all of which require maintenance. He said that in addition to these facilities there are 11 showers, adjacent to the beach in the foreshore area, that must be regularly cleared out because of a build-up of sand: (ts p 70).

154 Mr Calabrese said that with more tourists, cruise ships and temporary events that seem to be held more often than they used to be, there is a lot more preparation work, maintenance and cleaning to be done. Mr Calabrese explained that with increased use, there was always something to do: (ts p 69).

155 Mr Calabrese gave evidence that he had noticed the Geraldton Foreshore was being used as a place of refuge by Geraldton's homeless population. He gave evidence about his interactions with them, which could involve picking up some of their rubbish, but maintaining a good rapport with people who are doing it tough. Mr Calabrese finished this part of his evidence by saying:

"but there are quite a few more than there used to be" (ts p 69).

156 Mr Calabrese explained that his role involved interacting with members of the public throughout the day. He said this included removing hazards like a broken bottle, fixing a broken shower or cleaning up some mess that impacted on their enjoyment or impressions of the area: (ts p 70).

157 When asked about whether there had been any change to the size of team to attend to maintain the Geraldton Foreshore, Mr Calabrese gave evidence to the effect there had been no corresponding increase in staff: (ts p 70).

158 Mr Calabrese was asked about staff retention. He said that he had observed, the COGG had difficulty, retaining staff. Mr Calabrese said he had noticed the COGG was short-staffed in the 'Works, Reticulation and Horticultural teams': (ts p 71).

159 When asked about his earnings, Mr Calabrese said that he is classified as a Level 3 Step 1. He said that before tax he receives approximately \$69,000 per annum: (ts p 71).

160 Mr Calabrese said he lives with his wife Nicole and their two dogs. He said his wife works on a full-time basis at the Coles Supermarket (**Coles**). Mr Calabrese gave evidence that he and his wife's joint income was approximately \$120,000 per annum: (ts p 72).

161 In addition to his work at the COGG, Mr Calabrese said he has started performing night fill work at Coles approximately three nights per week. On the nights he performs night fill, Mr Calabrese said he works between 6.00 pm and 11.00 pm.

162 Mr Calabrese was asked about his household expenditure. He provided copies of his bank statements to illustrate his fortnightly expenditure. Mr Calabrese gave evidence that his fortnightly mortgage repayment is currently \$900 per fortnight whereas a few years ago it was just over \$400: (ts p 72).

163 During his evidence on his fortnightly expenses, Mr Calabrese stated that he pays approximately \$300 per fortnight for private health insurance. He said although this was a big expense he did not believe he or his wife could afford to let this insurance go: (ts p 74).

164 On his overall expenditure, Mr Calabrese said that after meeting the costs of his private health insurance and his mortgage repayments, he did not have much money left over for discretionary spending. When commenting on his fortnightly expenditure overall, he said;

“I think I have probably got more going out than going in” (ts p 74).

#### **Evidence of Joey Van Lierop**

165 The WASU called Joey Van Lierop who works with Mr Hoddy as a maintenance worker in Parks and Infrastructure, to give evidence. Mr Van Lierop said his work involves conducting inspections of the most popular playgrounds in Geraldton, which he says he conducts on Mondays, to identify if there is any equipment that needs to be repaired: (ts p 102).

166 Mr Van Lierop said information on items requiring repairs, which could include gazebos, barbecues, benches or playground equipment is provided in reports received from the police or members of the public. Mr Van Lierop described his duties as maintaining, installing and removing any damaged equipment: (ts p 102).

167 Mr Van Lierop said he is employed on a full-time basis. He said Parks and Infrastructure is part of the Maintenance Department which includes employees who install and maintain street signs and the concreters who lay concrete for paths, curbs and the like: (ts p 102).

168 When describing the COGG’s infrastructure, Mr Van Lierop said there are just over 50 playgrounds, which includes facilities in the towns of Mullewa, Walkaway and at Devlin Pool. In addition to playgrounds, Mr Van Lierop said that he was also required to maintain drink fountains, gazebos, barbecues and other infrastructure, which he confirmed were being added to as the city grows. Mr Van Lierop equated an increase in facilities with an increase in workload: (ts p 103).

169 Mr Van Lierop stated that in addition to the repair work he performs with Mr Hoddy in Geraldton, he is also required to maintain playgrounds in Mullewa. Mr Van Lierop said that he performs quarterly inspections of facilities in Mullewa and depending on the issues that are identified, will make additional trips to effect repairs: (ts p 103).

170 Mr Van Lierop gave evidence about his earnings. He said he earns around \$75,000 per annum. In addition to the income he receives from this work, Mr Van Lierop said his wife works on a full-time basis at the St John of God Hospital. With their combined income, Mr Van Lierop said they earn approximately \$150,000 gross per annum: (ts pp 103-104).

171 Mr Van Lierop said he and his wife have four children, one grandchild, with another grandchild on the way. Mr Van Lierop said three of his children live at home with him aged 17, 16 and 14: (ts p 104).

172 Mr Van Lierop said he currently pays \$430 per week in rent. He said the house he rents is currently up for sale, which has happened for the second time in 12 months. He said the house did not sell the first time it was placed on the market, so he was allowed to continue renting the property. He was unsure whether this would change if the house is sold: (ts p 104).

173 When asked about what may happen if he wasn’t able to continue renting the property, Mr Van Lierop said rental prices for comparable houses that would allow him to accommodate his family, at a minimum, range from \$450-\$550 per week. Mr Van Lierop said the house he is in has four bedrooms. With the number of children he has, Mr Van Lierop said he would need a home with at least four bedrooms to accommodate everyone: (ts p 105).

174 Mr Van Lierop gave evidence about his other weekly expenses. He said his electricity bill varied from \$600-\$1,200 every two months. Mr Van Lierop said that while the energy rebates he had received from the government had assisted in meeting the cost of his energy bills, they were not guaranteed and his power bills, remained one of his more significant expenses: (ts p 105).

#### **Evidence of Esper Windsor**

175 The WASU called three witnesses who are employed by the COGG to perform roles ‘inside’. The first of these was Esper Windsor who works at the COGG as a ‘Young Peoples Services Officer’: (ts p 80).

176 Ms Windsor says she commenced working for the COGG in 2005 as a casual. She is now employed on a permanent part-time basis, 27 hours per week. Ms Windsor explained that she performs her role in the COGG Library. Ms Windsor said that in addition to performing duties on the front desk on Mondays, she presents ‘Story Time’ and ‘Rhyme Time’ sessions twice a week, every Thursday and Friday: (ts p 80).

177 In addition to providing these services, Ms Windsor said that she performs other duties in the library including sorting books, shelving, returning books to the State Library, providing an outreach program to schools and delivering ‘Early Literacy Better Beginnings’ bags, which the COGG receives from the State Library: (ts p 80).

178 Ms Windsor gave evidence that in addition to the duties she performs at the COGG library, she also works two days per week 2.00 pm to 9.15 pm on Tuesdays and Thursdays at the Nazareth Aged Care Centre in Geraldton. Ms Windsor said she used to be a registered nurse in the Philippines. With her background in nursing, Ms Windsor has been able to secure work as an aged care worker: (ts p 80).

179 Ms Windsor gave evidence that she is the sole bread winner in her household. She said this is because her husband passed away three years ago. She said the income she receives provides for herself and her daughter who is in her early 20’s. Ms Windsor said her daughter is currently studying and so she is mostly dependent on the income Ms Windsor takes home: (ts p 81).

180 Ms Windsor was asked to provide some details on the literacy programs she provides in the COGG Library. She said in previous years; she used to run ‘Story Time’ once a week for 20 minutes. It then became very popular. Ms Windsor said at one point she had as many as 100 participants in the session including parents, carers and young children. With its rise popularity, the COGG decided to run additional sessions every Thursday and Friday: (ts p 81).

- 181 Ms Windsor said the 'Story Time' and 'Rhyme Time' sessions are still very popular. She said there are as many as 50 to 60 participants in each session: (ts p 81).
- 182 In addition to her evidence regarding 'Story Time' and 'Rhyme Time', Ms Windsor spoke about the front counter duties she performs in the library. Ms Windsor described having to deal with people from a whole range of backgrounds, including customers who exhibit 'difficult behaviour'. Ms Windsor described having to call police to deal with aggressive customers. She said this was something she was having to deal with more regularly: (ts pp 81-82).
- 183 When asked about her earnings, Ms Windsor said that she earned approximately \$800 per fortnight from her work with the COGG. Ms Windsor said she is paid at the classification of a Level 2 Step 4. In addition to her earnings at the COGG, Ms Windsor gave evidence that she earns approximately \$800 per fortnight, after tax, for the work she performs at Nazareth Care: (ts pp 82-83).
- 184 Ms Windsor gave evidence about her accommodation arrangements. She said she lives in a Geraldton caravan park, in a caravan that she owns. Ms Windsor said a few days prior to the hearing, she was given a new lease agreement which increased the weekly rent she pays from \$135 to \$168 per week. Ms Windsor said the rent she will be required to pay under the new lease will be increased annually by 5%: (ts p 83).
- 185 Ms Windsor said the increase in rent was of concern to her because she is the sole income earner in her household. When asked about her cost of living, Ms Windsor described herself as barely keeping her head above water: (ts p 84).
- 186 Ms Windsor said she had found dealing with the cost of living challenging because she did not have any family support in Australia, as her family are all overseas: (ts p 85).

#### **Evidence of Diane McDonald**

- 187 Diane McDonald was the second witness the WASU called who works 'inside.' Ms McDonald, is employed as a library clerk at the COGG Library. Ms McDonald said she became a permanent part-time employee with the COGG in 2007. Prior to this, Ms McDonald worked in the library as part of an Aboriginal employment program: (ts p 8).
- 188 Ms McDonald said she commenced in the Aboriginal employment program in 1995. In addition to her work on this program, Ms McDonald said she also worked at the COGG Library on a casual basis. In 2007, Ms McDonald was directly employed by the COGG: (ts p 88).
- 189 Ms McDonald said that her job has largely remained the same since as when she first commenced employment with the COGG. She described her duties in the COGG Library which included work on the front desk for around three shifts per week and work in the back room of the library where she sorts and repairs books and returns them to the State Library: (ts p 88).
- 190 Ms McDonald described her duties at the front desk. She said she is required to attend to customers, who can be rude and difficult to deal with. Ms McDonald said that while she accepted it was something she had to deal with as part of her job, it had put a lot of stress on her and her colleagues: (ts pp 89-90).
- 191 Ms McDonald said that for most of her employment with the COGG, she has been employed as a Level 2. However, in the last six months, Ms McDonald was reclassified to a Level 3: (ts p 90).
- 192 Ms McDonald said that most of the people who work in the library are employed on a part-time basis. Ms McDonald said she works three full days per week and two half days: (ts p 91).
- 193 McDonald gave evidence that there are approximately 10 to 12 people who work in the COGG Library, which she says is a reduction in previous staffing levels. Ms McDonald said the staffing levels have remained stable in the library for the last six to eight years: (ts p 91).
- 194 Ms McDonald said quite a few people in Geraldton use the library to access computers, to scan documents and for photocopying. When she was asked if more people were using the library, Ms McDonald responded by saying that at least a couple of people joined each day: (ts p 91).
- 195 Ms McDonald said the number of people using the library today when compared with three or four years ago has in her view, increased. She said more people were using the library's computing, photocopying and scanning facilities because they were being sent by Centrelink which did not provide this type of assistance to their clients. Ms McDonald said most of the people who Centrelink had sent to the COGG Library, were elderly who had not used computers before: (ts p 92).
- 196 Ms McDonald gave evidence about her income from the COGG. She said she receives after tax, approximately \$1,900 per fortnight: (ts p 92).
- 197 Ms McDonald gave evidence about her living arrangements and her weekly expenses. She said she currently lives with and cares for her brother who has dementia. Ms McDonald said that she is required to take her brother to his doctor's appointments. She also said that she supplies food for their meals, which she says is 'very expensive': (ts pp 93-94).

#### **Evidence of Cassandra Young**

- 198 The WASU called Cassandra Young who works for the COGG as a 'Community Partnerships Officer' in its Mullewa office, to give evidence. Ms Young described her role as 'connecting the community to' the COGG's service providers and other outside services: (ts pp 94-95).
- 199 Ms Young said she has worked in the Mullewa office for the last four years. She said she commenced her employment at the COGG as customer service officer. Ms Young said she is the only full-time employee out of four employees who work there: (ts p 95).
- 200 Ms Young said she is currently supervised by a manager who was appointed to the role in August 2023, but who only works on a part-time basis. Ms Young said the two other customer service officers she works with, are also part-time employees: (ts p 95).

- 201 Ms Young explained that two previous managers who worked in the Mullewa office on a full-time basis did not stay for as long as she hoped they would. She said the office was at this time staffed by herself, with assistance from these managers on a sporadic basis, with some support from staff in Geraldton: (ts p 95).
- 202 Ms Young said one of the two customer service officers she works with is currently on maternity leave. Ms Young explained the job this employee performs is shared with another customer service officer. Ms Young said there are two vacant positions in the Mullewa office that have been advertised but have not been filled: (ts p 95).
- 203 Ms Young gave evidence about the duties she performs in the Mullewa office. She said that in addition to her duties as a 'Community Partnerships Officer,' she performs a customer service role for the Department of Transport (**DOT**). Ms Young explained that this is because the Mullewa office accepts payments for and provides services on the DOT's behalf: (ts p 96).
- 204 Ms Young said the Mullewa office is open from 9.00am to 4.00pm daily. She said the number of DOT transactions the Mullewa office processes varies from 0 - 20 in a day. Ms Young said her involvement in these transactions very much depends on her workload: (ts p 96).
- 205 Ms Young also described some of the work that she performs in dealing with customers at the Mullewa office. She said she is required to attend to telephone enquiries, emails and deal with any other matters raised by people who come into the office: (ts p 96).
- 206 Ms Young said that her classification under the enterprise agreement is as a Level 4 Step 3. She said that after making additional superannuation contributions that she pays as a salary sacrifice and payments for a car that she has on a novated lease, her take home pay is approximately \$1,900 per fortnight: (ts p 97).
- 207 When asked about her fortnightly expenses, Ms Young said that she pays \$400 per week in rent, as well as groceries of \$250-\$500 per fortnight. Ms Young said that because Mullewa is in a remote setting, the town does not have a supermarket. She said a local store has some basic items, but they are expensive. For this reason, Ms Young said she needs to travel 200km round trip to/from Geraldton to access a full range of groceries: (ts p 97).
- 208 Ms Young said Woolworths is providing a delivery service to Mullewa on Wednesdays and Thursdays which she says has cut out the cost of travelling to Geraldton for shopping. However, Ms Young said there are still times she needs to travel to Geraldton for some things that are not available through online shopping: (ts p 98).
- 209 In addition to power and other utility expenses, Ms Young said her other major expense is for her children's education. Ms Young said her daughter will be attending boarding school in Geraldton at a cost of approximately \$15,000 per annum. In addition to this expenditure, Ms Young said she had to find money for her daughter's schoolbooks, uniforms and other items: (ts p 98).
- 210 Ms Young has two other children, both of whom are at primary school. Ms Young said she sends her children to the local Catholic Primary School and their school fees are approximately \$2,500 per annum: (ts p 99).
- 211 Ms Young said that she pays for her children's school fees on a fortnightly basis with assistance she receives through Centrelink from a Family Tax Benefit. Ms Young expects the expenditure that she will have to outlay on her children's education will go up in the coming years as her other two other children aged 4 and 10, approach high school age: (ts p 100).
- 212 When asked about her experiences in dealing with the cost of living, Ms Young who said she had lived away from Mullewa for a period, said she had returned because she could not afford to be anywhere else. Ms Young said she tried to do the best for her community because she was born and raised in Mullewa: (ts p 100).
- 213 On the question of alternative employment, Ms Young said she was unable to go anywhere else. Succinctly put, she said;  
"Like, I could not go on the mines because I have three kids" (ts p 100).

#### **The Respondent's Evidence**

- 214 In addition to the expert evidence from Mr Morey that I referred to earlier the COGG called Paul Radalj, who works as the COGG's Director of Corporate Services (**DCS**).
- 215 Mr Radalj who holds a Bachelor of Business degree, has worked at the COGG for 25 years. He said he commenced in his current role, approximately six years ago in 2019. Mr Radalj gave evidence that although he performs multiple tasks in his DCS role, his main responsibility is to look after the financial health and good governance of the COGG: (ts p 108).
- 216 Mr Radalj said his duties include looking after the COGG's finances, business planning, Human Resources (**HR**) and governance. He said that each of the positions he has worked in at the COGG, have been in management and have related to finance or business planning: (ts p 108).
- 217 Mr Radalj said the COGG currently employs around 289 staff. He said that while the COGG has a structure that provides for 315 full-time equivalent employees (**FTEs**), only 289 of these positions are currently filled. He said that 70% of these employees pay council rates (**rates**) to the COGG: (ts p 109).
- 218 Mr Radalj was asked about the industries that operate in the COGG. He confirmed there are a range of industries including mining, agriculture, aquaculture, government departments and a service industry for the northwest of WA: (ts p 110).
- 219 Mr Radalj described Geraldton as 'fairly resilient to change' by which he said this meant that Geraldton was not reliant on just one industry. He said that if the mining sector is strong, it may be offset by a bad year in the agricultural sector: (ts p 110).
- 220 Mr Radalj gave evidence about how the COGG plans for financial expenditure. Mr Radalj said the COGG had adopted an 'Integrated Planning Framework', which is used by all local councils: (ts p 110).
- 221 He said the Integrated Planning Framework requires the preparation of an 'Integrated Planning and Recording Schedule' (**planning schedule**). A copy of the current planning schedule was accepted into evidence as Exhibit R2.

- 222 Mr Radalj described the planning schedule as a yearly rolling calendar the COGG follows to guide its financial decision making so the COGG can plan for the following year's capital budget program: (ts p 112).
- 223 In addition to the planning schedule, Mr Radalj explained that one of the other documents the COGG relies upon to prepare its annual budget is *the City of Greater Geraldton's Long-Term Financial Plan 2023-2033 (LTFP)*, a copy of which was earlier accepted into evidence as Exhibit A27.
- 224 Mr Radalj explained that the LTFP is also used by the COGG to guide the financial decisions it makes: (ts p 110). He said the LTFP is reviewed every year: (ts p 111). Mr Radalj said this happens because the LTFP influences what is contained in the annual budget.
- 225 Mr Radalj said that in addition to the LTFP and the COGG's Capital Infrastructure Program, a further document the COGG considers when preparing its budget is the COGG's Corporate Business Plan. Mr Radalj said this document is important because it lists actions that require resourcing: (ts p 111).
- 226 Mr Radalj said the planning schedule commences in September of the current financial year and runs to June. He said the planning schedule culminates in the adoption of the COGG's Annual Budget (**annual budget**) and any updates to the LTFP: (ts p 111).
- 227 In his evidence, Mr Radalj said the planning schedule, which includes preparing an annual budget, takes nine months. He described the process as complex with many moving parts. Mr Radalj said the preparation of an annual budget for the new financial year on the planning schedule commences in or around February/March each year: (ts p 112).
- 228 Mr Radalj said that prior to the preparation of the annual budget, a series of steps are taken to inform this process. He said there is a mid-year review in or around February/March each year which provides guidance on any changes that have occurred with the existing budget. He also said that a review of the LTFP is undertaken: (ts p 113).
- 229 Mr Radalj said that when preparing an annual budget, the COGG must consider the underlying principles that are contained in the LTFP. He said that one of the principles is the prevention of revenue raising shocks to the community. The example he provided was a one-off annual increase in rates of 10%. Mr Radalj said large increases in rates of this type were not palatable to the council or to the community: (ts p 113).
- 230 A further principle from the LTFP Mr Radalj referred to was ensuring the annual budget meets the financial ratios to ensure the COGG is in a financially sustainable position. When asked what he meant by a financial ratio, Mr Radalj described this has the amount of debt the COGG has, when compared with its income or assets: (ts p 114).
- 231 Mr Radalj said a further principle the COGG had adopted under its LTFP was ensuring the council achieved a small operating surplus. He said this was for the purposes of ensuring the COGG was raising enough revenue to fund its asset renewal program each year. He said this was necessary to ensure the COGG's assets remained safe and functional for the community: (ts p 114).
- 232 Mr Radalj gave evidence about the revenue the COGG receives. He said that in addition to rates, the COGG's other sources of income include various fees and charges. He said the two together make up about 85% of the COGG's revenue: (ts p 115).
- 233 When asked about rates increases, Mr Radalj said that over the last ten years, the COGG on average had increased rates by around 2.8% per annum. He said the council is very much set on annual rate increases of between 2.5 – 3% per annum. Mr Radalj said the COGG in the 2024/2025 financial year, had increased rates by 3.9% but this was an attempt to negate increased costs: (ts p 115).
- 234 Mr Radalj gave evidence about 'fees and charges.' He said a schedule of fees and charges is set by reference to the *Local Government Act 1995*. He said in most instances the amount charged is based on cost recovery, whereas others are based on statutory charges. Inherent in his evidence was the suggestion that there is a limit to the amount of income the COGG can generate from fees and charges: (ts p 116).
- 235 Mr Radalj said that once fees and charges are set, they remain fixed for the year of the budget they are contained in. He said you cannot change a fee or charge unless it is authorised by a meeting of the council. Mr Radalj said fees and charges are set by the council at the same time the annual budget is endorsed and adopted. He said that in the same way fees and charges are set for a budget year, rates cannot be increased after budget has been approved: (ts p 116).
- 236 Mr Radalj was questioned about other sources of income the COGG receives. He said the COGG receives income by way of interest earnings, which he explained is the interest that accumulates on surplus funds: (ts p 117).
- 237 In addition to rates, fees and charges, the COGG's other major source of income are grants funding, which Mr Radalj said is comprised of general grants and for specific purposes, which COGG receives from the Federal Government. Mr Radalj said that unlike a specific purpose grant, the council is permitted to determine how the funds obtained under a general-purpose grant, are to be used and invested: (ts p 118).
- 238 Mr Radalj presented as part of his evidence 'Statements of Comprehensive Income' for the 2022/2023 and 2024/2025 budgets. Both documents include a description of forecast revenue and the expenses for the respective financial years to which the two budgets relate. These documents were accepted into evidence as Exhibits R3 and R4.
- 239 Mr Radalj was asked to compare the amounts the COGG had budgeted for employee costs in the 2023/2024 financial year with those in the 2024/2025 financial year. He said the amount budgeted for employee costs had increased by approximately \$4 million per annum which Mr Radalj said was the biggest increase he had seen in his 25 years at the COGG: (ts p 120).
- 240 Mr Radalj was asked if the COGG had made any plans for large capital expenditures in the next five or so years (**major projects**). He said the COGG was planning to spend approximately \$15 million to undertake the rehabilitation of its landfill cells and that it had plans to develop the Maitland Park Education Precinct (**Maitland Park**) to improve community safety: (ts p 121).

- 241 Mr Radalj said that while the design cost to improve Maitland Park was approximately \$3 million, the cost of the actual project would likely be in the range of \$20-\$30 million. In addition to these projects, Mr Radalj said the civic centre had reached its capacity. He said for this reason, the COGG was now exploring the development of a new civil precinct, the cost of which could be in the range of \$30-\$50 million: (ts p 121).
- 242 Mr Radalj said the COGG was investigating the establishment of workers' accommodation in Geraldton. In addition to this project, he said the COGG was also looking to upgrade the theatre, which he estimated would cost between \$30-\$50 million. He said upgrading the theatre would require significant works. Mr Radalj said that each of these projects were significant and required further planning: (ts p 121).
- 243 Mr Radalj was asked about the parameters the council placed on rate increases. Mr Radalj responded by saying that rate increases are not to exceed 3% per annum. He said this parameter forms part of the modelling in the COGG's LTFP: (ts p 122).
- 244 Mr Radalj gave evidence that there had been growth in the amount the COGG received from rates, fees and charges. He said this was because the COGG had lost revenue during the COVID Pandemic and any growth in revenue was a return to 'normality'. He said that over the last two years the COGG had expected growth in fees and charges but it was unlikely to continue: (ts p 124).
- 245 Mr Radalj was questioned about how the COGG would fund predicted employee costs. He said the only levers the COGG has available to it to meet an increase in expenditure beyond what is budgeted for, is through an increase in rates, fees and charges and by cutting services: (ts pp 124-125).
- 246 When asked what cutting services would involve, Mr Radalj said there are some mandatory services the COGG provides and some non-mandatory services. Mr Radalj described the non-mandatory services as those the community would like the council to provide but which the COGG is not under a statutory obligation to deliver: (ts p 125).
- 247 An example of one of the non-mandatory services, Mr Radalj said the COGG was not required as a local council to provide youth or 'youth at risk' programs. He also said that when the COGG cuts services, it would reduce staffing levels. He said if the COGG removes a service, then the person delivering the service may no longer be required and might not be able to be redeployed somewhere else: (ts p 125).
- 248 As part of his evidence, Mr Radalj presented two spreadsheets that projected the costs of the parties' competing wage outcomes. The first of these exhibits (Exhibit R5) shows the projected cost of the COGG's wage proposal over a 10-year period to June 2034. The second spreadsheet (Exhibit R6) shows the projected costs of the WASU wage proposal over the same period.
- 249 When commenting on the COGG wage proposal, Mr Radalj said it was in effect a 14% increase over the life of the new agreement. He said this was because the COGG had increased the wage rates for its lowest level employees from Level 2 to Level 3, which he said in real terms had increased the cost of the COGG's offer by a further 1%: (ts p 127).
- 250 Mr Radalj gave evidence to the effect that the COGG wage proposal required the COGG to operate in an overdraft position. This he said meant the COGG would have to use money from its reserves to fund the ongoing cost of the wage increases: (ts p 127).
- 251 Mr Radalj was asked whether the anticipated expenditure described Exhibit R5 included a capital outlay for major projects. Mr Radalj said that while there was provision for the rehabilitation and capping of the landfill sites, the LTFP did not include spending on major projects: (ts p 128).
- 252 When asked about Exhibit R6, Mr Radalj said both wage proposals would require the COGG to continue to operate in a deficit position. He suggested the financial impact of the WASU wage proposal would be more pronounced. Mr Radalj said the COGG, in either scenario would not allow the COGG to become insolvent: (ts p 128).
- 253 When asked what financial lever the COGG would likely use to meet an increase in wages, Mr Radalj said that in his view, the council would pull the service reduction lever rather than increase rates. He said this was because the community and the council will only accept a certain level of rates increases: (ts p 129).
- 254 Mr Radalj said it was more likely the COGG, would instead of hurting the community through rate increases, look at cutting services. When asked about the number of jobs that would likely be lost from cutting services, Mr Radalj suggested it would easily be 20 FTEs: (ts p 129).
- 255 Mr Radalj said that even with the COGG wage proposal, it is likely the COGG would give serious consideration to reducing the number of FTEs. He said this was because on current projections, the COGG would not be able to get into an operating surplus position: (ts p 129).
- 256 Mr Radalj said that on current modelling, the COGG will continue to remain in a net deficit operating position. He said the council will want to address this because it has an expectation the COGG should be operating with a small surplus: (ts p 129).
- 257 Mr Radalj gave evidence to the effect the continuation of operations in a deficit position is not financially sustainable. He suggested that on its current budget trajectory, the COGG will not generate enough revenue to deliver, all the services the COGG provides and to maintain its assets: (ts p 130).
- 258 Mr Radalj was questioned about whether the COGG had any regard to what other local governments were paying by way of wage increases, when the COGG wage proposal was framed. Mr Radalj said the COGG had made a comparison with the wage increases the City of Albany is paying to its employees: (ts p 130).
- 259 Mr Radalj described the City of Albany as having similar characteristics to the City of Geraldton. He said both councils have an urban and rural mix, are about the same distance from Perth, have airports, are both on the coast and while they are not the same size, Albany as a comparator to Geraldton, was the closest: (ts p 131).

- 260 Mr Radalj produced a table, which he said provided a comparison between the wages and salaries of the classifications that appear in the *City of Albany Industrial Agreement 2023 (City of Albany EBA)* with the equivalent classifications that appear in the new agreement: (Exhibit R7).
- 261 Mr Radalj said the classifications that appear in the City of Albany EBA were the same as those contained in the new agreement. He said 70% of the COGG's workforce are employed in classifications under Level 8, more specifically between Levels 3 Step 1 and Level 7 Step 4: (ts p 131).
- 262 Relying upon Exhibit R7, Mr Radalj suggested the rates of pay under the COGG wage proposal are substantially higher than the pay rates that apply under the City of Albany EBA. He suggested that on this basis, the COGG's wage proposal will provide for wages outcomes that are well above market and 30% over the Award: (ts p 131).

#### **Cross Examination of Mr Radalj**

- 263 Mr Radalj was cross-examined by Mr Fogliani. When asked about whether he had prepared Exhibit R7, Mr Radalj confirmed that it was prepared by staff who work in the COGG's HR Department: (ts p 132).
- 264 Mr Fogliani asked Mr Radalj whether he knew what a Level 3 at the City of Albany performed, in comparison to an employee at the same level at the COGG. Mr Radalj was unable to say: (ts p 133).
- 265 When questioned further on Exhibit R7, Mr Radalj said he did not personally conduct a comparison between the classifications in the two agreements. He said this assessment was done by other members of the COGG's staff: (ts p 133).
- 266 Mr Fogliani questioned Mr Radalj about the number of FTEs who work at the COGG. While Mr Radalj confirmed that the COGG has a structure that provides 315 FTE positions, it actually only employs 289.
- 267 In response to further questioning on this topic, Mr Radalj accepted that a proportion of the 289 employees, are part-time employees. He was not however able to say the number of employees who are employed on a part-time basis: (ts pp 134-136).
- 268 Mr Fogliani questioned Mr Radalj about the COGG's planning documents including the *City of Greater Geraldton's Strategic Community Plan (Strategic Community Plan)*.
- 269 Mr Radalj said that when viewed in a hierarchy, the Strategic Community Plan is at the top. He said the Strategic Community Plan, provides a list of the local community's aspirations, while the Corporate Business Plan is an internal document that sets out how the COGG will deliver these aspirations: (ts pp 136-137).
- 270 When asked about the LTFP, Mr Radalj accepted the LTFP requires the COGG's annual budget to be updated on a quarterly basis. Mr Radalj said this was so adjustments may be made for any changes that may affect the budget: (ts p 138).
- 271 Mr Fogliani asked Mr Radalj about the main industries the COGG relies on. He confirmed that mining now heads this list, ahead of agriculture. When asked whether the population of Geraldton had increased because of the shift to mining, Mr Radalj said that it had, but not to expectations: (ts p 139).
- 272 When commenting on 'fly/in fly/out' work arrangements that apply in other WA mining communities, Mr Radalj said that Geraldton was more a place where the workers flew out for work and then returned. He also said Geraldton had become a base for the provisions of services to mine sites in both the Midwest and Northwest of WA: (ts p 140).
- 273 Mr Fogliani asked Mr Radalj about the services the COGG provides in the local community. Mr Radalj accepted that the role of local government had become more prominent and there was a greater focus on the services it provided. He also accepted there is a growing demand for increased services, and it was something the COGG had to deal with: (ts p 141).
- 274 Mr Radalj was questioned about the sources of the COGG's income. He restated his earlier evidence that the COGG under its LTFP wanted to keep aggregate rates revenue increases to between 2.5% to 3.0% plus growth. Mr Radalj explained that "growth" came with an increase in or additions to, the number of properties for which council rates are paid to the COGG: (ts p 142).
- 275 Following this, Mr Fogliani referred Mr Radalj to the COGG's Annual Reports for the financial years ending 2021/2022 (Exhibit A22) and 2022/ 2023 (Exhibit A23).
- 276 In response to questioning from Mr Fogliani, Mr Radalj agreed that except for 2021/2022, the rates revenue the COGG received had increased in each financial year since 2019. Mr Radalj said the COGG had decided that it would not increase rates in the 2020-2021 financial year, to provide financial relief to the community during the COVID pandemic: (ts p 143).
- 277 In further questioning Mr Radalj accepted that in the 2022 financial year rates revenue increased by 5%. He also agreed that the rates revenue the COGG received for the 2023 financial year went up by 4.6%.: (ts pp 147-148).
- 278 During what was a quite an elongated exchange of questions and answers Mr Radalj was careful to draw a distinction between the figures that appear in the COGG's annual budgets and its actual results. While he confirmed the COGG makes its financial decisions from budget to budget, Mr Radalj agreed the increases in the rates revenue the COGG received were higher than the 2.4-3% it had budgeted for: (ts p 148).
- 279 When asked about projected expenditure for wage increases, Mr Radalj acknowledged the LTFP indexed annual employee costs by 2.5% – 4% per annum: (ts p 152). He also accepted the annual increase in employee wages may differ from the amounts forecast for the reason specified at p 21 of the LTFP which states:

Achieving annual operating surpluses are now subject to new risks around future expenditure pressures stemming from demand for greater wage increases to combat rising costs of living and materials and contract price pressures on the back of high inflation.

- 280 Mr Fogliani asked Mr Radalj if he was prepared to accept the COGGs budgets quite often don't reflect the actual circumstances as they stand at the end of the financial year. In what was a lengthy response to the question, Mr Radalj in effect disagreed. He said that on average, the COGG's budgets 'fairly much align' with the COGG's actual results: (ts p 157).
- 281 After providing this response, Mr Fogliani referred Mr Radalj to the COGG's annual reports for the 2017 (Exhibit A17), 2022 and 2023 financial years: (ts p 157). Whereas the financial statements in each of these reports show the COGG had budgeted for a deficit, the actual results in these years show the COGG returning an annual profit.

#### WASU's Outline of Submissions

- 282 Having now provided a summary of the evidence in this matter, it is necessary to provide a description of the parties' submissions, commencing with the points made by the WASU in support of its claim.
- 283 The WASU filed an Outline of Opening Submissions (**WASU Opening**) as well as Outline of Submissions in Reply (**WASU Reply**). Like the COGG, counsel for the WASU was afforded the opportunity to make closing oral submissions.
- 284 The WASU submitted that it is important the COGG's employees are provided with annual pay increases. This is so COGG's employees are fairly rewarded for their work and so that the COGG can attract, develop, and retain the workers it needs to deliver the required level of services to the community now and in the future. The WASU submitted the parties jointly share this view (WASU Opening para 9).
- 285 At paragraph 10 of the WASU's Opening, the WASU listed a series of factors to justify its claim for a 6% increase in both the second and third years of the new agreement. Those factors are:
- a. The annual change in Perth CPI for the years ending on 31 March 2022, 2023, and 2024 were as follows:
    - i. 31 March 2022: 7.6%;
    - ii. 31 March 2023: 5.8%;
    - iii. 31 March 2024: 3.4%
  - b. The WASU submitted these increases in CPI placed a sudden and significant cost burden on the COGG's employees. It was submitted that strong and meaningful pay increases are required to combat the rising costs of living.
  - c. It was submitted there have also been unique cost of living pressures within Geraldton in recent years. The town has now become a mining hub for various companies. This has drawn more people into the town – increasing the cost of housing and making it more difficult for residents to find a home. The population living in Geraldton over recent years has been as follows:
    - i. 2019-2020 reporting year: 38,632 residents;
    - ii. 2020-2021 reporting year: 38,231 residents;
    - iii. 2021-2022 reporting year: 41,198 residents;
    - iv. 2022-2023 reporting year: 41,495 residents.
  - d. The WASU submitted there has been an increase to its members workload caused by an increase in the number of residents using the City's facilities and services, coupled with the City's failure to maintain (let alone increase) staffing levels. It was submitted the WASU's members believe over recent years that they have been required to do more with less staff.
  - e. It was submitted that over the last 10 years, the COGG's annual revenue has increased dramatically, whereas its employee costs have remained largely unchanged. The WASU provided a table, that appears below, to illustrate this point.

Year	Revenue	Employee Costs	% of Expenditure	Page in WASU Bundle	Exhibit Number
2013-2014	\$66,788,419	\$29,488,810	44.15	748	A14
2014-2015	N/A	N/A	N/A	N/A	A15
2015-2016	\$71,157,085	\$27,897,929	39.21	876	A16
2016-2017	\$79,385,682	\$26,416,916	33.28	993	A17
2017-2018	\$78,166,041	\$27,739,286	35.49	1117	A18

2018-2019	\$79,978,818	\$27,672,236	34.60	1243	A19
2019-2020	\$79,755,441	\$28,172,282	35.32	1381	A20
2020-2021	\$74,960,049	\$26,309,285	35.10	1523	A21
2021-2022	\$85,724,275	\$28,913,674	33.73	1665	A22
2022-2023	\$92,364,948	\$29,753,773	32.21	1799	A23

286 The WASU submitted the data contained in the preceding table, reveals that the COGG is in a better position than ever before, to pass on meaningful pay increases to its workforce, to relieve the cost-of-living increases the COGG's employees have experienced over recent years and to make it more attractive for existing staff to remain employed (WASU Opening para 10(f)).

287 It was submitted that increasing employee wages to the level sought by the WASU would, in addition to helping the COGG attract and retain staff, provide the added benefit of minimising the COGG's hiring and training costs as well as mitigating a loss of corporate knowledge and experience that results from employees leaving to work elsewhere (WASU Opening para 10(f)).

288 The WASU in its submissions acknowledged that while the COGG also has an interest in maintaining a balanced budget, its employee costs for the 2022-2023 financial year were largely the same as they were in the 2013-2014 financial year. This is despite the City's annual revenue increasing over the same period from \$66,788,419 to \$92,364,948 (WASU Opening para 17).

289 It was submitted that local governments are not intended to be large profit-generating enterprises. The WASU contended they exist to provide for the good government of persons within their relevant district (WASU Opening para 18).

290 While the WASU conceded that operating in a surplus is an important aspect of providing for the good government of its constituents, it was submitted the provision of fair and reasonable wages to its employees was equally important. The WASU submitted that without skilled and experienced workers, the COGG would not be able to meet its obligation to provide for the good government of the persons in its district (WASU Opening para 18).

291 The WASU submitted that it was in the community's interests, (which the WASU described as the interests of ratepayers and residents) that the COGG provided appropriate pay and conditions, to attract, train, and retain skilled staff, to provide services to the community (WASU Opening para 19).

292 It was submitted that if the COGG did not invest sufficient funds to pay its employees an attractive wage, the COGG would not be able to provide services to the community, regardless of the level at which the council sets its rates. It was submitted that such an outcome would be contrary to the interests of the community (WASU Opening para 21, also see WASU Reply para 6).

#### COGG's Submissions

293 The COGG submitted that its wage proposal is fair, fiscally sound and is supported by the evidence. It was submitted the 6% wage increase the COGG provided to employees from 1 July 2023 was more than the amount the COGG had budgeted for in its 2022/2023 annual budget, which required a reduction in operating expenditure (COGG Submissions paras 11-12).

294 It was submitted that as there were Level 2 employees (mostly depot workers) who had remained at a Level 2 rate and had not progressed to a Level 3 position, the COGG had decided to pay an administrative Level 3 increase to all Level 2 remunerated employees in recognition of cost-of-living pressures (COGG Submissions para 12).

295 At paragraph 13 of the COGG Submissions it was submitted the wage increases the COGG has proposed, have been properly budgeted for in accordance with the principles in the LTFP and have regard to the COGG's budgetary constraints that include:

- (a) the COGG is currently operating at a deficit position, contrary to its LTFP, which is not sustainable in the longer term;
- (b) the COGG's return on investment from existing revenue streams will diminish in the near future due to predicted falls in the cash rate;
- (c) the COGG anticipates several large capital projects over the next five years to deliver improvements in public facilities; and
- (d) the COGG's other operating costs, including materials and contractors, have risen substantially over the previous two financial years.

296 The COGG submitted that its wage increase proposal is fair and reasonable having regard to the comparative and expert evidence:

- (a) the proposed increases are consistent with or better than the wage increases in industrial agreements for other local governments over the same period including, in particular, those provided for in the City of Albany EBA;

- (b) they are consistent with, and cumulatively above, predicted all industries and public sector wage growth across the life of the Agreement: the COGG's proposal represents a cumulative wage increase of 13.5% across the 23/24, 24/25 and 25/26 financial years and against predicted wage growth across the same financial years of about 11.8% or 11.6%; and
- (c) from 2015 – 2024, cumulative wage growth at the COGG was 28.6% compared with the WPI Public Sector (22.6%) and all industries (24.8%) indices: in other words, cumulatively, for the last decade, the COGG has paid above market is providing an above forecast wage offer which continues that trend: (see COGG Submissions para 14).
- 297 Referring to *City of Albany* at [42]-[43], the COGG submitted its wage proposal balances the competing interests of the WASU, its members employed by the COGG, other COGG employees, the COGG itself, and the community (COGG Submissions para 15).
- 298 The COGG argued that in contrast, the WASU wage proposal is not supported by the evidence and is and unsustainable. It was submitted the WASU's wage proposal provides for a cumulative wage increase of 19.1% across the life of the Agreement, well beyond predicted all industries wage growth of between 11.6% and 11.8%. The COGG contended the WASU's claim had been erroneously advanced as "a claim to be had for the asking": (*City of Albany* [43] (COGG Submissions para 16)).
- 299 The COGG submitted that as in *City of Albany*, increases in wages beyond what has been budgeted for, will result in any one or more of combination of a reduction in the COGG's total equity, increases in rates, fees and charges or reduction in the quantity or quality of community services: (COGG Submissions para 20).
- 300 It was submitted that to meet this unbudgeted expenditure, the COGG would need to raise rates (in addition to any rates rises required for other reasons) across the life of the new agreement, reduce services to an equivalent amount or reduce the COGG's employee headcount: (COGG Submissions para 22).
- 301 It was contended that in all cases, the community will pay and that because 71% of the COGG's employees are ratepayers, rate rises or service reductions, to say nothing about headcount reduction, will, inevitably, will have negative impact on the majority of the COGG's employees (COGG Submissions para 22).
- 302 The COGG submitted the Commission should make an order setting the wage increases in the new agreement in the percentage amounts the COGG has proposed. It was submitted the COGG's proposed wage increases are in keeping with forecast wage growth, are fiscally prudent, particularly having regard to the COGG's functions and revenue streams: (COGG Submissions para 26).
- 303 The COGG submitted that its wage proposal is consistent with the percentage wage increases in other like industrial agreements (COGG Submissions para 26).

#### **Observations about the evidence**

- 304 Before providing my reasons on the quantum of the wage increases that I regard as reasonable, it is important that I make some observations about the evidence.
- 305 The first observation I would make is that the credibility and honesty of the witnesses in this matter is not in issue. I accept that cross examination in the main, was for the purposes of clarification rather than challenging the evidence that was given by a witness.
- 306 Secondly, and despite the submission from the respondent's counsel, that I should attach limited weight to the evidence from the WASU's witnesses because some of it was hearsay, I note that much of what they said is consistent with what is contained in the documentary and expert evidence, a point to which I will return.
- 307 Thirdly, I regard the evidence the Commission received from the individual employees the WASU called as worthwhile. I am with respect, not inclined to agree the Commission cannot extrapolate from the testimony of these witnesses, conclusions that have broader application to, the COGG's whole workforce.
- 308 There were some trends that emerged from the evidence WASU's witnesses gave, which added a qualitative human dimension to Mr Morey's commentary on housing affordability and the cost of living. The witnesses also provided relatable examples of the staff retention problems the COGG is experiencing that were identified in the Strategic Workforce Plan.

#### **Consideration**

- 309 I accept that among the critical issues that are in play when determining the quantum of the wage increases to apply in the second and third years of the new agreement are the following:
- i. Providing a meaningful wage increase to employees that will go some way to addressing cost of living pressures;
  - ii. Awarding competitive pay increases that will operate as an incentive to attract and retain staff; and
  - iii. Ensuring that the quantum of any wage increases to be ordered are financially responsible and sustainable.
- 310 When considering these issues, I do not accept that the role of the Commission when determining an application under s 42G of the IR Act is to prefer one party's wages proposal ahead of the other.
- 311 Rather, I consider that when applying the various principles that I earlier referred to in the preceding paragraphs [9] – [11], the Commission is allowed to decide that percentage increases, other than what the parties have proposed, are more appropriate.

#### **Historical position**

- 312 It is in my view, relevant to pay some attention to the approach parties have previously taken to the percentage amounts by which wages were increased. As I observed earlier at paragraph [24], the parties have a well-established industrial relationship.

- 313 While I accept that each of the previous EBA's were all shaped by the unique circumstances the parties faced at the time they were made and should not be viewed as a yardstick, as Exhibit A6 (extracted at paragraph [96]) shows, between 2008 and 2024, the parties have negotiated annual wage increases that are on average, 1 – 1.25% above CPI.
- 314 The sole anomaly in this trend, was when CPI completely outstripped the 1.5% wage increase the parties had agreed would apply from 1 July 2022. I accept that this sharp rise in inflation is ultimately one of the factors, contributing to the decline in the growth of COGG employees' wages when compared with CPI.
- 315 In response to this anomaly, I accept that the increases the COGG has paid by agreement from 1 July 2023 and administratively from 1 July 2024 are at the higher end of the percentages the COGG has agreed to pay between 2008 and 2024. While they may be slightly above CPI the increases are below the average 1-1.25% buffer the parties have previously applied.
- 316 For this reason, I consider that by way of a comparison it cannot be said the wage outcomes the COGG is offering now, are way over and above the percentage wage increases the COGG has agreed to in previous negotiations.
- 317 I also consider, the evidence in this matter, does not establish the previous payment of wage increases that were on average 1-1.25 % above CPI, placed the COGG in a position that is financially unsustainable.
- 318 As the WASU's analysis of the COGG's annual reports for the period 2013-2023 illustrates, the COGG's employee costs, in proportion to COGG revenue for the same period, have largely remained the same.

#### **The COGG's Financial position**

- 319 I accept the COGG is in a healthy financial position. As was revealed its 2022-2023 Annual Report (Exhibit A23) at p 42, the COGG has total assets of \$975,093,066 which far exceed its liabilities of \$59,043,690. As a result, the COGG has Equity/Net Assets of \$916,049,376.
- 320 While operating expenditure has increased from \$82,148,145 in the 2021/2022 financial year to \$86,188,679 for 2022/2023, operating revenue has increased from \$85,724,275 for 2021/2022 to \$92,364,948 in the 2022/2023 financial year: (Exhibit A23 at p 42).
- 321 In the 2022/2023 Financial Year, the COGG returned an Operating Surplus of \$6,176 269, which was up on the surplus of \$3,576,130, from the previous financial year. This is despite the COGG predicting in both years that it would record a deficit: (see Exhibit A22 – Financial Statements p 3 and Exhibit A23 – Financial Statements p 3).
- 322 For the purposes of budgeting, the COGG's LTFP is underpinned by an assumption that employee costs are to be indexed annually to provide for enterprise agreement wage increases of between 2.5% and 4% over the ten-year life of the LTFP: (LTFP p 15).
- 323 The LTFP also assumes that increases in rates revenue will be kept to a maximum of 2.5%-3% per annum (plus growth) over the life of the LTFP: (LTFP p 9). While it might be argued the percentages by which wages are forecast to rise are higher than the planned increase in rates, a straight comparison between the two is not that simple.
- 324 As the LTFP states, the COGG achieves at the higher end of the target band for the 'Own Source Revenue Coverage Ratio': (LTFP p 20). There are two takeaways from this.
- 325 First, it shows that despite the COGG receiving a proportion of its annual revenue from various general-purpose grants, the COGG is not overly dependent on external funding to cover its operating costs (LTFP p 20). Second, it suggests that even with a cap on rates, the COGG is in a strong position to cover its costs through its own taxing and revenue efforts: (LTFP p 20).
- 326 That said, I am prepared to accept that with either wage proposal, there are limits to the percentage increase that should be ordered. For both proposals, the COGG has prepared budgets that foreshadow operating expenses exceeding operating revenue. However, this needs to be considered alongside the evidence of the COGG's recent financial performance.
- 327 Commencing with the 2019-2020 annual report (Exhibit A20), the COGG in its operational results, has financially, performed better than expected. While Mr Radalj was not prepared to concede this trend and information on the COGG's actual performance in the 2023-2024 financial year, was not available for the arbitration, I am not convinced the evidence suggests the COGG is about to experience a change in fortune.
- 328 Having regard to the COGG's recent financial performance, as evidenced in the COGG's annual reports, it is reasonable to conclude the COGG financially, is not headed on a downwards trajectory. On this basis, I consider that a finding COGG has the capacity to pay a reasonable wage increase, in both the second and third years of the new agreement, may be made.

#### **The interests of the employees**

- 329 From the evidence, there are two important matters which weigh heavily as considerations when determining appropriate percentage wage increases to apply in the second and third years of the new agreement.
- 330 The first is the need to ensure the percentage increases are sufficient to help the employees deal with the difficulty they are experiencing with the cost of living. The second is the need to ensure employee wage increases under the new agreement, are at level that will operate as an incentive to attract new staff and to retain existing employees.
- 331 There were two themes, that emerged from the evidence that was given by the employees who the WASU called to give evidence that support this view. The first is that each of the employees who gave evidence, are struggling to make ends meet and (even where they have second jobs) are experiencing hardship with the cost of living.
- 332 Each of the witnesses who gave evidence described having difficulty in meeting an increase in the cost of rents, mortgage repayments or education expenses. As indicated, their evidence was in my view, corroborated by the expert evidence that Mr

Morey gave. The WASU's witnesses' evidence on the increased and prohibitive cost of housing in Geraldton, was also supported by the data in the CoreLogic Report.

- 333 The second theme that emerged is that seeking alternative employment (whether in the mining industry or elsewhere) as means to secure an increase in earnings, is something that is either not available to every employee or something these employees do not want to do.
- 334 On this, the employees who the WASU called to give evidence, struck me as people who are committed to their employment with the COGG and to the service of the community where they live.
- 335 During Ms Young's evidence it became clear that one of the difficulties she was experiencing in her work is due to the difficulty the COGG is having, in attracting and retaining staff at the Mullewa Office.
- 336 While leaving employment at the COGG is not something Ms Young is contemplating, her work is plainly something that has been affected by job attraction and retention issues which the COGG is aware of.
- 337 Put simply, I accept Ms Young's work is adversely affected because there are less staff to assist her with the work that needs to be done. It follows that Ms Young is either required to do more or there are some services, that she is not able to provide.
- 338 Job attraction and retention issues were identified during Mr McKay's evidence as reasons why the COGG has a high turnover of staff in its Horticulture Department. Of particular concern is that younger, skilled employees do not stay because the wages the COGG pays are not competitive with the mining and other industries which the COGG competes with for labour.
- 339 In summary I accept that any wage increase the Commission orders must be sufficient to address cost of living and but also go some way in assisting with the recruitment and retention of staff.

#### **The Interests of the COGG**

- 340 Some of the employee interests I have identified in the preceding paragraphs are matters the COGG has in common. It is apparent from the Strategic Workforce Plan that the COGG accepts there is utility in having wage rates that are competitive to help the COGG attract and retain staff.
- 341 While I accept the COGG has an interest in ensuring any increases in wages are kept to sustainable levels, the LTFP acknowledges that an increase in wages to keep pace with cost of living or inflationary pressures, is something for which adjustments to its budget may have to be made: (LTFP p 21).
- 342 In making any adjustments to its budget, it is my view that an overall wage increase, proportionately above the total amount proposed by the COGG, may be granted without a rates shock or the loss of jobs and the reduction of services, which Mr Radalj pre-empted during his evidence.
- 343 Noting my earlier observations regarding the healthy state of the COGG's finances, I am not convinced the COGG lacks the capacity to pay a total wage increase under the new agreement of more than 13%.
- 344 I do however take the view that disruption to the COGG's budget for 2024-2025 financial year is not in the COGG's interest, a point to which I will return before framing the final orders to issue.

#### **The interests of the community**

- 345 I was not presented with any evidence regarding the median income of residents in the COGG or evidence on the cost of an average rates notice.
- 346 While the evidence shows that council rates COGG residents will pay in the 2024-2025 financial year, were increased by 3.9% (see preceding paragraph [224]) it is still less than the rate of CPI that applied when the rates increases were set: (as per the table from the Morey Report extracted at paragraph [62]).
- 347 I accept that many of the COGG's employees are themselves ratepayers and so, they will in effect be contributing towards their own wage increases. I also accept that other employees are residents who contribute to the COGG's coffers through the payment of fees and charges.
- 348 However, as in *City of Albany* at [111], it is in the community's interest the COGG attracts and retains a workforce that is sufficiently skilled, experienced and capable of delivering services the COGG provides.
- 349 As an example, I was particularly moved by the evidence that was given by Ms Windsor and Ms McDonald. I regard both witnesses, who work on a part-time basis as performing roles that are essential to the health and wellbeing of their community in Geraldton.
- 350 While each of the witnesses who gave evidence perform roles that are critical in their own way, Ms Windsor and Ms McDonald with their work in the COGG library, are providing a connection for young families, the elderly and people dependent on Centrelink, who are vulnerable to isolation from their community.
- 351 There are also times the COGG's employees need to deal with difficult customers. Ms Windsor and Ms McDonald both gave evidence about having to deal with abuse and aggressive behaviour. Mr Calabrese sensitively gave evidence about how he is required to interact with Geraldton's homeless population.
- 352 On balance, I accept that it is in the community's interest that increases in rates are kept within the range that has been set in the LTFP. That said, there will always be a cost involved for the provision of services to a standard the COGG is required to provide and which the community has an expectation will be delivered.
- 353 While the quantum of the percentage pay increases to be ordered may result in a recalibration of community expectations regarding the use of the revenue the COGG receives, I am confident, having regard to the recent financial performance of the COGG, that it has the capacity to make these adjustments and to pay the wage increases I am intending to order be paid.

#### **Comparison with the City of Albany**

- 354 I have attached limited weight to the table Mr Radalj provided (Exhibit R7) that compared the rates of pay under the COGG proposal with those paid to employees in the City of Albany.

- 355 As was revealed during his cross-examination, Mr Radalj was unable to say with any precision, if the duties the COGG's employees perform at the equivalent levels for the City of Albany, are the same as the duties performed by the COGG's employees.
- 356 While the median house price and the cost of rent in Geraldton might be lower than in Albany, there was no evidence regarding comparative wage rates that apply in other industries which the City of Albany competes with for labour. In other words, there was insufficient evidence to explain why the rates of pay that apply in Geraldton are higher than they are in Albany.
- 357 Even if as a matter of comity, I was required to make an order for the same percentage wage increases from 1 July 2024 and 1 July 2025, which the Senior Commissioner ordered in *City of Albany*, the COGG's proposed 3% increase in the final year of the new agreement is less than the 4% the City of Albany was ordered to pay.
- 358 I accept there are some similarities between the COGG and the City of Albany. However, there are significant differences between the two local councils, which means a like-for-like comparison is not possible.
- 359 In any event, when determining a matter under s 42G of the IR Act, the Commission is required to exercise a broad discretion, having regard to the circumstances of the case, that is before it. Although there may be some utility in a rates comparison with a similar shire, it is my view the assessment to be made by the Commission in an application under s 42G is far more nuanced.

#### **The WASU's wage proposal**

- 360 As set out earlier, the WASU wage proposal advances a claim for the COGG to pay a 6% wage increase in the second and third years of the new agreement, resulting in a cumulative increase of 18% over the life of the new agreement.
- 361 In balancing the competing interests of the WASU, its members who work for the COGG, the COGG's other employees, the COGG itself and the community, I am not persuaded a cumulative increase to this level is justified.
- 362 A 6% wage increase from 1 July 2024 would be well over and above the 4.6% figure for All Industries WA WPI Growth and the 3.1% for Public Sector WPI Growth: (see table at paragraph [58] as extracted from the Morey Report).
- 363 It would also exceed CPI of 4.6% for the 2024 September Quarter; (see table at paragraph [62]). A 6% increase would also be above the average historical buffer of 1-1.25% the COGG has paid previously, which I described in the preceding paragraphs [314] – [315] above.
- 364 A 5% wage increase from 1 July 2024, while not as high as the quantum sought by the WASU, would provide a better outcome for employees than the increase the COGG is proposing to pay. The WA Treasury and CCIWA have also forecast that WPI will likely fall, respectively predicting WPI growth of 3.75% during the 2024-2025 financial year.
- 365 The COGG is, under both the WASU and the COGG wage proposals, forecast to go into deficit. The scenario that is predicted for the WASU's wage proposal is understandably more pronounced and as it was not challenged by the WASU, has caused me to approach the percentage wage increases sought by the WASU with caution.
- 366 In addition, the WASU did not challenge the COGG's evidence that it had decided to pay employees who were previously classified as Level 2s at the higher Level 3 rate or that it had done this, to provide cost of living relief.
- 367 Despite this, I do not consider the COGG's wage proposal adequately addresses the matters that in my view, justify a higher total wage outcome than what is in the COGG wages proposal.

#### **The COGG's wage proposal**

- 368 It is my view the COGG wages proposal is deficient in several respects. Firstly, the proposed 4% wage increase from 1 July 2024 is less than CPI of 4.6%: (CPI as appears in the table extracted at paragraph [63]).
- 369 Second, a 4% wage increase is less than the figure of 4.6% for WPI Growth - All Industries WA: (WPI as appears in the table extracted at paragraph [58]). As a means to attract and retain staff, a 4% increase falls short of the mark, as it would not be keeping pace with increases payable in other industries, which the COGG must compete with, for staff.
- 370 As an increase, I accept that a 4% rise is at the upper end of the annual 2% - 4% by which the COGG under its LTFP, indexes its annual wages costs. However, an increase in this range does not completely deal with the need to raise wages in response to inflationary pressures, which the COGG has foreshadowed in its LTFP, as something it may also need to do: (LTFP p 21).
- 371 The difficulty I have with the COGG's wage proposal is that cumulatively, it will not, following the sharp rise in inflation that occurred in 2022, put the COGG's employees back into the position where their wages have kept pace with the cost of living. In my view, this problem would be addressed with the awarding of a percentage increase of 5% in the second year of the new agreement, to apply from 1 July 2024.
- 372 While a 5% increase from 1 July 2024, in combination with the 6% wage rise the parties have agreed would apply from 1 July 2023, will not completely restore the gap between wages growth and inflation, that widened significantly in 2022, a cumulative increase of 11%, would at least put wage increases slightly above CPI in the first two years of the new agreement.
- 373 The COGG's proposed 3% increase for the third and final year of the new agreement is similarly deficient. Although the Morey Report contained no data on CPI for the increase to apply from 1 July 2025, WA Treasury and the CCIWA have predicted WPI growth in the range of 3.25% - 3.5%: (see table extracted at paragraph [59] as extracted from the Morey Report).
- 374 From this data, it is reasonable to conclude that even if CPI falls, on current projections, the COGG's proposed 3% wage increase will be less than increases that are being paid by the other employers the COGG must compete with for labour.
- 375 Having made these observations, it is my view that if a 5% increase was to be ordered to apply from 1 July 2024, then the quantum of the percentage increase to ensure wage increases remain competitive, for the final year of the new agreement would need to be set at 4%.

#### **The timing of the increases with the COGG's Budget**

- 376 I accept that making an order for a 5% wage increase to apply from 1 July 2024, has the potential to disrupt the budget the COGG has approved for the 2024-2025 financial year.

- 377 I also accept that the hearing of this application occurred after the COGG's council had endorsed its annual budget and made decisions on the rates, fees and charges the residents would be required to pay in the 2024-2025 financial year.
- 378 Knowing the WASU was seeking a 6% wage increase to apply in the 2025-2026 financial year, the same cannot be said if the Commission was to order that a 5% wage increase should apply from 1 July 2025.
- 379 In other words, I take the view the COGG's budget and planning schedule will be less disrupted and the COGG will be in a better position to provision for the 5% increase, that I consider is justified for the second year of the new agreement, if it is deferred for a year.
- 380 By flipping the dates from which the two increases will apply, so that the 4% wage increase the COGG is currently paying will apply from 1 July 2024, (which in the usual course I would have ordered for the final year of the new agreement) with the 5% wage increase I regard as appropriate for the second year, the COGG's employees will still stand to benefit from same cumulative result.
- 381 The COGG's and the community's interests will also be served by timing the increases in the way I have foreshadowed, as it will minimise disruption to the COGG's budgeting process and provide the COGG with a reasonable opportunity to provide the community with an explanation for the quantum of the wages increases to be paid to its staff.
- 382 It will also afford the COGG with an opportunity to find the means to avert any job losses or reductions in services, in fact those threats ring true. I say this, because I have found it difficult to reconcile the evidence of the COGG's recent financial performance with suggestions from Mr Radalj, that job losses and reduced services are likely, even if the Commission was to order the percentage increases in salary, under the COGG's wage proposal.
- 383 By deferring the second wage increase of 5% until the third year of the new agreement, the COGG will have a chance to re-evaluate its budget priorities, thereby ensuring its stated commitment to providing wage increases that are competitive and which, address the cost-of-living pressures the COGG's employees are facing.

### Conclusion

- 384 For all of the reasons I have provided in the preceding paragraphs, I consider the new agreement should make provision for two further wage increases in the second and third years as follows:
- a. 4% increase to be applied on and from 1 July 2024 to 30 June 2025; and
  - b. 5% increase to be applied on and from 1 July 2025 to 30 June 2026.
- 385 Having regard to all of the evidence and my consideration of the principles that I earlier referred to in paragraphs [9]-[11], I have concluded the percentage increases to be applied will provide meaningful wage increases to assist employees in dealing with cost-of-living pressures.
- 386 I also consider the quantum of the increases are justified as a measure to help the COGG deal with its acknowledged staff attraction and retention issues.
- 387 In determining the quantum of the wage increases to be paid, I have sought to responsibly balance the interests of the WASU and the COGG's employees with the interests of the COGG itself and the community.
- 388 It is my view the quantum of any wage increases to be paid are at a financially sustainable level and the COGG has the capacity to pay these increases.
- 389 I will accordingly make orders to register the new agreement, which will include terms on the quantum of the pay increases to be paid in the second and final years of the agreement.
- 390 To this end, I intend to hear from the parties on the form of orders to issue and the steps to be taken next, for the registration of the new agreement.

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## PUBLIC SERVICE APPEAL BOARD—

2025 WAIRC 00267

### APPEAL AGAINST THE DECISION OF THE EMPLOYER TAKEN ON 14 MAY 2024

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

KRISTEN TUNG

**APPELLANT**

-v-

COMMISSIONER OF POLICE, WESTERN AUSTRALIA POLICE FORCE

**RESPONDENT**

**CORAM**

PUBLIC SERVICE APPEAL BOARD  
 COMMISSIONER T B WALKINGTON - CHAIRPERSON  
 MS B SKALKO - BOARD MEMBER  
 MR B HAWKINS - BOARD MEMBER

**DATE**

MONDAY, 5 MAY 2025

**FILE NO**

PSAB 11 OF 2024

**CITATION NO.**

2025 WAIRC 00267

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<b>Result</b>	Appeal Discontinued
<b>Representation</b>	
<b>Appellant</b>	Mr S Hicks (of counsel)
<b>Respondent</b>	Ms A Miller (of counsel)

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*Order*

WHEREAS on 4 June 2024 the appellant filed a *Form 8B – Notice of Appeal – Government Officers, Public Service Officers*, and on 25 June 2024 the respondent filed a *Form 4 – Response (General)*;

AND WHEREAS on 31 October 2024 the appellant filed a *Form 1A – Requesting discovery, production or inspection of documents relevant to an application or appeal*, and an interlocutory hearing was listed for 11 December 2024;

AND WHEREAS on 1 May 2025 the appellant informed the Commission in writing that she wished to discontinue her appeal PSAB 11 of 2024 (**Appeal**);

AND WHEREAS the respondent advised on 2 May 2025 that it does not object to the Appeal being discontinued;

NOW THEREFORE the Public Service Appeal Board, pursuant to the powers conferred on it under the *Industrial Relations Act 1979* (WA), and by consent, orders –

THAT the Appeal PSAB 11 of 2024 be, and by this order is, discontinued.

(Sgd.) T B WALKINGTON,  
Commissioner,

On behalf of the Public Service Appeal Board.

[L.S.]

**2025 WAIRC 00271**

**APPEAL AGAINST THE DECISION TO TAKE DISCIPLINARY ACTION ON 31 OCTOBER 2024**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES** MALCOLM HARBOR

**APPELLANT**

-v-

DIRECTOR GENERAL, DEPARTMENT OF PRIMARY INDUSTRIES AND REGIONAL DEVELOPMENT

**RESPONDENT**

**CORAM** PUBLIC SERVICE APPEAL BOARD  
COMMISSIONER T B WALKINGTON – CHAIRPERSON  
MS Z JOHNSTON – BOARD MEMBER  
MR G LEE – BOARD MEMBER

**DATE** WEDNESDAY, 7 MAY 2025

**FILE NO** PSAB 26 OF 2024

**CITATION NO.** 2025 WAIRC 00271

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<b>Result</b>	Appeal discontinued
<b>Representation</b>	
<b>Appellant</b>	Mr M Harbor
<b>Respondent</b>	Mr J Carroll (of counsel)

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*Order*

WHEREAS on 20 November 2024 the appellant filed a *Form 8B – Notice of Appeal – Government Officers, Public Service Officers*, and on 29 November 2024 the respondent filed a *Form 4 – Response (General)*;

AND WHEREAS on 4 April 2025, Directions regarding a hearing of the matter were issued by consent;

AND WHEREAS on 19 April 2025 the appellant informed the Commission in writing that he wished to discontinue his appeal PSAB 26 of 2024 (**Appeal**);

AND WHEREAS the respondent advised on 24 April 2025 that she does not object to the Appeal being discontinued;

NOW THEREFORE the Public Service Appeal Board, pursuant to the powers conferred on it under the *Industrial Relations Act 1979* (WA), and by consent, orders —

THAT the Appeal PSAB 26 of 2024 be, and by this order is, discontinued.

(Sgd.) T B WALKINGTON,  
Commissioner,

[L.S.]

On behalf of the Public Service Appeal Board.

## PUBLIC SECTOR MANAGEMENT ACT 1994—Matters dealt with—

2025 WAIRC 00253

### REFERRAL TO COMMISSION UNDER PUBLIC SECTOR MANAGEMENT ACT 1994

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**CITATION** : 2025 WAIRC 00253  
**CORAM** : COMMISSIONER T B WALKINGTON  
**HEARD** : WEDNESDAY, 19 FEBRUARY 2025  
**DELIVERED** : WEDNESDAY, 23 APRIL 2025  
**FILE NO.** : APPL 74 OF 2023  
**BETWEEN** : JACQUELINE COOPER  
 Applicant  
 AND  
 MINISTER FOR CORRECTIVE SERVICES  
 Respondent

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**CatchWords** : Application to dismiss for want of prosecution – delay in prosecuting – principles for applications to dismiss for want of prosecution  
**Legislation** : *Industrial Relations Act 1979* (WA)  
**Result** : Application Refused  
**Representation:**  
**Applicant** : Ms Jacqueline Cooper  
**Respondent** : Mr John Caroll (of counsel)

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#### Case(s) referred to in reasons:

*The Australian Workers Union, West Australian Branch, Industrial Union of Workers and Barmingo Pty Ltd – Plutonic Project* [2000] WAIRC 13162; (2000) 80 WAIG 3162

*Birkett v James* [1978] AC 297

*Mr Nathan Maher -v- Director General of Health* [2012] WAIRC 00134

*Ulowski v Miller* [1968] SASR 277

#### Reasons for Decision

- 1 On 30 October 2023 Ms Jacqueline Cooper (the applicant) referred to the Commission the decision of her employer, the Minister for Corrective Services (the Respondent) to take disciplinary action by demoting her from Principal Officer to Senior Officer.
- 2 On 5 July 2024 the respondent applied to the Commission for an order to dismiss the application pursuant to s 27(1)(a) of the *Industrial Relations Act 1979* (WA) because it asserts the applicant has failed to progress her application.
- 3 The applicant opposes the dismissal of her appeal and says she has progressed her matter. The applicant says the period the respondent complains she did not progress her application is as a result of her attempts to negotiate an outcome, and this ought not be held against her.

#### Background

- 4 On 28 October 2023 the applicant referred a matter under the *Public Sector Management Act 1994* (WA), concerning a decision of the employing authority to take disciplinary action against her and reduce her classification. The application was filed in the Commission on 30 October 2023.
- 5 The employer responded on 6 November 2023.
- 6 The parties attended a conciliation conference on 14 December 2023. No settlement was agreed at the conciliation conference. The respondent agreed to provide the applicant's lawyer a video that it says confirms their allegations of the applicant's

conduct. The applicant was requested to advise the Commission how she wished to progress her appeal once she had viewed the video and considered her options.

- 7 On 15 December 2023, the respondent sent an email to the applicant's lawyer, sending her a link to view CCTV of the incident. It stated that video footage would need to be viewed at the respondent's lawyer's office (in Perth Central Business District), due to risks associated with public disclosure of the footage.
- 8 Ms Cooper submitted that due to the footage only being able to be viewed from the Perth CBD, about 45 minutes' drive from her home, along with the rostering of shift work patterns, meant there were limited opportunities for her to be able to view the video.
- 9 On 25 March 2024, the Commission emailed the parties requesting an update as nothing further was heard from either party following the conciliation conference.
- 10 On 18 April 2024 the applicant's lawyer responded to chambers' request for an update made in late March 2024. The applicant's lawyer advised that she had sought further documents from the respondent and on receipt and review of the documents she anticipated the applicant would be in a position to provide a more substantive update to the Commission.
- 11 From the documents submitted at the hearing it is evident that between 27 March 2024 and 17 April 2024, the applicant and her lawyer were in communications about any additional evidence the applicant sought from the respondent and 'a compromise position with respect to a return to rank (for example a time period within which this would occur given no substantiated conduct/performance allegations in that period)'.
- 12 On 22 April 2024, the respondent sent the applicant's lawyer the evidence sought.
- 13 Evidence provided by the applicant shows that during May 2024 the applicant communicated with the respondent and with her lawyer for the purposes of proposing terms for a settlement and securing further documents or materials.
- 14 On 23 May 2024 the respondent informed the applicant that they declined to meet with her.
- 15 On 4 July 2024, the respondent informed the applicant's lawyer that it would be filing an application to be dismiss her appeal because the applicant had not progressed her application.
- 16 On 5 July 2024, the respondent filed a Form 1A application to dismiss the application for want of prosecution under s 27(1)(a) of the *Industrial Relations Act 1979* (WA).
- 17 At that stage, no correspondence had been received by Ms Cooper's lawyers addressing the proposals or submissions with reference to the evidence they had considered.
- 18 On 8 July 2024, the applicant's lawyers sent a further letter to the respondent outlining the view of the applicant and seeking a remedy.
- 19 On 8 July 2024, the respondent responded to this letter via email, stating 'I am instructed that the Department will not reconsider the disciplinary action which was imposed'.
- 20 On 16 July 2024, the applicant's lawyer ceased to act for the applicant.
- 21 On 19 July 2024, the Commission sought the views of the applicant on the respondent's application to dismiss her appeal. The applicant responded on the same day advising she opposed the application.

### Legal Principles

- 22 The relevant principles to be considered in determining whether to dismiss an application for want of prosecution are set out in *The Australian Workers Union, West Australian Branch, Industrial Union of Workers and Barminto Pty Ltd – Plutonic Project* (2000) 80 WAIG 3162 (*Barminto*), in reliance on *Ulowski v Miller* [1968] SASR 277 at 280.
- 23 Adopting the five 'paramount matters' which must be taken into account in the exercise of the discretion to dismiss for want of prosecution set out by Sharkey P in *Barminto* I must consider the following: (1) length of delay; (2) the explanation for the delay; (3) the hardship to the plaintiff if the application is dismissed and the cause of action left statute barred; (4) the prejudice to the defendant if the action is allowed to proceed notwithstanding the delay, (5) and the conduct of the respondent in the litigation.[3162]
- 24 In *Barminto* Sharkey P also cited *Birkett v James* [1978] AC 297, where it was held:
 

that the power of the court to dismiss an action for want of prosecution should be exercised only where the plaintiff's default had been intentional and continuous or where there had been inordinate and inexcusable delay on the part of the plaintiff or her/his lawyers giving rise to a substantial risk that a fair trial would not be possible or to seriously prejudice to the respondent.
- 25 In *Mr Nathan Maher -v- Director General of Health* [2012] WAIRC 00134, the Public Service Appeal Board adopted these principles and also noted –
 

[14] an order that an application be dismissed for want of prosecution is a discretionary matter, and ought not be fettered by any absolute or inflexible rules. However, the paramount matters identified in *AWU v Barminto* (op cit) are appropriate in this case.

### The length of the delay

- 26 The respondent acknowledges that there was a period following the conciliation conference for which it was reasonable that the applicant would have taken time to view evidence and consider her situation. Taking this into account, the respondent submits that there is a significant period in which the applicant failed to actively progress her appeal. The respondent says that it is reasonable to expect that the applicant would have taken steps to progress her application after the respondent provided

discovery in December and the applicant failed to do so for about four months. The respondent asserts the applicant has not provided an acceptable reason for the failure to progress her application in that period.

- 27 The applicant submits that in the months of April and May she was in regular contact with her legal representative about accessing and viewing the video produced by the respondent, the need for additional evidence, and her options. The applicant submits that the need to attend at offices in Perth and her shift work arrangements meant this occurred between December and March 2024.
- 28 The applicant submits that, in the period March to May 2024 through her lawyer then engaged with the respondent to request additional evidence in their possession and corresponded with the respondent in an attempt to negotiate a settlement.
- 29 For some periods, the applicant endeavoured to engage the respondent to settle her application by proposing terms of settlement directly or through representations made by her lawyer. However, there is no evidence of any activity during June 2024.
- 30 The length of delay is consequently reduced given the applicant was attempting to progress her application, seeking further evidence or a negotiated settlement.

#### **The explanation for the delay**

- 31 The applicant met with the Assistant Commissioner Custodial Operations on 2 May 2024. Following this meeting the applicant sought the intervention of the Commissioner on 6 May 2024.
- 32 The applicant says that she believed negotiations were being progressed. The applicant refers the Commission to her two letters dated 14 May 2024 and sent to the respondent on 21 May 2024. Neither party submitted any evidence of a response to this correspondence.
- 33 The applicant says she was waiting for the respondent to respond to her letter dated 14 May 2024 and sent to the respondent on 21 May 2024 setting out her position following her viewing of the video evidence and further evidence.
- 34 Consistent with the applicant's view that negotiations were ongoing, on 8 July 2024 her lawyer subsequently sent a further letter to the respondent seeking a remedy and sought a response by 15 July 2024. On the same day, the respondent notified the applicant that they would not reconsider the disciplinary action imposed.
- 35 I find that prior to 8 July 2024 the applicant reasonably believed that communications and correspondence was being conducted by her lawyer on her behalf to reach a settlement of her appeal and a remedy for her circumstances. The respondent submits that there was nothing to show the applicant that further negotiations would be fruitful. In the absence of a response to the applicant's two letters dated 14 May 2024 and an unequivocal response in similar terms to that of 8 July 2024 the applicant reasonably believed negotiations were being conducted on her behalf. This favours the applicant.

#### **The hardship to the applicant if the application is dismissed**

- 36 The applicant has claimed that the decrease in income has been substantial, and that there have been feelings of humiliation from being demoted.
- 37 This is a neutral factor.

#### **The prejudice to the respondent**

- 38 It should be noted that Ms Cooper stated in the hearing that this is her first disciplinary breach in 21 years of service, and so it is difficult to see the prejudice to the respondent on this basis.
- 39 The respondent has argued that asking employees to give evidence would continue to have this prospect 'hanging over their heads', and that their memories will become less reliable.
- 40 There is evidence in the form of CCTV and cell call recordings which are available. Whilst there may be some prejudice to the respondent, if the CCTV and cell call recordings are in support of its decision, this should not be a significant factor.
- 41 The respondent also gave evidence that the Principal Officer positions at Bandyup Women's Prison are no longer vacant. The applicant submits that there are 30 positions throughout the state at this rank, and she is willing to move to another prison to return to rank.
- 42 I find that on balance there is a degree of prejudice to the respondent.

#### **Conduct of the respondent in the litigation**

- 43 The respondent has provided discovery and further evidence and responded to the requests of the Commission quickly.
- 44 However, the lack of response to the letter dated 21 May 2024 does not favour the proceedings being dismissed. Given the details in that correspondence which were based on Ms Cooper having viewed further evidence, if the respondent had been clear that it was not willing to negotiate, this may have caused Ms Cooper to no longer believe negotiations were being conducted and to progress the matter to final hearing.

#### **Conclusion**

- 45 My assessment of the five paramount factors, set out in *Barmingo* and applied to this matter I consider on balance the interests of the appellant are favoured. Adopting the reasoning in *Birkett v James* and applied in *Barmingo*, I find that there is no evidence that Ms Cooper's behaviour had 'been intentional and continuous' or that her delay was 'inexcusable'. Rather, it appears she held a reasonable belief that she was progressing her application through various means including negotiations conducted by meetings and correspondence.
- 46 The respondent's application to dismiss the application is refused.
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2025 WAIRC 00252

## REFERRAL TO COMMISSION UNDER PUBLIC SECTOR MANAGEMENT ACT 1994

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

## PARTIES

JACQUELINE COOPER

APPLICANT

-v-

MINISTER FOR CORRECTIVE SERVICES

RESPONDENT

## CORAM

COMMISSIONER T B WALKINGTON

## DATE

WEDNESDAY, 23 APRIL 2025

## FILE NO/S

APPL 74 OF 2023

## CITATION NO.

2025 WAIRC 00252

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<b>Result</b>	Application refused
<b>Representation</b>	
<b>Applicant</b>	Ms J Cooper
<b>Respondent</b>	Mr J Carroll (of counsel)

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*Order*

HAVING heard from the applicant on her own behalf and Mr Carroll on behalf of the respondent, the Commission pursuant to the powers conferred on it under the *Industrial Relations Act 1979* (WA), hereby orders:

THAT the respondent's application to dismiss the application for want of prosecution be refused.

(Sgd.) T B WALKINGTON,  
Commissioner.

[L.S.]

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## NOTICES—Union Matters—

2025 WAIRC 00269

## NOTICE

**CICS 8 of 2025**

NOTICE is given of application CICS 8 of 2025 by The Independent Education Union of Western Australia, Union of Employees to the Commission in Court Session of the Western Australian Industrial Relations Commission for an alteration to the following registered rules:

- Rule 3 – Constitution
- Rule 10 – Elections

The proposed rule alterations are available to be viewed at the Commission's Registry on Level 17, 111 St Georges Terrace Perth WA or alternatively accessed on the Notices page of the Commission's website.

This matter will be listed for hearing before the Commission in Court Session on a date to be fixed.

Any person who satisfies the Commission in Court Session that they have a sufficient interest or desires to object to the application may, having given notice of that objection within the time and in the manner prescribed, appear and be heard in objection to the application.

Pursuant to regulation 77A(3) of the *Industrial Relations Commission Regulations 2005* (WA) a notice of an objection in the approved form (*Form 1A – Multipurpose Form*) must be filed within 21 days of this notice. A *Form 1A – Multipurpose Form* is available on the WAIRC website at [www.wairc.wa.gov.au](http://www.wairc.wa.gov.au) under Applications & Forms.

(Sgd.) S KEMP,  
Registrar (Designate).

[L.S.]

5 MAY 2025