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## GENERAL ORDERS—

2025 WAIRC 00311

### AWARDS WITH WAGES LESS THAN THE STATE MINIMUM WAGE

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

#### COMMISSION IN COURT SESSION

<b>CITATION</b>	:	2025 WAIRC 00311
<b>CORAM</b>	:	CHIEF COMMISSIONER S J KENNER SENIOR COMMISSIONER R COSENTINO COMMISSIONER T KUCERA
<b>HEARD</b>	:	THURSDAY, 8 MAY 2025
<b>DELIVERED</b>	:	TUESDAY, 20 MAY 2025
<b>FILE NO.</b>	:	CICS 7 OF 2025
<b>BETWEEN</b>	:	COMMISSION'S OWN MOTION Applicant AND (NOT APPLICABLE) Respondent

<b>Catchwords</b>	:	Industrial Law (WA) – Commission's Own Motion application for a General Order s 50A – Review of awards with wages less than the State Minimum Wage
<b>Legislation</b>	:	<i>Industrial Relations Act 1979</i> (WA) s 50, s 50(3)(a), s 50(4)
<b>Result</b>	:	General Order issued

#### Representation:

Mr B Entrekin on behalf of the Honourable Minister for Industrial Relations

Mr C Harding on behalf of the Chamber of Commerce and Industry of Western Australia (Inc)

Mr G Hansen on behalf of UnionsWA

#### *Reasons for Decision*

#### THE COMMISSION IN COURT SESSION:

- As a result of the 2024 State Wage Order, which adjusted the State Minimum Wage relativity from the C14 to the C13 minimum award classification rate, a considerable number of awards contain minimum wage rates less than the SMW.

- 2 By letter dated 8 April 2025, the s 50 parties were notified of this issue, and informed that a General Order application on the Commission's own motion under ss 50(3)(a) and (4) of the *Industrial Relations Act 1979* (WA) would be commenced, to vary the affected awards to reflect the SMW.
- 3 The Commission's Registry compiled schedules of affected awards which were provided to the s 50 parties. Some minor adjustments were made as a result of the consultation process. At a short hearing on 8 May 2025, the s 50 parties indicated their consent to the minutes of proposed order provided to them. No further changes have been requested and accordingly, an order now issues giving effect to the minutes. The order will take effect from the beginning of the first pay period on or after 29 May 2025. The Commission wishes to record its appreciation for the assistance provided by Mr Entrekin, on behalf of the Minister, in the review process.

2025 WAIRC 00312

**AWARDS WITH WAGES LESS THAN THE STATE MINIMUM WAGE**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

COMMISSION'S OWN MOTION

**APPLICANT**

-v-

(NOT APPLICABLE)

**RESPONDENT****CORAM**

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER S J KENNER

SENIOR COMMISSIONER R COSENTINO

COMMISSIONER T KUCERA

**DATE**

TUESDAY, 20 MAY 2025

**FILE NO.**

CICS 7 OF 2025

**CITATION NO.**

2025 WAIRC 00312

**Result** General Order issued**Representation**

Mr B Entrekin on behalf of the Honourable Minister for Industrial Relations

Mr C Harding on behalf of the Chamber of Commerce and Industry of Western Australia (Inc)

Mr G Hansen on behalf of UnionsWA

*General Order*

HAVING heard from Mr B Entrekin on behalf of the Honourable Minister for Industrial Relations, Mr C Harding on behalf of the Chamber of Commerce and Industry of Western Australia (Inc), and Mr G Hansen on behalf of UnionsWA, the Commission in Court Session, pursuant to the powers conferred on it by the *Industrial Relations Act 1979* (WA), hereby orders –

- (1) THAT each award cited in the attached Schedule be varied in accordance with the Schedule.
- (2) THAT the variation to each award shall have effect from the beginning of the first pay period to commence on or after 29 May 2025.

By the Commission in Court Session

(Sgd.) S J KENNER,  
Chief Commissioner.

[L.S.]

**Schedule****1. Aboriginal Communities and Organisations Western Australian Interim Award 2011****SCHEDULE B – ANNUAL SALARIES: Delete this schedule and insert the following in lieu thereof:****SCHEDULE B – ANNUAL SALARIES**

Year of Service	Rate Per Year (\$)
<b>Level 1</b>	
First year	47920
Second year	47920

Third year	47920
Fourth year	47920
Fifth year	47920
<b>Level 2 (100% Base Rate)</b>	53294
<b>Level 3</b>	57486
<b>Level 4</b>	62541
<b>Level 5</b>	
First year	66735
Second year	66735
Third year	66735
Fourth year	67478
<b>Level 6</b>	72368
<b>Level 7 - Management Band A</b>	78142
<b>Level 8 - Management Band B</b>	83482
<b>Level 9 - Executive Band A</b>	89689
<b>Level 10 - Executive Band B</b>	
First year	98640
Second year	101156
Third year	108446

## 2. Animal Welfare Industry Award

**Clause 18. – RATES OF PAY: Delete subclause (1) of this clause and insert the following in lieu thereof:**

- (1) The minimum weekly rate of wage per week payable to an employee covered by this award shall include the base rate plus the arbitrated safety net adjustments reflected hereunder:

Classification	\$ per week
Introductory (not exceeding 3 months)	918.60
Level 1 (87.4%)	946.20
Level 2 (92.4%)	961.20
Level 3 (Cert III) (100%)	1017.00
Level 4 (Cert IV) (110%)	1091.50
Level 5 (Diploma.) (119.4%)	1161.50

## 3. Bag, Sack and Textile Award

**Clause 25. - WAGES: Delete subclause (1) of this clause and insert the following in lieu thereof:**

- (1) The minimum weekly rate of wage payable to an employee covered by this award shall include the base rate plus the Arbitrated Safety Net Adjustment expressed hereunder:

	Base Rate	Arbitrated Safety Net Adjustments	Minimum Rate
	\$	\$	\$
Tradespersons			
Canvas and Vinyl Fabricator	397.60	589.80	987.40
Other Classifications			
(a) Bag and sack repairing machinist	339.70	578.90	918.60
(b) Labourers in bag and sack repairing sections	331.50	587.10	918.60
(c) Bag-making machinist	336.50	582.10	918.60

(d)	Sailmaker (as defined)		369.80	583.00	952.80
(e)	Manufacturer and/or repair of sails and ship's gear (including nets, fenders and rigging) and other articles that require the hand sewing of incomplete ropes by use of palm and needle:	First six months of employment on such work -	346.80	577.70	924.50
		Between six and twelve months of employment on such work	349.40	578.30	927.70
		After twelve months of employment on such work	354.10	579.30	933.40
(f)	Manufacture and/or repair of canvas goods of all description covered by this award including plastic substitutes for canvas:	First six months of employment on such work	339.90	578.70	918.60
		Between six and twelve months of employment on such work	342.60	576.70	919.30
		After twelve months of employment on such work	347.50	577.80	925.30
(g)	Sewing machinist, cutter or repairer of canvas:	First six months of employment on such work -	339.90	578.70	918.60
		Between six and twelve months of employment on such work	342.60	576.70	919.30
		After twelve months of employment on such work	347.50	577.80	925.30
(h)	Sewing Machinist (bag)	First six months of employment on such work -	339.90	578.70	918.60
(i)	All Others	Thereafter	342.60	576.70	919.30
			342.70	576.70	919.40

#### 4. Bakers' (Metropolitan) Award No. 13 of 1987

**Clause 8. - WAGES: Delete subclause (1)(a) of this clause and insert the following in lieu thereof:**

- (1) (a) The total minimum wage payable each week shall consist of appropriate allowances and the Award Rate (comprising Base Rate, Supplementary Payment and Arbitrated Safety Net Adjustment) as set out in this clause:

Classification	Base Rate	Supplementary Payment	Arbitrated Safety Net Adjustments	Award Rate
	\$	\$	\$	\$
Adults:				
Doughmaker	374.10	36.10	592.70	1002.90
Single Hand Baker	374.10	36.10	592.70	1002.90
Baker	365.20	38.80	591.40	995.40
Bakers' Assistant	310.20	21.30	587.10	918.60

#### 5. Bespoke Bootmakers' and Repairers' Award No. 4 of 1946

**Clause 8. - WAGES: Delete subclause (1) of this clause and insert the following in lieu thereof:**

- (1) The following shall be the minimum weekly rates of wages payable to workers covered by this award -

\$

- (a) Surgical Bootmaker 966.80

- (b) Bespoke Bootmaker 966.80  
 (c) Boot Repairer 966.80

A worker employed in the classification of "Boot Repairer" who is called upon to perform the work of "Bespoke Bootmaker" or "Surgical Bootmaker" shall be paid the appropriate rate for the actual time he/she is engaged on the work of the higher classification, provided that if he/she is employed for more than four hours in any one day on work of the higher classification he/she shall be paid the appropriate rate for the whole of that day.

#### 6. Brick Manufacturing Award 1979

##### Clause 11. - WAGES: Delete subclause (1)(a) of this clause and insert the following in lieu thereof:

(1) (a) CLASSIFICATION:	Base Rate \$	Supplementary Payment \$	Total Rate \$
ADULT EMPLOYEES:			
Tunnel Kiln Operator	360.30	586.10	946.40
Machine Operator: Brick, Setting, Packing or Strapping	353.00	593.40	946.40
Kiln Car Decker in Charge	353.00	593.40	946.40
Refractory Moulder, Brick Cutter, Setter, Drawer, Off Bearer, Grinding Machine Operator, Brick Maker and Handler, Crucible Machine Operator	347.10	582.10	929.20
Burner	343.20	585.80	929.00
Powder Monkey	340.20	588.80	929.00
Hand Press Operator, Presser Fancy Bricks, Clay Hole Motor Loco Driver, Truck Loader, Loader Out to Trucks, Man Winding, Sorter, Packer, Strapper	339.10	579.50	918.60
Operator: Mixer, Weighbatcher Press, Sand Winning, Overhead Crane - After 2 months' service	350.60	578.40	929.00
Steam Curing Operator	335.40	593.60	929.00
Fork Lift Drivers	357.30	580.20	937.50
Front End Loaders:			
(i) 35 b.h.p.	336.60	582.00	918.60
(ii) 35 b.h.p. - 130 b.h.p.	347.10	581.90	929.00
(iii) Over 130 b.h.p.	349.80	587.60	937.40
All Others and Trainees during first two months' of service	324.10	594.50	918.60

#### 7. Brushmakers' Award No. 30 of 1959

##### Clause 8. - WAGES: Delete subclause (1) of this clause and insert the following in lieu thereof:

- (1) The minimum weekly rate of wage payable to employees covered by this award shall be the base rate plus the Arbitrated Safety Net Adjustment (ASNA) Payment expressed hereunder:

	Base Rate	Arbitrated Safety Net Adjustments Rate	Minimum Rate
(a) Woodworking machinists whose work includes both making cutters and setting machines	357.10	580.10	937.20
(b) Automatic boring and filling machinist Filling machinists (hand filing) Twisted-in wire lathe operator (gauge of wire 10g. or more and soft coppered oval wire)			

Bench Drawing			
Feather Duster Maker			
Paint Brush Maker			
Person employed on lacquering and ducoing			
Hair Pan Hands			
Bass Pan Hands			
Bottle Brush Makers			
Finishers			
Millet Broom Makers			
Millet Broom Sewers			
Wood-working Machinists			
Ducoers and Lacquerers			
Sorters	345.40	577.40	922.80
(c) Semi-automatic Boring and Filling Machinist			
Boring Machinist (on) filling machines)			
Broom and Brush Press Operator			
Mop Press Operator			
Mixing Machine Operator			
Branding Machinist	341.50	577.10	918.60
(d) Trimming Machinist and all Others	332.00	586.60	918.60

**8. Building and Engineering Trades (Nickel Mining and Processing) Award, 1968**

**Clause 44. - RATES OF PAY AND CLASSIFICATION DEFINITIONS: Delete subclauses (1) and (2) of this clause and insert the following in lieu thereof:**

(1) Classification and Wage Rates - Kambalda and Leinster Nickel Operations

(a) Engineering Employees -

- (i) Engineering Employees Grade 1 (EEG1)  
Not defined in Kambalda.
- (ii) Engineering Employees Grade 2 (EEG2)  
Semi-skilled employee comparable to former classifications of battery attendant, pipe fitter, etc.
- (iii) Engineering Employees Grade 3 (EEG3)  
Indentured tradespersons who satisfy all regulatory requirements or an EEG2 who has achieved a practical level of competency as approved by some regulatory control.
- (iv) Engineering Employees Grade 4 (EEG4)  
Indentured tradespersons who continually demonstrate superior knowledge and ability and are capable of handling difficult problems without immediate supervision, and have obtained training in, and can practically apply various skills as previously appropriate to other specific trade areas.  
e.g. Boilermaker with basic fitting skills including basic hydraulic and pneumatic fitting and vice versa.
- (v) Engineering Employees Grade 5 (EEG5)  
Indentured tradespersons who continually demonstrate superior knowledge and ability, and have achieved successful completion in relevant post-trade studies or courses, which enables them to apply multi-disciplinary skills as required including primary skills, and can competently work largely unsupervised.  
e.g. A Fitter/Turner who acquires qualifications and training to competently act as a Diesel Fitter.  
A Boilermaker who becomes competent at more detailed fitting such as balancing, aligning, fault detecting, etc.
- (vi) Engineering Employees Grade 6 (EEG6)  
Indentured tradespersons who possess the same qualities as an EEG5, and are also capable of supervising a large work group. Generally fulfils the duties as Assistant/Acting Supervisor and are therefore by appointment only.

Award Wages	Rate \$	Arbitrated Safety Net Adjustments \$	Total Rate \$
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EEG1	N/A		
EEG2	324.80	642.00	966.80
EEG3	372.40	594.40	966.80
EEG4	389.40	590.30	979.70
EEG5	404.10	593.90	998.00
EEG6	426.90	604.70	1031.60

The above new rates include allowance for the withdrawal of the multi-skilled over award payment. The above new rates for EEG4, EEG5 and EEG6 also include allowance for the withdrawal of the award leading hand rates 1, 2 and 3 respectively.

(b) Electrical Employees:-

(i) Electrical Employee Grade 1 (EEG1)

Not defined in Kambalda.

(ii) Electrical Employee Grade 2 (EEG2)

Semi-skilled employee comparable to former classifications such as battery fitter, linesperson (three years experience) etc.

(iii) Electrical Employee Grade 3 (EEG3)

A linesperson with more than three years experience or an indentured electrical fitter or installer.

(iv) Electrical Employee Grade 4 (EEG4)

An EEG3 who continually demonstrates superior knowledge and ability and is capable of handling difficult problems without immediate supervision and has obtained training in, and can practically apply various skills appropriate to other trades, or an indentured instrument fitter.

(v) Electrical Employee Grade 5 (EEG5)

An indentured electrical or instrumentation fitter/installer who has completed relevant post-trade courses conducing to cross-skilling of these disciplines, or an EEG4 who has obtained through experience and practice a high degree of competency in multi-disciplinary trade areas, and is capable of supervising work groups.

(vi) Electrical Employee Grade 6 (EEG6)

An Electrical Employee Grade 5 who is capable of supervising a large work group. Generally fulfils the duties as Assistant/Acting Foreperson is therefore by appointment only.

Award Wages	Rate \$	Arbitrated Safety Net Adjustments \$	Total Rate \$
EEG1	N/A		
EEG2	341.90	624.90	966.80
EEG3	372.40	594.40	966.80
EEG4	389.40	590.30	979.70
EEG5	404.80	593.90	998.70
EEG6	426.90	604.70	1031.60

The above new rates include allowance for the withdrawal of the multi-skilled over award payment. The above new rates for EEG4, EEG5 and EEG6 also include allowance for the withdrawal of the award leading hand rates 1, 2 and 3 respectively.

(c) Building Employees -

(i) Building Employee Grade 1 (BEG1)

Not applicable at Kambalda Nickel Operations.

(ii) Building Employee Grade 2 (BEG2)

Not applicable at Kambalda Nickel Operations.

(iii) Building Employee Grade 3 (BEG3)

Indentured tradespersons who satisfy all regulatory requirements and who have achieved a practical level of competency as approved by some regulatory control.

(iv) Building Employee Grade 4 (BEG4)

Indentured tradespersons who continually demonstrate superior knowledge and ability and are capable of handling difficult problems without immediate supervision, and have obtained training in, and can practically apply various skills as previously appropriate to other specific trade areas.

(v) Building Employee Grade 5 (BEG5)

Indentured tradespersons who continually demonstrate superior knowledge and ability, and have achieved successful completion in relevant post-trade studies or courses, which enables them to apply

multi-disciplinary skills as required including them primary skills, and can competently work largely unsupervised.

(vi) Building Employee Grade 6 (BEG6)

Indentured tradespersons who possess the same qualities as a BEG5, and are also capable of supervising a large work group. Generally fulfils the duties as assistant/acting supervisor and is therefore by appointment only.

Award Wages	Rate \$	Arbitrated Safety Net Adjustments \$	Total Rate \$
BEG1	N/A		
BEG2	N/A		
BEG3	363.20	603.60	966.80
BEG4	376.70	590.10	966.80
BEG5	389.60	590.40	980.00
BEG6	413.80	596.00	1009.80

The above new rates for BEG4, BEG5 and BEG6 also include allowance for the withdrawal of the award leading hand rates, 1, 2 and 3 respectively.

(2) Classification and Wage Rates - Windarra Nickel Project

(a) Engineering Employees -

(i) Engineering Employees Grade 1 (EEG1)

Newly appointed semi-skilled employees who have not yet shown the necessary site knowledge to be competent enough to move from area to area within the operation without assistance. An employee will not remain in this classification for more than three months. This is a new classification.

(ii) Engineering Employees Grade 2 (EEG2)

Semi-skilled employees who have been employed at the operation for more than three months and are comparable to the former classification of pipe fitter.

(iii) Engineering Employees Grade 3 (EEG3)

Indentured tradespersons who satisfy all regulatory requirements of Grade 2 employees and have who achieved practical levels of competency as approved by the regulatory authority.

(iv) Engineering Employees Grade 4 (EEG4)

Indentured tradespersons who continually demonstrate superior knowledge and ability and are capable of handling difficult problems without immediate supervision.

(v) Engineering Employees Grade 5 (EEG5)

Indentured tradespersons who continually demonstrate superior knowledge and ability, and have achieved successful completion in relevant post-trade studies or courses, which enables them to apply multi-disciplinary skills as required and can work largely unsupervised.

(vi) Engineering Employee Grade 6 (EEG6)

Indentured tradespersons who possess the same qualities as Grade 5 employees and are capable of organising and supervising a large work group. Generally fulfils the duties as Assistant/Acting Supervisor.

Award Wages	Rate \$	Arbitrated Safety Net Adjustment \$	Total Rate \$
EEG1	302.00	664.80	966.80
EEG2	327.60	639.20	966.80
EEG3	363.20	603.60	966.80
EEG4	377.10	589.70	966.80
EEG5	384.20	589.00	973.20
EEG6	390.40	590.60	981.00

The above new rates include allowance for the withdrawal of the award leading hand rates 1, 2 and 3 respectively.

(b) Electrical Employee -

(i) Electrical Employee Grade 1 (EEG1)

Newly appointed semi-skilled employees who have not yet shown the necessary site knowledge to be competent enough to move from area to area within the operation without assistance. An employee will not remain in this classification for more than three months. This is a new classification.

(ii) Electrical Employee Grade 2 (EEG2)

Semi-skilled employees who have been employed at the operation for more than three months and are comparable to the former classification of battery fitter.

(iii) Electrical Employee Grade 3 (EEG3)

A linesperson with more than three years experience or an indentured electrical fitter or installer.

(iv) Electrical Employee Grade 4 (EEG4)

A Grade 3 employee who continually demonstrates superior knowledge and ability and is capable of handling difficult problems without immediate supervision or an indentured instrument fitter.

(v) Electrical Employee Grade 5 (EEG5)

An indentured electrical or instrument fitter/installer who has completed relevant post-trade courses conducive to cross-skilling of these disciplines, or a Grade 4 employee who has obtained through experience and practice a high degree of competency in multi-disciplinary trade areas.

(vi) Electrical Employee Grade 6 (EEG6)

A Grade 5 employee who is capable of supervising a large work group and generally fulfils the duties as assistant/acting foreman.

Award Wages	Rate \$	Arbitrated Safety Net Adjustments \$	Total Rate \$
EEG1	302.00	664.80	966.80
EEG2	327.60	639.20	966.80
EEG3	363.20	603.60	966.80
EEG4	391.70	590.70	982.40
EEG5	404.80	593.90	998.70
EEG6	411.00	595.50	1006.50

The above new rates include allowance for the withdrawal of the award leading hand rates.

(c) Building Employees -

(i) Building Employee Grade 1 (BEG1)

Not applicable at Windarra Nickel Project.

(ii) Building Employee Grade 2 (BEG2)

Not applicable at Windarra Nickel Project.

(iii) Building Employee Grade 3 (BEG3)

Indentured tradespersons who satisfy all regulatory requirements and who have achieved a practical level of competency as approved by some regulatory control.

(iv) Building Employee Grade 4 (BEG4)

Indentured tradespersons who continually demonstrate superior knowledge and ability and are capable of handling difficult problems without immediate supervision, and have obtained training in, and can practically apply various skills as previously appropriate to other specific trade areas.

Award Wages	Rate \$	Arbitrated Safety Net Adjustments \$	Total Rate \$
BEG3	363.20	603.60	966.80
BEG4	376.70	590.10	966.80

The above new rate for BEG4 also include allowance for the withdrawal of the award leading hand rates 1, 2 and 3 respectively.

## 9. Building Trades and Labourers (General) Award

### Clause 10. - WAGES: Delete subclause (1) of this clause and insert the following in lieu thereof:

(1) Base Rate and Supplementary Payment (per week)

	Base Rate Per Week\$	Safety Net Adjustment\$	Total Rate Per Week\$
(a)			
(i) Bricklayers, stoneworkers, carpenters, joiners, painters, signwriters, glaziers, plasterers, plumbers, concrete tradesperson (Certificate III trade qualification), and stonemason as defined in Clause 6 of this award	376.20	587.00	963.20
(ii) Plumber holding registration in accordance with the Metropolitan Water Supply, Sewerage and Drainage Act	385.40	589.20	974.60
(iii) Joiner - Assembler A (as defined in Clause 6 of this award)	344.60	576.90	921.50
(iv) Joiner - Assembler B (as defined in Clause 6 of this award)	330.70	587.90	918.60

(b) Builders Labourers:-

(i) Rigger	360.30	580.70	941.00
(ii) Drainer	360.30	580.70	941.00
(iii) Dogman	360.30	580.70	941.00
(iv) Scaffolder	345.00	577.10	922.10
(v) Powder Monkey	345.00	577.10	922.10
(vi) Hoist or Winch Driver	345.00	577.10	922.10
(vii) Concrete Finisher	345.00	577.10	922.10
(viii) Steel Fixer including tack welder	345.00	577.10	922.10
(ix) Operator Concrete Pump	345.00	577.10	922.10
(x) Bricklayer's Labourer	333.60	585.00	918.60
Plasterer's Labourer	333.60	585.00	918.60
Assistant Powder Monkey	333.60	585.00	918.60
Assistant Rigger	333.60	585.00	918.60
Demolition Worker			
(after three months' experience)	333.60	585.00	918.60
Gear Hand	333.60	585.00	918.60
Pile Driver	333.60	585.00	918.60
Tackle Hand	333.60	585.00	918.60
Jackhammer Hand	333.60	585.00	918.60
Mixer Driver (concrete)	333.60	585.00	918.60
Steel Erector	333.60	585.00	918.60
Aluminium Alloy Structural Erector	333.60	585.00	918.60
Gantry Hand or Crane Hand	333.60	585.00	918.60
Crane Chaser	333.60	585.00	918.60
Concrete Gang including Concrete Floater	333.60	585.00	918.60
Steel or Bar Bender to pattern or plan	333.60	585.00	918.60
Concrete Formwork Stripper	333.60	585.00	918.60
Concrete Pump Hose Hand	333.60	585.00	918.60
(xi) Builder's Labourers employed on work other than specified in classifications (i) to (x)			918.60

#### 10. Case and Box Makers' Award, 1952

##### Clause 6. - WAGES: Delete subclause (1) of this clause and insert the following in lieu thereof:

- (1) The minimum rates of wages payable to employees employed in classifications contained in subclause (2) of this clause shall be as follows:

Broadbanded Groups	Base Rate \$	Arbitrated Safety Net Adjustment \$	Total Minimum Weekly Rate (38 Hours) \$
1			918.60
2			918.60
3	364.60	554.00	918.60
4	385.50	549.70	935.20
5	417.20	557.20	974.40
6	438.10	562.30	1000.40

The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.

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

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

**11. Cleaners and Caretakers (Car and Caravan Parks) Award 1975****Clause 24. - WAGES: Delete subclause (1)(a) of this clause and insert the following in lieu thereof:**

	Base Rate	Arbitrated Safety Net Adjustments	Award Rate
	\$	\$	\$
(1) (a) Adult Employees			
Caretaker	357.20	580.20	937.40
Cleaner	340.60	578.00	918.60
Watchman	338.30	580.30	918.60
Parking Attendant	336.10	582.50	918.60

**12. Cleaners and Caretakers Award, 1969****Clause 3.1 - WAGES: Delete subclause 3.1.1(1) of this clause and insert the following in lieu thereof:**

3.1.1 The minimum total rate of wage payable under this award shall be as follows:

(1) Classification	Base Rate	Arbitrated Safety Net Adjustment	Award Rate
	\$	\$	\$
Attendant	331.70	586.90	918.60
Lift Attendant	336.10	582.50	918.60
Security Guard	338.30	580.30	918.60
Rest Room/Toilet Attendant	338.80	579.80	918.60
Security Guard / Cleaner	339.40	579.20	918.60
Cleaner	340.60	578.00	918.60
Window Cleaner	346.10	577.40	923.50
Security Guard (mobile)	354.20	579.30	933.50
Caretaker	357.20	580.20	937.40

**13. Clothing Trades Award 1973****Clause 18A. - RATES OF PAY POST TRANSITION PERIOD: Delete subclause (2)(a) of this clause and insert the following in lieu thereof:****(2) Skill Based Classification Structure**

(a) The following wage schedule will operate from the beginning of the first pay period commencing on or after 1 July 2024.

Skill Level	Relativity to Skill	Base Rate	Supplementary Payment	Arbitrated Safety Net Adjustment	Total Minimum Award Rate
Level 4					
Trainee	78	299.50	25.90	593.20	918.60
1	82	314.30	27.80	576.50	918.60
2	87.4	334.00	30.60	581.80	946.40
3	92.4	345.70	39.80	586.90	972.40
4	100	358.30	58.90	599.80	1017.00
5	Na	376.30	82.60	613.30	1072.20

**14. Club Workers' Award****Clause 21. - WAGES: Delete subclause (1) of this clause and insert the following in lieu thereof:**

(1) The following shall be the minimum fortnightly rates of wage payable to full-time employees covered by this award

Level	Classification	\$ per Fortnight
	Introductory	1837.20
Level 1	Food & Beverage Attendant Grade 1	
	Kitchen Attendant Grade 1	

	Guest Services Grade 1	1837.20
	Gardener	
	General Hand	
	Yardman	
Level 2	Food & Beverage Attendant Grade 2	
	Cook Grade 1	
	Kitchen Attendant Grade 2	
	Night Porter	1899.20
	Storeperson Grade 1	
	Doorperson/Security Officer Grade 1	
	Guest Services Grade 2	
Level 3	Food & Beverage Attendant Grade 3	
	Cook Grade 2	
	Kitchen Attendant Grade 3	
	Guest Services Grade 3	1944.70
	Storeperson Grade 2	
	Timekeeper/Security Officer Grade 2	
	Handyperson	
	Forklift Driver	
Level 4	Cook Grade 3	
	Storeperson Grade 3	
	Food & Beverage Attendant Grade 4 (Tradesperson)	2034.00
	Guest Service Grade 4	
Level 5	Cook Grade 4	
	Food & Beverage Supervisor	2144.80
	Guest Services Supervisor	
Level 6	Cook Grade 5	2195.00

**15. Commercial Travellers and Sales Representatives' Award 1978**

**Clause 7. - WAGES: Delete subclause (1) of this clause and insert the following in lieu thereof:**

(1) The following shall be the minimum weekly rates of wages payable to employees covered by this award with effect from the beginning of the first pay period commencing on or after 1 July 2024.

(a)		Base	Arbitrated Safety	Award
		Rate \$	Net Adjustments \$	Rate \$
	(i) Commercial Traveller/Sales Representative	417.20	599.80	1017.00
	(ii) Country Traveller/Sales Representative	451.60	611.20	1062.80

The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.

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

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

- (b) During the first three months in the industry in which the employer is engaged, an employee classified in (i) or (ii) above, shall be paid 85% of the appropriate rate of pay rounded to the nearest ten cents.
- (c)
  - (i) Probationary Commercial Traveller/Sales Representative 918.60
  - (ii) Probationary Country Traveller/ Sales Representative 918.60

The above "Probationary" rates are calculated by taking 85% of the appropriate rate in paragraph (a) above and rounding to the nearest ten cents.

## 16. Dairy Factory Workers' Award 1982

### Clause 29. - WAGES: Delete subclause (1) of this clause and insert the following in lieu thereof:

- (1) The minimum weekly rate of wage payable to employees covered by this award shall be as expressed hereunder as a base rate, supplementary payment and arbitrated safety net adjustments: -:

	Base rate	Supplementary Payment	Arbitrated Safety Net Adjustments	Minimum Rate
(a) <u>Dairy Production Worker - Grade I</u> A new employee with less than three months of employment in the industry who performs routine duties under supervision	284.70	40.70	593.20	918.60
(b) <u>Dairy Production Worker - Grade II</u> Shall mean an employee classified as such engaged on work in connection with or incidental to the production and distribution operations of the employer and who is able to perform duties under supervision beyond the skills of a Grade I employee and who, may be required to regularly carry out a range of the specific duties listed hereunder for which they have been suitably trained <u>Special Duties - Grade II</u> Recrater/Decrater Cool Room Hand Wheeler Yard Person Auto Cutting, (Cheese Section) Spotter Hand Packer Machine Feeder Hand Conveyor Loader Box Maker Powdered Milk Bagger Cleaner (General)	314.00	44.80	580.50	939.30
(c) <u>Dairy Production Worker - Grade III</u> Shall mean an employee classified as such who is engaged on work in connection with or incidental to the production and distribution operations of the employer and who is able to perform duties with routine supervision, beyond the skills of a Grade II employee and who, may, be required to regularly carry out a range of the specific duties listed hereunder for which they have been suitably trained <u>Special Duties - Grade III</u> (i) Mobile Electric Milk Crate Lifter (ii) Cheese Room Hand (Machine Operator) (iii) Mill Attendant (Casein/Cheese Manuf. Plants) (iv) Separator Operator (v) Freezer Room Hand (vi) Laboratory Assistant	321.20	45.90	582.60	949.70

- (vii) Bulk Bag Operator (Milk Section)
- (viii) Separator Operator (Cheese)
- (ix) Pickers
- (x) Despatch Hands
- (xi) Cleaning/Machine Operator
- (xii) Milk Receiver and Sampler

(d) Dairy Production Worker - Grade IV

Shall mean an employee classified as such who is engaged on work in connection with or incidental to the production and distribution operations of the employer and who is able to carry out duties beyond the skills of a Grade III employee and who, may be required to regularly carry out a range of the specific duties listed hereunder for which they have been suitably trained

<u>Special Duties - Grade IV</u>	328.60	46.90	584.40	959.90
Pasteuriser (HTST)				
Separator and/or Mix Maker				
Machine Operator (Cup)				
Tester and Grader				
Cream Grader (Single)				
Cream Tester (Single)				
Assist. Cheese maker				
Pasteuriser Operator (Cheese)				
Butter Cutter (in charge of machine)				
Vacreator Operator				
Tester and Grader (Casein Certificated)				
Casein Maker				
Continuous Evaporator (Dryer Operator)				
Machine Operator (Single)				
Blow Moulder Operator				
Reverse Osmosis and/or Ultra				
Filtration Operator				
Blender/Mix Maker				
Butter Maker				
Despatch (Multiple Function)				
Boiler Attendant				

(e) Dairy Production Worker - Grade V

Shall mean an employee classified as such who is engaged on work in connection with or incidental to the production and distribution operations of the employer and who is able to perform duties beyond the skills of a Grade IV employee and who, may be required to regularly carry out a range of the specific duties listed hereunder for which they have been suitably trained

<u>Special Duties - Grade V</u>				
Technical Assistant (Unqualified)	343.20	49.00	588.30	980.50
Butter Maker with Certificate				
Machine Operator (Multiple)				

Auto Form – Fill Aspectic Machine  
 Blow Moulder Operator (Advanced)  
 Stores (Advanced)  
 Process Controller (UHT, Ultra Clean, Pasteuriser)

- (f) Dairy Production Worker - Grade VI  
 Shall mean an employee classified as such who is engaged on work in connection with or incidental to the production and distribution operations of the employer and who is able to perform duties, beyond the skills of a Grade V employee, and who, may be required to regularly carry out at least one of the specific duties listed hereunder for which they have been suitably trained –
- |  |                                  |        |       |        |        |
|--|----------------------------------|--------|-------|--------|--------|
|  | <u>Special Duties - Grade VI</u> | 350.40 | 50.10 | 599.50 | 991.00 |
|--|----------------------------------|--------|-------|--------|--------|
- (i) Technical Assistant (Qualified)  
 (ii) Cheese Maker (Qualified - up to 2 varieties)  
 (iii) Process Controller (Advanced)  
 Automated Batchmaking and Computerised Plant
- (g) Dairy Production Worker - Grade VII  
 Shall mean an employee who is classified as such who is engaged on work in connection with or incidental to the production and distribution operations of the employer and who is able to perform duties beyond the skills required of a Dairy Production Worker - Grade VI and who, may be required to regularly carry out at least one of the specific duties listed hereunder for which they have been suitably trained –
- |      |   |        |       |        |         |
|------|---|--------|-------|--------|---------|
|      | <u>Special Duties - Grade VII</u>               |        |       |        |         |
| (i)  | Laboratory Technician                           |        |       |        |         |
| (ii) | Cheese Maker (Advanced - more than 2 varieties) | 365.20 | 52.00 | 599.80 | 1017.00 |
- (h) (i) The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.
- These arbitrated safety net adjustments may be offset against any equivalent amount in the rate of pay received by employees since 1 November 1991 above the rate prescribed in the Award, except where such absorption is contrary to the terms of an industrial agreement.
- Increases in rates of pay otherwise made under the State Wage Case Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

#### 17. Dental Technicians' and Attendant/Receptionists' Award, 1982

##### Clause 7. - WAGES: Delete subclauses (2) and (4) of this clause and insert the following in lieu thereof:

- (2) Laboratory Assistants
- |     |  |        |         |         |
|-----|--|--------|---------|---------|
| (a) | Laboratory Assistants                                | 720.80 | 1116.40 | 1837.20 |
| (b) | Junior Laboratory Assistants - percent of adult rate |        |         |         |
|     | Under 16 year of age                                 | 48%    |         |         |
|     | 16 to 17 years of age                                | 58%    |         |         |
|     | 17 to 18 years of age                                | 69%    |         |         |
|     | 18 to 19 years of age                                | 82%    |         |         |
|     | 19 to 20 years of age                                | 93%    |         |         |
|     | 20 to 21 years of age                                | 99%    |         |         |

		CURRENT	ASNA	NEW
(4)	Assistants Attendants and Attendant/Receptionists			
(a)	Dental Attendants and/or Receptionist	720.80	1116.40	1837.20
(b)	Dental Assistants	735.20	1102.00	1837.20
(c)	Senior Dental Attendant and/or Receptionist	737.80	1099.40	1837.20
(d)	Senior Dental Assistant	752.20	1085.00	1837.20

(e)	Junior Dental Assistants, Attendants and Attendant/Receptionist percent of relevant adult rate	
	Under 16 years of age	48%
	16 to 17 years of age	58%
	17 to 18 years of age	69%
	18 to 19 years of age	82%
	19 to 20 years of age	93%
	20 to 21 years of age	99%

**18. The Draughtsmen's, Tracers', Planners' and Technical Officers' Award 1979**

**Clause 7. - WAGES: Delete subclause (2) of this clause and insert the following in lieu thereof:**

- (2) (a) The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.

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

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

	Wage Per Week	Arbitrated Safety Net Adjustment	Total Rate Per Week
	\$	\$	\$
Adult Tracers			
First year of experience	331.70	586.90	918.60
Thereafter	343.80	576.90	920.70

**19. The Dried Vine Fruits Industry Award, 1951**

**Clause 22. - WAGES: Delete subclause (1) of this clause and insert the following in lieu thereof:**

- (1) Adult Workers (per week) - ASNA  
 All adults engaged in production \$966.80

**20. Drum Reclaiming Award**

**Clause 25. - RATES OF PAY: Delete subclause (1) of this clause and insert the following in lieu thereof:**

(1) The minimum weekly rates of wage payable to employees covered by this award shall be as follows:

	Base Rate	ASNA	Minimum Rate
	\$	\$	
Painting and incidental duties	348.30	577.90	926.20
Chiming, shaping, internal lacquering, rumbling, cleaning, classifying and drum inspecting, stencilling with a spray gun, spray painting	341.70	576.90	918.60
Yard Hands	331.50	587.10	918.60

**21. Dry Cleaning and Laundry Award 1979**

**Clause 30. - WAGES: Delete subclause (1) of this clause and insert the following in lieu thereof:**

- (1) The minimum weekly rate of wage payable to an adult employee covered by this award shall include the base rate plus the arbitrated safety net adjustment expressed hereunder:

(a) Group Classification	Minimum Rate	STRUCTURAL EFFICIENCY ADJUSTMENT
	\$	\$
A Tradesperson Dry Cleaner/ in charge of machinery maintenance and/or boiler	1022.00	15.00
B "Invisible" Mender Tailor or Tailoress	975.20	15.00
C Presser	931.80	12.50

	Receiver and Despatcher in Charge (namely a person in charge of a depot and responsible for the keeping of records and responsible for cash)		
	Cleaner (Operating Dry Cleaning Machine)		
D	Repairer (other than Tailor or Tailoress)	931.80	12.50
	Spotter		
	Presser (Off-set Press)		
	Hand Ironer		
	Receiver and/or Despatcher		
E	Wet Cleaner	921.60	12.50
	Steam Air Finisher		
	Examiner of Garments		
	Assembler of Garments		
	Sorter of Garments		
F	All other Adult Employees	918.60	10.00

Provided that a person employed in any area of operation of this Award who is required to be solely accountable for all aspects of a self-contained dry cleaning establishment including the receiving of garments and articles, the cleaning, spotting, pressing, packaging and despatch of garments and articles, the handling of moneys, the keeping of records and the maintenance of the establishment shall be paid at a rate of not less than the rate prescribed in this table for the Tradesperson Dry Cleaner. Provided that in such a case all receivers and despatchers in that establishment shall be paid in accordance with the rates prescribed for Group D of such table.

(b) Laundering Industry:

Classification	Minimum Rate Per Week \$
Laundry Employee - Grade 1	918.60
Laundry Employee - Grade 2	918.60
Laundry Employee - Grade 3	949.60
Laundry Employee - Grade 4	959.60

(c) The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.

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

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

**22. Earth Moving and Construction Award**

**Clause 27. - WAGES: Delete PART 1 of this clause and insert the following in lieu thereof:**

CLASSIFICATION	RATE PER WEEK\$	ARBITRATED SAFETY NET ADJUSTMENT\$	TOTAL RATE PER WEEK\$
PART 1			
(a) Engine Driver operating winch from pile driving rig net on pile driving	384.60	534.00	918.60

(b)	All stationary steam engine drivers whose work requires first or second class certificate	392.90	529.10	922.00
(c)	All other stationary steam engine drivers whose work requires third class certificate	379.70	538.90	918.60
(d)	Drivers of Internal Combustion Engines –			
	(i) if under 250 b.h.p.	388.50	530.10	918.60
	(ii) if 250 b.h.p. or over	395.70	529.80	925.50
(e)	Locomotive fireman	379.20	539.40	918.60
(f)	Boiler Attendant -			
	(i) attending one boiler			918.60
	(ii) attending two boilers	377.40	541.20	918.60
(g)	Driver of steam crane	386.10	532.50	918.60
(h)	Scotch Derrick power crane	405.30	532.20	937.50
(i)	Compressor driver over 30 h.p.	373.70	544.90	918.60
(j)	Driver of Wayne Road Sweeper	397.60	530.30	927.90
(k)	Additions to margins, an Engine Driver engaged under this Part, as hereinafter specified shall have his/her marginal rate increased as follows:			
	(i) Attending to electric generator or alternator exceeding 10 k.w. capacity			18.55
	(ii) Attending to refrigerator compressor or compressors			18.55
	(iii) Engine Driver in charge of plant			18.55
	(iv) Engine Driver in charge of switchboard of 350 k.w. capacity or more			5.85
	(v) Crane Drivers engaged on building construction or demolition			17.10

**23. Egg Processing Award 1978**

**Clause 14. - WAGES: Delete subclause (1) of this clause and insert the following in lieu thereof:**

(1) Adult Employees

	Relativity	Weekly Rate	ASNA	Total Weekly Rate
	\$	\$	\$	\$
Level F5	100%	465.20	551.80	1017.00
Level F4	92.4%	429.80	537.90	967.70
Level F3	87.4%	406.60	532.40	939.00
Level F2	82%	381.50	537.10	918.60
Level F1				918.60

The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.

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

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

**24. Electronics Industry Award No. A 22 of 1985**

**PART I. - GENERAL, Clause 33. - WAGES: Delete subclause (1) of this clause and insert the following in lieu thereof:**

(1) (a) Adults

	Rate Per Week	Arbitrated Safety Net Adjustment	Total Rate Per Week
Electronic Technician (Grade III)	537.50	636.60	1174.10

Electronic Technician (Grade II)	463.30	612.30	1075.60
Electronic Technician (Grade I)	442.20	608.10	1050.30
Electronic Serviceperson	418.90	600.50	1019.40
Installer	375.90	584.60	960.50
Serviceperson's Assistant	357.90	580.20	938.10
Assembler (1)	352.60	579.10	931.70
Assembler	331.50	587.10	918.60
Trainee Installer			918.60

- (b) The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.

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

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

**PART II. - CONSTRUCTION WORK, Clause 10. - WAGES: Delete subclause (3) of this clause and insert the following in lieu thereof:**

- (3) (a) CLASSIFICATIONS

	Rate Per Week	Special Payment	Arbitrated Safety Net Adjustment	Total Rate Per Week
Electronic Technician (Grade III)	537.50	31.50	646.80	1215.80
Electronic Technician (Grade II)	463.30	26.90	621.10	1111.30
Electronic Technician (Grade I)	442.20	25.40	613.70	1081.30
Electronic Serviceperson	418.90	24.00	608.20	1051.10
Installer	375.90	18.10	589.00	983.00
Trainee Installer (90% of Installer)	338.30	16.30	564.00	918.60

**25. Engine Drivers' (General) Award**

**Clause 19. - WAGES: Delete subclause (1) of this clause and insert the following in lieu thereof:**

(1)	Classification:	Wage Per Week \$	Supplementary Payments Per Week \$	Safety Net \$	Total Per Week Adjustments \$
	(a) Turbine Driver	345.30	16.80	604.70	966.80
	(b) Steam Engine Drivers:				
	(i) whose work requires 1st or 2nd class certificate	341.30	16.80	608.70	966.80
	(ii) whose work requires a 3rd class certificate				966.80
	I Internal Combustion Engine Drivers:				
	(i) 180 kW brake power or over	344.20	16.80	605.80	966.80
	(ii) 35 kW brake power or over but under 180 kW brake power				966.80
	(iii) under 35 kW brake power				966.80
	(d) Electric Motor Attendant:				
	(i) on motors over 180 kW power	339.60	16.80	610.40	966.80
	(ii) on motors 70 kW power to 180 kW power inclusive				966.80
	(iii) on motors under 70 kW power				966.80
	Where an employee attends two or more motors he/she shall be paid at a rate calculated on the aggregate kW power of such motors.				

	Note: kW power shall be that shown on the maker's nameplate.				
	(e) Greaser or Oiler				966.80
	(f) Fireperson:				
	(i) Attending one boiler				966.80
	(ii) attending two or more boilers				966.80
	(g) Trimmer				966.80
	(h) Scotch Derrick Crane Driver	347.40	16.80	602.60	966.80
	(i) Overhead electric crane driver who requires a certificate under the Inspection of Machinery Act				966.80
	(j) Mobile Crane Driver				
	(i) lifting capacity up to and including 5 tonnes	339.60	13.80	613.40	966.80
	(ii) lifting capacity over 5 tonnes but not exceeding 10 tonnes	344.10	16.80	605.90	966.80
	(iii) lifting capacity over 10 tonnes but not exceeding 20 tonnes	349.90	19.90	597.00	966.80
	(iv) lifting capacity over 20 tonnes but not exceeding 40 tonnes	360.20	23.10	588.80	972.10
	(v) lifting capacity over 40 tonnes but not exceeding 80 tonnes	366.30	26.00	590.80	983.10
	(vi) lifting capacity in excess of 80 tonnes	373.90	28.00	593.20	995.10
	(k) Excavator Driver:				
	(i) up to .5m <sup>3</sup>	350.00	19.90	596.90	966.80
	(ii) over .5 m <sup>3</sup> and up to and including 2.25m <sup>3</sup>	353.30	21.50	592.00	966.80
	(iii) over 2.25 m <sup>3</sup>	364.00	24.80	590.30	979.10
	(l) Tractors - while using power operated attachments:				
	(i) up to 35 kW brake power				966.80
	(ii) over 35 kW brake power to 70 kW brake power	344.20	16.80	605.80	966.80
	(iii) over 70 kW brake power to 110 kW brake power	350.00	19.90	596.90	966.80
	(iv) over 110 kW brake power	353.30	21.50	592.00	966.80
	(m) Loader, front end or overhead - Appropriate Tractor Margin				
	(n) Grader self propelled				
	(i) over 70 kW brake power	364.00	24.80	590.30	979.10
	(ii) 35 to 70 kW brake power inclusive	353.30	21.50	592.00	966.80
	(iii) under 35 kW brake power	350.00	19.90	596.90	966.80

## 26. Engine Drivers' (Gold Mining) Consolidated Award, 1979

### SCHEDULE 1. - WAGES: Delete subclause (1) of this schedule and insert the following in lieu thereof:

(1)	The minimum rate of wages payable to workers covered by this award shall be:-			
	Classification:	Award Base Rate	ASNA \$	Total \$
		\$		
	(a) Winding Engine Driver	356.70	610.10	966.80
	(b) Locomotive Engine Drivers on Mines	327.10	639.70	966.80

(c)	Excavators driven by electricity or internal combustion -			
	(i) up to 3/4 cubic yards	330.40	636.40	966.80
	(ii) over 3/4 cubic yards	335.20	631.60	966.80
(d)	Drivers of suction gas and other internal combustion engines -			
	(i) if under 50 bhp	320.60	646.20	966.80
	(ii) if 50 bhp or over	329.20	637.60	966.80
(e)	Drivers of suction gas and other internal combustion engines in power houses including electric generating engines and/or air compressors			
	-			
	(i) Exceeding 500 bhp -			
	(aa) Shift Engine Driver in charge	334.10	632.70	966.80
	(bb) Other Engine Drivers on shift	332.30	634.50	966.80
	(ii) Exceeding 2000 bhp -			
	(aa) Shift Engine Driver in charge	338.30	628.50	966.80
	(bb) Other Engine Drivers on shift	332.30	634.50	966.80
	Exceeding 5000 bhp -			
	(aa) Shift Engine Driver in charge	340.30	626.50	966.80
	(bb) Other Engine Drivers on shift	332.30	634.50	966.80
	(iv) Exceeding 8000 bhp -			
	(aa) Shift Engine Driver in charge	342.70	624.10	966.80
	(bb) Other Engine Drivers on shift	332.30	634.50	966.80
	(v) Exceeding 14000 bhp -			
	(aa) Shift Engine Driver in charge	344.80	622.00	966.80
	(bb) Other Engine Drivers on shift	332.30	634.50	966.80

- (f) If an engine driver also attends to an electric generator or dynamo exceeding 10 kilowatt capacity he/she shall be paid an additional sum of \$14.20 per week.
- (g) If an engine driver also attends to a switchboard he/she shall be paid an additional sum of \$4.10 per week.
- (h) If an engine driver also attends to a refrigerating and/or air compressor or compressors, he/she shall be paid an additional \$14.20 per week.

(i)	Engine Greasers or Cleaners (Powerhouse)	310.80	656.00	966.80
(j)	Lube Oil - Fuel Oil Attendant	310.80	656.00	966.80
(k)	Electric Air Compressor Drivers	315.90	650.90	966.80
(l)	Electric Locomotive or Tractor Drivers	318.70	648.10	966.80
(m)	Drivers of Mobile Cranes -			
	Lifting capacity up to and including five tons	327.00	639.80	966.80
	Lifting capacity over five tons	331.00	635.80	966.80

The above wages are payable under a contract of weekly service.

**27. Engine Drivers' (Nickel Mining) Award 1968**

**SCHEDULE 1. - WAGES: Delete subclause (1) of this schedule and insert the following in lieu thereof:**

(1) KAMBALDA NICKEL OPERATIONS

	Base Rate	Arbitrated Safety Net Adjustment	Total
	\$	\$	\$
Plant Controller Grade 1 Semi skilled employee comparable to former classification of Engine Greaser.	318.50	648.30	966.80
Plant Controller Grade 2 Semi skilled employee comparable to former classification of Mobile or Electrical Air Compressor Driver and Locomotive Engine Driver (Surface).	335.30	631.50	966.80
Plant Controller Grade 3 An employee who has acquired a Mobile Crane Drivers ticket and operates a crane with the capacity of less than 20 tonnes.	343.10	623.70	966.80
Plant Controller Grade 4			

An employee who has acquired a Mobile Crane Drivers ticket and operates a crane with the capacity of more than 20 tonnes.	362.15	604.65	966.80
OR			
An employee who is a certificated Winding Engine Driver and is conversant and competent to operate all types of winders on the lease. In addition the duties will include the cleaning of the Winder cabin including the window.	368.30	598.50	966.80
Plant Controller Grade 5			
An employee who is the holder of an Engine Drivers ticket relevant to drive internal combustion engines in Power Houses including Electric Generating and for Air Compressors and attending a Switchboard.	386.55	580.25	966.80

## 28. Engine Drivers' Minerals Production (Salt) Industry Award, 1970

### Clause 26. - WAGES: Delete subclause (1) of this clause and insert the following in lieu thereof:

- (1) The minimum rates of wages payable to workers covered by this award shall be:
- | Classification:  | Total Wage Rate \$ |
|--|--------------------|
| (a) Turbine Driver   | 966.80             |
| (b) Steam Engine Drivers -   |                    |
| (i) whose work requires 1st or 2nd class certificate   | 966.80             |
| (ii) whose work requires a 3rd class certificate   | 966.80             |
| (c) Internal Combustion Engine Drivers -   |                    |
| (i) 180 kw brake power or over   | 966.80             |
| (ii) 35 kw brake power or over but under 180 kw<br>brake power   | 966.80             |
| (iii) under 35 kw brake power  | 966.80             |
| (d) Electric Motor Attendant -   |                    |
| (i) on motors over 180 kw power  | 966.80             |
| (ii) on motors 70 kw power to 180 kw power incl  | 966.80             |
| (iii) on motors under 70 kw power  | 966.80             |
| Where a worker attends to two or more motors he shall be paid at a rate calculated on the aggregate kw power of such motors NOTE: Kw power shall be that shown on the maker's name plate |                    |
| (e) Greaser or Oiler   | 966.80             |
| (f) Firemen  |                    |
| (i) attending one boiler   | 966.80             |
| (ii) attending two or more boilers   | 966.80             |
| Where two or more firemen are employed on one shift, one fireman shall be paid ten cents per shift extra.  |                    |
| (g) Trimmer  | 966.80             |
| (h) Scotch Derrick Crane Driver  | 966.80             |
| (i) Overhead electric crane driver who requires a certificate under the Inspection of Machinery Act  | 966.80             |
| (j) Mobile Crane Driver -  |                    |
| (i) lifting capacity up to and including 5 t   | 966.80             |
| (ii) lifting capacity over 5 t but not exceeding 10 t  | 966.80             |
| (iii) lifting capacity over 10 t but not exceeding 20 t  | 966.80             |
| (iv) lifting capacity over 20 t but not exceeding 40 t   | 966.80             |

(v) lifting capacity over 40 t but not exceeding 80 t	966.80
(vi) lifting capacity in excess of 80 t	966.80
(k) Excavator Driver -	
(i) up to.5m3	966.80
(ii) over.5m3 and up to and including 2.25m3	966.80
(iii) over 2.5m3	966.80

**29. Engineering Trades (Government) Award, 1967 Award Nos. 29, 30 and 31 of 1961 and 3 of 1962**

**FIRST SCHEDULE - WAGES: Delete subclause (2) of this schedule and insert the following in lieu thereof:**

(2)

Classification:	On Engagement \$	Safety Net Adjustment \$	Total Rate \$
C5 Advanced Engineering Tradesperson -level II	566.80	646.00	1212.80
C6 Advanced Engineering Tradesperson -Level I	545.00	638.90	1183.90
C7 Engineering Tradesperson Special Class - Level II	501.40	624.70	1126.10
C8 Engineering Tradesperson Special Class - Level I	479.60	617.70	1097.30
C9 Engineering Tradesperson - Level II	457.80	613.20	1071.00
C10 Engineering Tradesperson - Level I/Production Systems Employee	436.00	606.10	1042.10
C11 Engineering Employee - Level IV	402.90	590.90	993.80
C12 Engineering Employee - Level III	381.10	585.70	966.80
C13 Engineering Employee - Level II	357.50	580.20	937.70
C14 Engineering Employee - Level I	340.10	578.50	918.60

**FIFTH SCHEDULE - BUILDING MANAGEMENT AUTHORITY WAGES AND CONDITIONS: Delete subclause (5)(a) of this schedule and insert the following in lieu thereof:**

(5) Wages:

(a) The wages for Building Management Authority employees from the beginning of the first pay period commencing on or after 1 July 2024 will be as follows:

Classification	On Engagement \$	Safety Net Adjustment \$	Total Rate Per Week \$
Engineering Tradesperson:			
Level 4 - Group A	492.60	621.80	1114.40
Group B	502.30	625.00	1127.30
Group closed	511.70	628.10	1139.80
Level 3A	465.40	612.80	1078.20
Level 3B	457.70	613.10	1070.80
Level 2	442.00	608.00	1050.00
Level 1	436.00	606.10	1042.10
Engineering Employee			
Level 4 - Group A	406.20	591.70	997.90
Group B	392.70	588.40	981.10
Group C	384.20	586.50	970.70
Group D	381.70	585.90	967.60
Level 3	370.00	583.20	953.20
Level 2	363.00	581.40	944.40
Level 1	341.90	576.70	918.60

Classification	After One Year of Service \$	Safety Net Adjustment \$	Total Rate Per Week
Engineering Tradesperson:			
Level 4 - Group A	498.60	623.60	1122.20
Group B	508.30	627.20	1135.50
Group C	517.70	627.40	1145.10
Level 3A	471.10	614.90	1086.00
Level 3B	462.60	612.10	1074.70
Level 2	447.30	609.90	1057.20
Level 1	441.20	607.70	1048.90

Engineering Employee:			
Level 4 - Group A	411.10	593.00	1004.10
Group B	397.10	589.70	986.80
Group C	388.20	587.40	975.60
Group D	383.90	586.50	970.40
Level 3	374.50	584.30	958.80
Level 2	367.10	582.60	949.70
Level 1	346.00	577.40	923.40

Classification	After Two Years of Service \$	Safety Net Adjustment \$	Total Rate Per Week \$
Engineering Tradesperson:			
Level 4 - Group A	503.60	625.40	1129.00
Group B	513.30	628.60	1141.90
Group C	523.10	631.90	1155.00
Level 3A	475.50	616.10	1091.60
Level 3B	467.30	613.70	1081.00
Level 2	451.50	611.10	1062.60
Level 1	445.60	609.00	1054.60

Engineering Employee			
Level 4 - Group A	415.00	593.90	1008.90
Group B	401.10	590.50	991.60
Group C	391.90	588.20	980.10
Group D	386.90	587.10	974.00
Level 3	378.00	585.00	963.00
Level 2	370.80	583.40	954.20
Level 1	349.10	578.20	927.30

The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.

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

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

**30. Enrolled Nurses and Nursing Assistants (Private) Award No. 8 of 1978**

**Clause 30. - WAGES: Delete subclause (1) of this clause and insert the following in lieu thereof:**

(1) The minimum rate of wage payable to employees covered by this award shall be as follows:

	Base Rate \$	Arbitrated Safety Net Adjustment \$	Minimum Weekly Rate \$
(a) Trainee Enrolled Nurse			

1st year of training			918.60
2nd year of training			918.60
(b) Enrolled Nurse Level One			
1st year of employment	419.10	600.50	1019.60
2nd year of employment	424.10	602.20	1026.30
3rd year of employment and thereafter	435.00	605.50	1040.50
(c) Enrolled Nurse Level Two			
1st year of employment	428.20	603.60	1031.80
2nd year of employment	433.30	605.20	1038.50
3rd year of employment and thereafter	444.10	608.60	1052.70
(d) Enrolled Nurse Level Three			
	456.30	612.80	1069.10
(e) Nursing Assistant (at 19 years of age and over)			
1st year of employment	377.70	584.90	962.60
2nd year of employment	388.00	587.40	975.40
3rd year of employment and thereafter	398.50	589.90	988.40

(f) Nursing Assistant (under 19 years of age) shall be paid a percentage of the total weekly wage prescribed for a Nursing Assistant in their first year of employment in subclause (1)(e) hereof as follows:

Under 17 years of age	73%
Under 18 years of age	81%
Under 19 years of age	87%

(g) Provided that an Enrolled Nurse undergoing training in a post basic course approved by the Nurses' Board of W A will be paid the '1st year of employment' rate of wage at the appropriate level during the training period.

(h) Provided further that an Enrolled Nurse (Student) who is 21 years of age or over shall be paid at the rate applicable to a Nursing Assistant (at 19 years of age and over) at the 'first year of employment' rate.

(i) The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.

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

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

**31. Farm Employees' Award**

**Clause 8. – WAGES: Delete subclause (1) of this clause and insert the following in lieu thereof:**

(1) Adult Employees:

TOTAL \$

Farm Hand

(a) With less than twelve months experience in the Industry

24.17

- |     |   |       |
|-----|---|-------|
| (b) | With twelve months experience in the industry | 24.17 |
| (c) | General Farm Hand                             | 24.17 |
| (d) | Tradesperson                                  | 24.17 |

### 32. Food Industry (Food Manufacturing or Processing) Award

**Clause 31. - WAGES: Delete subclause (1) of this clause and insert the following in lieu thereof:**

		TOTAL Rate Per Week\$
(1)	Section One to Six as Defined:	
	Level 1	78% 918.60
	Level 1A	80% 918.60
	Level 2	82% 918.60
	Level 3	87.4% 946.40
	Level 4	92.4% 972.40
	Level 5	100% 1017.00

The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.

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

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

### 33. Fruit and Produce Market Employees Award No. 50 of 1955

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

(1)	Adults	Operative from the beginning of the first pay period commencing on or after 1 July 2024	
			\$
	Storemen		966.80
	Head Storemen		966.80

The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.

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

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

### 34. The Fruit Growing and Fruit Packing Industry Award

**Clause 24. - WAGES: Delete subclauses (1) and (2) of this clause and insert the following in lieu thereof:**

		Rate Per Week \$Total
(1)	Fruit Packing and Sorting	
	(a) Trainee Packer & Trainee Sorter	966.80
	(b) Competent Packer (as defined) & Sorter	966.80
	(c) Shed Hand	966.80
(2)	Fruit Growing and Picking:	

(a) Orchard Hand (General) 966.80

(b) Orchard Hand (Machine Operator) 966.80

The following hourly rates shall apply to workers in this section for each hour worked in excess of 40 hours per week and not more than 52 hours per week:

(a) Orchard Hand (General) 36.26

(b) Orchard Hand (Machine Operator) 36.26

The following hourly rates shall apply to workers in this section for each hour worked in excess of 52 hours per week:

(a) Orchard Hand 48.34

(b) Orchard Hand (Machine Operator) 48.34

The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.

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

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

### 35. Furniture Trades Industry Award

#### Clause 8. - WAGES: Delete subclause (2) of this clause and insert the following in lieu thereof:

(2) Wages

The minimum rate of wage for employees covered by this award shall be:

	Total Minimum Rate\$
(a) Furniture Making Employee - Group 1	918.60
Furniture Making Employee - Group 2	918.60
Furniture Making Employee - Group 3	946.40
Furniture Making Employee - Group 4	972.40
Furniture Making Employee - Group 5	1017.00
Furniture Making Employee - Group 6	1044.80
Furniture Making Employee - Group 7	1072.20
(b) The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.	

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

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

### 36. Gate, Fence and Frames Manufacturing Award

#### FIRST SCHEDULE - WAGES: Delete subclause (1) of this schedule and insert the following in lieu thereof:

(1) (a) Adult Employees:	Rate Per Week	Supplementary Payment	Safety Net Adjustment Payment	Total Rate Per week
Machinist (Wire) "A"	333.30	23.30	580.00	936.60
Machinist (Wire) "B"	320.70	18.60	579.30	918.60
Machinist (Wire) Assistant	314.30	17.50	586.80	918.60
Framer "A"	333.30	23.30	580.00	936.60
Framer "B"	310.40	17.50	590.70	918.60
Process Employee	310.40	17.50	590.70	918.60
Wirer	310.40	17.50	590.70	918.60
Welder "A"	363.20	34.10	589.70	987.00

Welder "B"	316.10	18.60	583.90	918.60
Welder "C"	312.00	17.50	589.10	918.60
Painter of Iron Work	319.30	18.60	580.70	918.60
Erector	316.10	18.60	583.90	918.60
Erector's Assistant	310.40	17.50	590.70	918.60
Tool and Material Storeperson	323.10	20.10	576.70	919.90
Tradesperson	363.20	34.10	589.70	987.00
Mechanical Tradesperson- Special Class	386.90	39.00	602.70	1028.60

- (b) The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.

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

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

### 37. Golf Link and Bowling Green Employees' Award, 1993

**Clause 27. - WAGES: Delete subclause (1) of this clause and insert the following in lieu thereof:**

CLASSIFICATIONS	Total Rate Per Fortnight \$
(1) Adult Employees	
Trainee	1837.20
Groundsperson Grade 1	1837.20
Groundsperson Grade 2	1837.20
Assistant Greenkeeper	1867.20
Greenkeeper Tradesperson Grade 1	2034.00
Greenkeeper Tradesperson Grade 2	2060.00

The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.

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

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

### 38. Health Attendants Award, 1979

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

	Base Rate Per Week\$	Arbitrated Safety Net Adjustments\$	Minimum Weekly Rate\$
(1) Adult Employees:			
Instructor/ess Controller	363.30	581.40	944.70
Instructor/ess	350.70	578.50	929.20
Masseur/Masseuse	350.70	578.50	929.20
Health Attendant	337.10	581.50	918.60

### 39. The Horticultural (Nursery) Industry Award No. 30 of 1980

**Clause 5. - WAGES: Delete subclause (1) of this clause and insert the following in lieu thereof:**

(1) Adult Employees	Rate Per Week \$
---------------------	---------------------

Trainee	918.60
Horticultural Employee Grade 1	918.60
Horticultural Employee Grade 2	918.60
Horticultural Employee Grade 3	923.30
Horticultural Tradesperson Grade 1	993.10
Horticultural Tradesperson Grade 2	1021.20
Horticultural Tradesperson Advanced	1047.70

The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.

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

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

**APPENDIX 1. – MAKE UP OF TOTAL WAGE: Delete subclause (1) of this appendix and insert the following in lieu thereof:**

(1) Adult Employees

	Base Rate\$	Arbitrated Safety Net Adjustments\$	Total Rate\$ from the beginning of the first pay period commencing on or after 1 July 2024
Trainee			918.60
Horticultural Employee Grade 1			918.60
Horticultural Employee Grade 2	346.07	572.53	918.60
Horticultural Employee Grade 3	362.83	560.47	923.30
Horticultural Tradesperson Grade 1	417.20	575.90	993.10
Horticultural Tradesperson Grade 2	437.29	583.91	1021.20
Horticultural Tradesperson Advanced	457.28	590.42	1047.70

**40. Hotel and Tavern Workers' Award**

**Clause 21. – WAGES: Delete subclause (1) of this clause and insert the following in lieu thereof:**

- (1) The following shall be the minimum fortnightly rates of wage payable to full-time employees covered by this award –

Level	Classification	\$ per Fortnight
	Introductory	1837.20
Level 1	Food & Beverage Attendant Grade 1	1837.20
	Kitchen Attendant Grade 1	
	Guest Services Grade 1	
	Gardener	
	General Hand	
	Yardman	
Level 2	Food & Beverage Attendant Grade 2	1899.20
	Cook Grade 1	
	Kitchen Attendant Grade 2	
	Night Porter	
	Storeperson Grade 1	
	Doorperson/Security Officer Grade 1	

	Guest Services Grade 2	
Level 3	Food & Beverage Attendant Grade 3	1944.70
	Cook Grade 2	
	Kitchen Attendant Grade 3	
	Guest Services Grade 3	
	Storeperson Grade 2	
	Timekeeper/Security Officer Grade 2	
	Handyperson	
	Forklift Driver	
Level 4	Cook Grade 3	2034.00
	Storeperson Grade 3	
	Food & Beverage Attendant Grade 4 (Tradesperson)	
	Guest Service Grade 4	
Level 5	Cook Grade 4	2144.80
	Food & Beverage Supervisor	
	Guest Services Supervisor	
Level 6	Cook Grade 5	2195.00

#### 41. Landscape Gardening Industry Award

**Clause 25. - WAGES: Delete subclause (1) of this clause and insert the following in lieu thereof:**

TOTAL RATE PER WEEK

\$

(1) Adult Employees:

(a) Landscape Tradesperson	957.20
(b) Landscape Employee Grade 1	918.60

The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.

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

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

**APPENDIX 1 – MAKE UP OF TOTAL WAGE: Delete subclause (1) of this appendix and insert the following in lieu thereof:**

(1) Adult Employees:	Base Rate Per Week \$	Arbitrated Safety Net Adjustments \$	Total Rate Before Adjustment \$	Total Rate After Adjustment for 2024 Adult Minimum Award Wage \$
(a) Landscape Tradesperson	373.30	583.90	957.20	957.20
(b) Landscape Employee Grade 1	302.00	616.60	897.90	918.60

#### 42. Laundry Workers' Award, 1981

**Clause 7. - WAGES: Delete subclause (1) of this clause and insert the following in lieu thereof:**

(1) The minimum weekly rate of wage payable to an employee covered by this award shall include the base rate plus the Arbitrated Safety Net Adjustment expressed hereunder:

(a) Adult Employees

	Minimum Rate \$
Laundry Employee - Grade 1	918.60
Laundry Employee - Grade 2	934.00
Laundry Employee - Grade 3	965.20
Laundry Employee - Grade 4	985.70

(b) The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.

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

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

#### 43. Marine Stores Award

**Clause 6. - RATES OF PAY: Delete subclause (1) of this clause and insert the following in lieu thereof:**

- (1) The minimum weekly rate of wage payable to employees covered by this award shall be as follows:

Classification	Minimum Rate\$
General Hand	918.60
Sorter	918.60
Packer	918.60
Washer of Bottles	918.60
Cutter of Cloth	918.60

#### 44. Meat Industry (State) Award, 2003

**Clause 16. - CLASSIFICATIONS AND WAGE RATES: Delete subclause (2) of this clause and insert the following in lieu thereof:**

- (2) Adult Wage Rates

Classification Group	Minimum Rate Per Week	Minimum Rate Per Hour
<u>PW - LEVEL 1</u>	\$918.60	\$24.17
<u>PW - LEVEL 2</u>	\$918.60	\$24.17
<u>PW - LEVEL 3</u>	\$939.60	\$24.73
<u>PW - LEVEL 4</u>	\$969.60	\$25.52
<u>PW - LEVEL 5 *</u>	\$1017.00	\$26.76
<u>PW - LEVEL 6</u>	\$1086.70	\$28.60

\* Key classification rate

**Clause 58. - CLASSIFICATIONS AND WAGE RATES: Delete subclause (2) of this clause and insert the following in lieu thereof:**

- (2) Adult Wage Rates

Classification Group	Minimum Rate Per Week	Minimum Rate Per Hour
<u>RW - LEVEL 1</u>	\$918.60	\$24.17
<u>RW - LEVEL 2</u>	\$918.60	\$24.17
<u>RW - LEVEL 3</u>	\$939.60	\$24.73
<u>RW - LEVEL 4</u>	\$969.60	\$25.52
<u>RW - LEVEL 5 *</u>	\$1017.00	\$26.76
<u>RW - LEVEL 6</u>	\$1052.10	\$27.69

\* Key classification rate

45. Mental Health Nurses' Consolidated Award 1981 No. 13 of 1947

**Clause 22. - RATES OF PAY AND ALLOWANCES: Delete subclause (1) of this clause and insert the following in lieu thereof:**

- (1) Registered Mental Health Nurses, Enrolled Mental Health Nurses, and Student Mental Health Nurses shall be paid the weekly wages as set out hereunder:

	\$ Per Week	ASNA	TOTAL
(a) Mental Health Nurse			
(i) Student Nurse Adult			
1st year of training			918.60
2nd year of training			918.60
3rd year of training	382.80	539.10	921.90
Student under 21 years of age			
1st year of training	316.40	393.90	710.30
2nd year of training	334.30	416.20	750.50
3rd year of training	356.40	443.70	800.10
4th year of training	380.50	473.70	854.20
(ii) Level 1	\$ Per Week		
1st year of service	445.10	554.10	999.20
2nd year of service	458.10	562.80	1020.90
3rd year of service	476.50	568.80	1045.30
4th year of service	495.30	575.10	1070.40
5th year of service	509.60	577.00	1086.60
6th year of service	526.60	582.50	1109.10
7th year of service	547.00	589.20	1136.20
(iii) Level 2			
1st year of service	581.00	602.90	1183.90
2nd year of service	597.00	608.30	1205.30
3rd year of service	619.60	615.60	1235.20
(iv) Level 3			
1st year of service	667.00	628.50	1295.50
2nd year of service	686.10	634.60	1320.70
3rd year of service	702.40	640.10	1342.50
(v) Community Mental Health Nurses			
1st year of service	619.60	615.60	1235.20
2nd year of service	631.00	619.20	1250.20
3rd year of service	646.70	624.50	1271.20
4th year of service	662.20	626.90	1289.10
(vi) Community Mental Health Nurse with a post basic certificate			
1st year of service	631.00	619.20	1250.20
2nd year of service	646.70	624.50	1271.20
3rd year of service	662.20	626.90	1289.10

	4th year of service	684.50	634.10	1318.60
	(vii) Community Mental Health Administrative Nurse	697.10	638.10	1335.20
	(viii) Community Mental Health Nurse with a post basic certificate	713.50	643.60	1357.10
(b)	(i) Progression through the increments for a registered mental health nurse classified at Level 1 shall occur by annual increments.			
	(ii) Progression for all other classifications for which there is more than one wage point, shall be by annual increments, subject to a satisfactory performance appraisal.			
(c)	Where an employee is appointed to a position, previous relevant nursing experience at that level, or in a similar level under a differing career structure, shall be taken into account for determining the appropriate increment level.			
(d)	The onus of proof of previous experience shall rest with the employee.			
	Provided that an employee returning to the profession after an absence greater than five years shall commence at the first increment of Level 1 for a period of three months. During this time the employee shall be reviewed by an assessment panel. Upon satisfactory review she/he shall move to a level and increment as determined by the panel's assessment. An employee who fails to satisfy the panel of her/his competency to progress through the Level 1 increments or into another level as the case may be, may apply for re-assessment by an assessment panel after a period of 12 months from the date of employment.			

\$ Per Week      ASNA      TOTAL

(e)	Enrolled Mental Health Nurse			
	(i) Student Enrolled Mental Health Nurse			
	Adult Student			
	1st year of training			918.60
	Thereafter			918.60
	Student under 21 years			
	1st year of training	316.40	393.90	710.30
	Thereafter	334.30	416.20	750.50
	(ii) Registered Enrolled Mental Health Nurse			
	1st year of service	399.20	543.10	942.30
	2nd year of service	407.50	544.90	952.40
	Thereafter	416.30	547.10	963.40
(f)	Provided that a student nurse in his/her first year of training shall only proceed to the next increment point in sub-paragraph (i) of paragraph (a) of subclause (1) of this clause upon passing the required examination.			

**46. Metal Trades (General) Award**

**Clause 4.8 - WAGES AND SUPPLEMENTARY PAYMENTS: Delete subclause 4.8.1 of this clause and insert the following in lieu thereof:**

4.8.1 The minimum award rate payable weekly to adult employees (other than apprentices) classified under a defined level specified in Clause 1.6 - Definitions and Classification Structure, shall be made up of a base rate, plus a supplementary payment, and safety net adjustment, giving a total award rate as follows:

(1)	Wage Group	Base Rate Per Week \$	Supplementary Payment \$	Arbitrated Safety Net Adjustment \$	Total Rate Per Week \$
	Level C14	284.80	40.60	593.20	918.60
	Level C13	299.50	42.60	576.50	918.60
	Level C12	319.20	45.40	581.80	946.40
	Level C11	337.40	48.10	586.90	972.40
	Level C10	365.20	52.00	599.80	1017.00

- |           |        |       |        |         |
|-----------|--------|-------|--------|---------|
| Level C 9 | 383.50 | 54.60 | 606.70 | 1044.80 |
| Level C 8 | 401.70 | 57.20 | 613.30 | 1072.20 |
| Level C 7 | 420.00 | 59.80 | 617.70 | 1097.50 |
| Level C 6 | 456.50 | 65.00 | 631.20 | 1152.70 |
| Level C 5 | 474.80 | 67.60 | 638.00 | 1180.40 |
- (2) Supplementary Payments
- (a) Where an employee is in receipt of a rate of pay which exceeds the Total Rate Per Week prescribed above, whether such payment is being made by virtue of any order, industrial agreement or other agreement or arrangement, then such rate will be deemed to be inclusive of the Supplementary Payment.
- (b) Overtime, shift allowances, penalty rates, disability allowances, special rates, fares and travelling time allowances and any other work related allowances prescribed by this Award shall not be offset against Supplementary Payments.
- (3) The rates of pay in this Award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.
- These arbitrated safety net adjustments may be offset against any equivalent amount in the rate of pay received by employees since 1 November 1991 above the rate prescribed in the Award, except where such absorption is contrary to the terms of an industrial agreement.
- Increases in rates of pay otherwise made under the State Wage Case Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

#### 47. Monumental Masonry Industry Award, 1989

##### Clause 7. – WAGES: Delete subclause (1) of this clause and insert the following in lieu thereof:

- (1) (a) The rates of wages payable to the employees covered by this Award (other than duly registered apprentices and junior employees) shall be as follows:

Classification	Minimum Weekly Base Rate	Supplementary Payment	Arbitrated Safety Net Adjustment	Total Rate (Exclusive of Industry Allowance)
	\$	\$	\$	\$
Monumental Mason	365.20	52.00	599.80	1017.00
Monumental Fixer	345.20	49.30	589.00	983.50
Monumental Employee Grade 4	318.90	45.50	581.80	946.20
A Grade 3 employee who has attained a high level of skill in at least one function or who is regularly required to perform more than two of the functions contained in Grade 3				
Monumental Employee Grade 3	301.40	43.00	576.90	921.30
Employee who has been performing work at Grade 2 level for more than six months				
Monumental Employee Grade 2				918.60
Employee who is performing one or more of the following functions and who has been performing such work for less than six months -				
- Primary Saw Operator				
- Secondary Saw Operator				
- Polishing Machine Operator				
- Stone Engraving Operator				
- Assistant Monumental Fixer				
- Monumental Concrete Moulder				

Monumental Employee Grade 1 918.60  
 Employee who is engaged to perform work not covered by any of the above classifications.

- (b) The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.

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

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

#### 48. Motel, Hostel, Service Flats and Boarding House Workers' Award

**Clause 21. – WAGES: Delete this clause and insert the following in lieu thereof:**

##### 21. – WAGES

Level	Classification	\$ per Fortnight
	Introductory	1837.20
Level 1	Food & Beverage Attendant Grade 1 Kitchen Attendant Grade 1 Guest Services Grade 1 Gardener General Hand Yardman	1837.20
Level 2	Food & Beverage Attendant Grade 2 Cook Grade 1 Kitchen Attendant Grade 2 Night Porter Storeperson Grade 1 Doorperson/Security Officer Grade 1 Guest Services Grade 2	1899.20
Level 3	Food & Beverage Attendant Grade 3 Cook Grade 2 Kitchen Attendant Grade 3 Guest Services Grade 3 Storeperson Grade 2 Timekeeper/Security Officer Grade 2 Handyperson Forklift Driver	1944.70
Level 4	Cook Grade 3 Storeperson Grade 3 Food & Beverage Attendant Grade 4 (Tradesperson) Guest Service Grade 4	2034.00
Level 5	Cook Grade 4 Food & Beverage Supervisor Guest Services Supervisor	2144.80
Level 6	Cook Grade 5	2195.00

- (2) Arbitrated Safety Net Adjustments

The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.

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

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

**49. Motor Vehicle (Service Station, Sales Establishments, Rust Prevention and Paint Protection), Industry Award No. 29 of 1980**

**Clause 11. – WAGES: Delete subclause (1)(d) of this clause and insert the following in lieu thereof:**

(1)

(d) The following shall be the minimum rate of wages payable to employees under this award from the beginning of the first pay period commencing on or after 1 July 2024.

	Weekly Rate of Pay	Arbitrated Safety Net Adjustments	Minimum Weekly Rate of Pay	Minimum Hourly Rate of Pay
	\$	\$	\$	\$
Motor Vehicle Industry Employee Level 1	373.40	545.20	918.60	24.17
Motor Vehicle Industry Employee Level 2	390.10	528.50	918.60	24.17
Motor Vehicle Industry Employee Level 3	412.60	533.80	946.40	24.91
Motor Vehicle Industry Employee Level 4	433.50	538.90	972.40	25.59

Minimum Hourly Rate of Pay does not include additional payments that may be required pursuant to Clause 12. - Additional Payments for Ordinary Hours, nor does it include any loading applicable pursuant to subclause (4) hereof.

**50. Nurses (Child Care Centres) Award 1984**

**Clause 11. - WAGES: Delete this clause and insert the following in lieu thereof:**

**11. - WAGES**

An employer on whom this award is binding shall not increase the rate of wage payable to an employee on 9th September, 1988, or otherwise vary the conditions applicable to an employee on that date so as to increase that employer's labour costs except to the extent that any such increase has been authorised by the Commission after that date.

Except as hereinafter provided the minimum rates of wage payable to employees under this award shall be as follows:

	Column A (4%) Operative on and from 21/12/88Per Week \$	Column B (\$10 p.w.) Operative* 3/4/89Per Week \$	ASNA	TOTAL
(1) Registered General Nurse				
1st year of experience	381.50	391.50	541.20	932.70
2nd year of experience	390.50	400.50	543.40	943.90
3rd year of experience	403.60	413.60	546.40	960.00
4th year of experience	414.50	424.50	549.00	973.50
Thereafter	427.60	437.60	552.20	989.80
(2) Registered Mothercraft Nurse				
1st year of experience				918.60
2nd year of experience				918.60
3rd year of experience	372.90	382.90	539.10	922.00
4th year of experience	393.20	403.20	543.80	947.00
Thereafter	413.20	423.20	548.80	972.00

\* NB This column is operative from the 1st pay period on or after 3/4/89.

The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.

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

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

**51. Nurses' (Day Care Centres) Award**

**Clause 20. - WAGES: Delete this clause and insert the following in lieu thereof:**

20. - WAGES

Per Week \$

Registered General Nurse

1st year 966.80

2nd year 966.80

Registered Mothercraft Nurse

1st year 966.80

2nd year 966.80

- (1) Subclause (1) and (2) apply whenever a State Wage Case decision is issued by the Commission, increasing adult rates of pay in State awards by a flat dollar amount.
- (2) The State Wage Case increase is to be applied to adult weekly rates of pay in this award in accordance with the following formula:

Step 1: Divide the flat dollar increase by 38 (and round to the nearest cent)

Step 2: Multiply the figure calculated in Step 1 by 40

*Example: The Commission awards an \$18.00 per week increase to adult weekly rates of pay*

*Step 1 = \$18.00 ÷ 38 = \$0.47*

*Step 2 = \$0.47 x 40 = \$18.80*

*In this example adult weekly rates of pay would be increased by \$18.80 per week.*

**52. Optical Mechanics' Award, 1971**

**Clause 24. - WAGES.: Delete subclause (1) of this clause and insert the following in lieu thereof:**

- (1) The minimum weekly rate of wage payable to an employee covered by this award shall include the base rate plus the Arbitrated Safety Net Adjustment expressed hereunder:

	Base Rate \$	Arbitrated Safety Net Adjustments \$	Minimum Rate \$
Adults (total wage per week)			
(a) Optical Mechanic	397.60	589.80	987.40
(b) Optical Employee:			
First 3 months of experience			918.60
Thereafter	342.40	576.60	919.00

**53. Particle Board Employees' Award, 1964**

**Clause 5. - WAGES: Delete subclause (1) of this clause and insert the following in lieu thereof:**

- (1) The minimum rates of wage payable to employees covered by this Award shall be:

	Rate of Wage\$	Supplementary Payment\$	ASNA	Award Rate\$
Grade 1				918.60
Trainee Operator				
Yard Hand				
Packaging				
Machine Assistant				

Factory Hand				
Grade 2				918.60
Flaker/Knife Room Operator				
Overlay Operator				
Log Deck/Chipping Operator				
Glue Mixer				
Paper Impregnation Operator				
Log Tower Operator				
Gatekeeper				
Grade 3				918.60
Residue & Waste Operator				
Flooring & Grading Operator				
Log Deck Loader				
Knife Setter & Grinder & Changing Knives				
Grade 4	362.70	15.90	540.00	918.60
Laboratory Assistant				
Finishing Line				
Logyard Loader Panel				
Saw Operator				
Sanding & Grading Operator				
Grade 5	378.70	15.90	542.00	936.60
Drier Operator				
Despatch				
Forming Machine Operator				
Relief Operator				
Press Operator Resin				
Plant Operator				
Grade 6	396.30	15.90	546.10	958.30
Senior Melamine Operator				
Senior Finishing Operator				
Senior Shift Operator				

#### 54. Pastrycooks' Award No. 24 of 1981

**Clause 10. - WAGES: Delete subclause (1)(a) of this clause and insert the following in lieu thereof:**

- (1) (a) The total minimum wage payable each week shall consist of appropriate allowances and the Award Rate (comprising Base Rate, Supplementary Payment and Arbitrated Safety Net Adjustments) as set out in this clause:

Classification	Base Rate \$	Supplementary Payment \$	Arbitrated Safety Net Adjustments \$	Award Rate\$
Adults:				
Single Hand Pastrycook	371.10	34.10	591.50	996.70
Pastrycook	365.20	37.80	590.90	993.90
Cake Decorator	359.40	-	580.60	940.00
Assistant	329.60	-	589.00	918.60

#### 55. Photographic Industry Award, 1980

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

- (1) The minimum weekly rate of wage payable to an employee covered by this award shall be -

	Base Rate\$	Arbitrated Safety Net Adjustments\$	Minimum Rate\$
<u>SECTION A:</u>			
Portrait Advertising And Commercial Studios:			
(a) Photographer	348.50	577.90	926.40
(b) All others - First three months			918.60
(c) All others - Thereafter	338.30	580.30	918.60

SECTION B:

Developing, Printing And Finishing Establishments:

(a) Colour filter determinator

Custom colour enlargement printer

Colour printer controller	356.50	580.00	936.50
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(b) Rack and tank colour film processor machine operator

Colour enlargement printer

Colour quality corrector

Kit mixing operator

Colour printer operator	348.50	577.90	926.40
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(c) Rack and tank black and white film processor

Black and white enlargement printer

Black and white printer operator	341.10	577.50	918.60
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(d) All others -

First three months			918.60
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(e) All others - Thereafter	338.30	580.30	918.60
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SECTION C

(a) The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.

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

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

**56. Pipe, Tile and Pottery Manufacturing Industry Award****Clause 11. - WAGES: Delete subclause (1)(a) of this clause and insert the following in lieu thereof:**

(1)	(a)	The following shall be the minimum rates of wages payable to employees covered by this award.			
		Classification	Rate Per Week	Supplementary Payment	TOTAL
		ADULT EMPLOYEES	\$	\$	\$
		Machine Attendant Grade A	347.00	586.00	933.00
		Machine Attendant Grade B	336.20	583.20	919.40
		Fork Lift Driver	357.20	580.30	937.50

Millman Mixer	343.20	585.10	928.30
Moulder	343.20	585.10	928.30
Thrower	343.20	585.10	928.30
Setter Drawer	341.40	578.00	919.40
Junction Sticker	339.80	579.60	919.40
Pipe Machine Operator	336.20	587.70	923.90
Taker Off Pipes (Fully Automatic)	336.20	582.40	918.60
Lathe Machine Operator	336.20	587.70	923.90
Panperson	336.20	583.20	919.40
Taker Off Tiles	336.20	582.40	918.60
Gang Tile Drawer (Caversham)	336.20	582.40	918.60
Pot Machine Operator (Large) and/or Vent Machine Operator	336.20	596.80	933.00
Burnt Ware Sorter (Pipe Tester)	334.40	584.20	918.60
Plant Attendant Oiler	334.40	584.20	918.60
Pipe Drawer Assistant	332.10	586.50	918.60
Forking Tiles (Caversham)	332.10	586.50	918.60
Packer (Dispatch)	332.10	586.50	918.60
Hand Colour Sprayer	332.10	586.50	918.60
Slipper	332.10	586.50	918.60
Cleaner (Flue and Oil Burner)	332.10	586.50	918.60
Ridge Maker	332.10	586.50	918.60
All Others	322.50	596.10	918.60

**APPENDIX, Clause 5 . - WAGES: Delete subclause (1)(a) of this clause in the appendix and insert the following in lieu thereof:**

(1)	(a)	The total minimum wage payable each week shall be:			
		Classification	Rate Per Week	Supplementary Payment	Award Rate
		Adult Employees:	\$	\$	\$
		Machine Attendant Grade I	353.00	593.40	946.40
		Machine Attendant Grade II	353.00	580.00	933.00
		Machine Attendant Grade III	337.90	581.50	919.40
		Fork Lift Driver	357.20	580.30	937.50
		All Others	322.50	596.10	918.60

**57. Plywood and Veneer Workers Award**

**SCHEDULE 1. - RATES OF PAY: Delete subclause 1. of this schedule and insert the following in lieu thereof:**

1.	Rates of Pay Per Week:-				
	Base Rate\$	Supplementary Payments \$	Arbitrated Safety Net Adjustment \$	Total Rate\$	
	Group A				
	First Year	390.37	15.50	591.73	997.60
	Thereafter	395.04	15.50	592.96	1003.50
	Group B				
	First Year	378.46	15.50	588.94	982.90
	Thereafter	384.07	15.50	590.13	989.70
	Group C				

First Year	363.75	15.50	585.45	964.70
Thereafter	368.42	15.50	586.58	970.50
Group D				
First Year	355.34	15.50	583.36	954.20
Thereafter	361.42	15.50	584.68	961.60
Group E				
First Year	348.63	15.50	581.77	945.90
Thereafter	352.19	15.50	582.71	950.40
Group F				
First Year	342.97	15.50	580.23	938.70
Thereafter	348.57	15.50	581.73	945.80
Group G				
First Year	338.76	15.50	579.34	933.60
Thereafter	344.02	15.50	580.58	940.10
Group H				
First Year	332.69	15.50	577.91	926.10
Thereafter	338.53	15.50	579.27	933.30
Group I				
First Year	325.22	15.50	577.88	918.60
Thereafter	330.59	15.50	577.41	923.50
Group J				
First Year	315.41	15.50	587.69	918.60
Thereafter	321.95	15.50	581.15	918.60

#### 58. Plywood and Veneer Workers' Award, 1952

##### Clause 5. – WAGES: Delete subclause (1) of this clause and insert the following in lieu thereof:

(1) The minimum rates of wages payable to employees covered by this Award shall be:

The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.

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

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

	Rate of Wage \$	Supplementary Payment \$	ASNA \$	Award Rate \$
Grade 1				918.60
Trainee Operator				
Factory/Yard Hand				
In/Out Feeder Assistant				
Hogger				
Cover Layer				
Packaging				
Grade 2				918.60
Hilderbrand Dryer Infeed				
Schildie Out/In Feed				
Control				

Asst. to Lathe/ Slicer Op				
Panel Grader Asst Desp				
Sander Asst.				
Taping				
Glue Mixer				
Core Sawyer				
Press Assist.				
Edging - Pre Gluer				
Log Charger				
Kuper Operator				
Veneer Assemb.				
Grade 3				918.60
Guillotine				
Groover				
Core Feeder				
Splicer Operator				
Clipper Operator				
Chain/Log Operator				
Dryer Grader				
Sander Operator				
Grade 4				918.60
Core/Centre Layer				
Panel Sawyer				
Slicer Operator				
Press Operator				
Grade 5	362.70	15.90	540.00	918.60
Slicer Machinist				
Lathe Machinist				

**59. Poultry Breeding Farm & Hatchery Workers' Award 1976**

**Clause 9. - WAGES: Delete subclauses (1) and (2) of this clause and insert the following in lieu thereof:**

(1)	Poultry Breeding Farms	Base Rate \$	Arbitrated Safety Net Adjustments \$	Minimum Rate \$
	(a) General Hand - Maintenance			918.60
	(b) General Hand - Other			918.60
(2)	Hatcheries General Hand			918.60

**60. Printing Award**

**Clause 11. - RATE OF WAGES: Delete Table A in Part 1 RATE OF WAGES of this clause and insert the following in lieu thereof:**

<u>TABLE A</u>			
GROUP LEVEL	BASE RATE	SAFETY NET ADJUSTMENT	AWARD RATE
	\$	\$	\$
1			918.60
2	342.10	576.50	918.60
3	364.60	564.40	929.00

4	385.50	569.40	954.90
5	417.20	577.00	994.20

**Clause 11. - RATE OF WAGES: Delete Part 2 - CLASSIFICATION STRUCTURE of this clause and insert the following in lieu thereof:**

**PART 2 - CLASSIFICATION STRUCTURE**

The classification structure relates to an adult employee performing the description of employment set out in the second column below. The Group Level for the adult employee is shown in the third column and the appropriate minimum weekly rate of pay in the fourth column.

COLUMN 2 EMPLOYMENT	DESCRIPTION OF	COLUMN 3 GROUP LEVEL	COLUMN 4 MINIMUM WEEKLY WAGE \$
a)	Compositor	5	994.20
b)	Keyboard Operator	4	954.90
c)	Proof Reader	4	954.90
d)	Proof Readers' Assistant	2	918.60
e)	Printing Machinist	5	994.20
f)	Artist/Designer	4	954.90
g)	Graphic Reproducer	5	994.20
	(i) Image Preparer		
	(ii) Plate Preparer		
	(iii) Cylinder Preparer		
h)	Small Offset Machinist	4	954.90
i)	Non Impact Printing Machinist (including Electronic and Laser Printing Machine Operator)	4	954.90
j)	Binder/Finisher	5	994.20
k)	Employee employed directly in connection with stationery, system work, addressograph work, paper products	2	918.60
l)	Feeder on any machine	2	918.60
m)	Storeperson	3	929.00
n)	Screen Printing:		
	(i) Stencil Preparer	5	994.20
	(ii) Power Driven Screen Printing Machine Operator	3	929.00
	(iii) Screen attendant	2	918.60
o)	An employee not otherwise specified	1	918.60

The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.

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

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

**61. Prospector and AvonLink on Train Customer Service Officers Award**

**Clause 4.3 - WAGE RATES: Delete subclause 4.3.1 of this clause and insert the following in lieu thereof:**

4.3.1 The following rates of pay shall apply to the classifications contained in 4.2 - Classification Structure:

Classification Levels	Base Rate - per week (Full time)
Customer Service Officer Level 1 (Trainee)	\$918.60

Customer Service Officer Level 2(Prospector)	\$1055.40
Customer Service Officer Level 3(AvonLink - without buffet)	\$1055.40
Customer Service Officer Level 4	\$1093.80
Customer Service Officer Level 5(AvonLink - with buffet)	\$1093.80

## 62. Radio and Television Employees' Award

### Clause 29. - WAGES: Delete subclause (1) of this clause and insert the following in lieu thereof:

(1) The minimum rates of wage payable weekly to employees covered by this award shall be as follows:

(a)	Adults	Rate Per Week	Arbitrated Safety Net Adjustment	Total Rate Per Week
	Radio-Television Serviceperson (Grade 1)	448.20	610.00	1058.20
	Radio-Television Serviceperson	418.90	600.50	1019.40
	Car Radio Installer	353.30	579.20	932.50
	Antenna and/or Television Installer	353.30	579.20	932.50
	Assembler	340.60	578.00	918.60

(b) The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.

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

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

## 63. Restaurant, Tearoom and Catering Workers' Award

### Clause 21. - WAGES: Delete subclause (1) of this clause and insert the following in lieu thereof:

(1) The following shall be the minimum fortnightly rates of wage payable to full-time employees covered by this award –

Level	Classification	\$ per Fortnight
	Introductory	1837.20
Level 1	Food & Beverage Attendant Grade 1	
	Kitchen Attendant Grade1	
	Guest Services Grade 1	1837.20
	Gardener	
	General Hand	
	Yardman	
Level 2	Food & Beverage Attendant Grade 2	
	Cook Grade 1	
	Kitchen Attendant Grade 2	
	Night Porter	1899.20
	Storeperson Grade 1	
	Doorperson/Security Officer Grade 1	
	Guest Services Grade 2	

Level 3	Food & Beverage Attendant Grade 3	
	Cook Grade 2	
	Kitchen Attendant Grade 3	
	Guest Services Grade 3	1944.70
	Storeperson Grade 2	
	Timekeeper/Security Officer Grade 2	
	Forklift Driver	
	Handyperson	
Level 4	Cook Grade 3	
	Storeperson Grade 3	2034.00
	Food & Beverage Attendant Grade 4 (Tradesperson)	
	Guest Service Grade 4	
Level 5	Cook Grade 4	
	Food & Beverage Supervisor	2144.80
	Guest Services Supervisor	
Level 6	Cook Grade 5	2195.00

#### 64. Retail Pharmacists' Award, 2004

**Clause 4.2 - WAGES: Delete subclause 4.2.1 of this clause and insert the following in lieu thereof:**

##### 4.2.1 Classifications

##### Award Rate Per Week \$

##### Pharmacist Manager

(a) Grade 3	1617.70
(b) Grade 2	1534.90
(c) Grade 1	1451.90

##### Pharmacist-in-Charge

(a) Grade 2	1396.50
(b) Grade 1	1368.70

##### Pharmacist

1291.10

##### Trainee - First Half of traineeship

1017.00

##### Trainee - Second Half of traineeship

1098.70

##### Pharmacy Students

First Year	918.60
Second Year	918.60
Third Year	962.40
Fourth Year	988.20

Note: Should an adult be employed as a first year student then that employee shall receive no less than the wage prescribed in 4.1.2.

#### 65. The Rock Lobster and Prawn Processing Award 1978

**Clause 7. - WAGES: Delete subclause (1) of this clause and insert the following in lieu thereof:**

(1) Adult Employees

The following shall be the minimum weekly rate of wage payable to employees covered by this award, with effect from the beginning of the first pay period commencing on or after 1 July 2024.

Classifications	Base Rates Per Week	Arbitrated Safety Net Adjustments	Total Award Rate Per Week
	\$	\$	\$
(a) Grader	325.95	592.65	918.60
(b) Process Employee			918.60

The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.

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

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

**66. Rope and Twine Workers' Award**

**Clause 19. - WAGES: Delete subclause (1) of this clause and insert the following in lieu thereof:**

	Rate	Arbitrated Safety Net Adjustment	Total Rate
	\$	\$	\$
(1) Adult Employees			
Rope layer on heavy type strand machine			918.60
Rope layer (other) in walk with traveller			918.60
Rope splicer on driving ropes and springs			918.60
Combination spinning and spooling machine operator			918.60
Rope house machinist			918.60
Feeder on first spreader			918.60
Oiler and/or belt repairer			918.60
Employees lumping, loading and unloading hemp			918.60
All other machine operators or employees feeding or taking from machines			918.60
All others			918.60

**67. Saw Servicing Establishments Award No. 17 of 1977**

**Clause 28. - WAGES: Delete subclause (1) of this clause and insert the following in lieu thereof:**

(1) Rate Per Week:

The minimum rate of wages payable to employees employed in classifications contained in this subclause shall be as follows:

	Base Rate \$	Arbitrated Safety Net Adjustment \$	Total Minimum Award Rate (38 Hours) \$
(a) Saw Doctor Special Skills	438.10	562.30	1000.40
(b) Saw Doctor	417.20	557.20	974.40
(c) Saw Filer	385.50	549.70	935.20
(d) Factory Hand			918.60

**68. Security Officers' Award**

**Clause 21. - CLASSIFICATION STRUCTURE AND WAGE RATES: Delete subclause (3) of this clause and insert the following in lieu thereof:**

- (3) A probationary Security Officer shall be paid 97.07% of the weekly wage rate prescribed for a Security Officer - Level 1 or Security Officer - Level 2 whichever is applicable and, if the officer is a casual, the casual loading referred to in subclause (3)(b) of Clause 6. – Types of Employment in the award.

**69. Sheet Metal Workers' Award No. 10 of 1973**

**Clause 6. - WAGES AND SUPPLEMENTARY PAYMENT: Delete subclause (1) of this clause and insert the following in lieu thereof:**

- (1) The minimum award rate payable weekly to adult employees (other than apprentices) classified under a defined level as specified in Clause 3. - Definitions, shall be made up of a base rate, plus a supplementary payment and safety net adjustment, giving a total award rate as follows:-

	BASE RATE PER WEEK \$	SUPPLEMENTARY PAYMENT \$	SAFETY NET ADJUSTMENT \$	TOTAL RATE PER WEEK \$
Level C14	284.80	40.60	593.20	918.60
Level C13	299.50	42.60	576.50	918.60
Level C12	319.20	45.40	581.80	946.40
Level C11	337.40	48.10	586.90	972.40
Level C10	365.20	52.00	599.80	1017.00

**70. Show Grounds Maintenance Worker's Award**

**Clause 27. - WAGES: Delete subclause (2) of this clause and insert the following in lieu thereof:**

	Rate Per Week\$	ASNA	TOTAL
(2) (a) Motor Vehicle Drivers -			
Not exceeding 25cwt capacity			918.60
Exceeding 25cwt but not exceeding 3 tons capacity			918.60
Exceeding 3 tons but under 6 tons capacity			918.60
Exceeding 6 tons and over but under 7 tons capacity			918.60
Exceeding 7 tons and over but under 8 tons capacity			918.60
(b) Machine Drivers -			
Operator-powered roller under 8 tons			918.60
Operator-powered roller 8 tons and over			918.60
Operator-powered vibrating roller under 4 tons			918.60
Operator-powered vibrating roller 4 tons and over			918.60
Operator-powered road roller pneumatic tyred 8 tons and over			918.60
Operator-tractor-pneumatic tyred without power operated attachments -			
(i) Classes 1 and 2			918.60
(ii) Classes 3, 4, 5 and 6 (including tractors tilting or a one man hitch trailer)			918.60
(iii) Over Class 6			918.60

	Operator-tractor-pneumatic tyred with power operated attachments -	
	(i) Classes 1 and 2	918.60
	(ii) Classes 3, 4, 5 and 6 (not including tractors tilting or a one man hitch trailer)	918.60
	(iii) Over Class 6 and up to and including 230 engine horsepower	918.60
	(iv) Over Class 6 with power operated attachments in excess of 230 engine horsepower	918.60
	Operator - Graders -	
	(i) Drawn Graders	918.60
	(ii) Grader - power operated below 50 net engine horsepower	918.60
	(iii) Grader - power operated 50 to 100 net engine horsepower	918.60
	(iv) Grader - power operated above 100 net engine horsepower	918.60
	Operator of portable petrol driven crosscut or circular saw	918.60
(c)	Gardeners -	
	Propagator	918.60
	Nurserymen, first class gardeners appointed as such by the employer and street tree pruners	918.60
	Gardeners planting out and attending flower beds and assisting nurserymen	918.60
	Hand power motor mower	918.60
	Hand rotary hoe and operators of other machines	918.60
	Sprayers or fumigators of noxious weeds and/or pests vermin, mosquitoes, or ants or workers employed in destroying blackberry bush or boxthorn -	
	(i) Hand operated	918.60
	(ii) Power Operated	918.60
(d)	General -	
	Track hands	918.60
	Machine man (jackhammer)	918.60
	Concrete slab layer	918.60
	Concrete kerb layer	918.60
	Concrete finisher	918.60
	Others	918.60

The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.

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

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

**71. Soap and Allied Products Manufacturing Award**

**Clause 25. - WAGES: Delete subclause (1) of this clause and insert the following in lieu thereof:**

- (1) The minimum weekly rate of wage payable to an employee covered by this award shall include the base rate plus the Arbitrated Safety Net Adjustment expressed hereunder:

	Base Rate\$	Arbitrated Safety Net Adjustments\$	Minimum Rate\$
Adult employees:			
Product maker - soap crutcher, liquids powders and pastes, detergents and cleaners polishes and stains, toilet soaps	343.60	576.80	920.40
Assistant Product Maker	335.60	583.00	918.60
General Hand other than above	327.50	591.10	918.60

**72. Theatrical Employees Entertainment, Sporting and Amusement Facilities (Western Australian Government) Award 1987**

**Schedule A – RATES OF PAYMENT: Delete this schedule and insert the following in lieu thereof:**

SCHEDULE A – RATES OF PAYMENT

Classification	Hourly Rate of Pay			TOTAL
	<u>Column A</u> \$	<u>Column B</u>	<u>ASNA</u>	
(1) Attendant - General Duties: Cloakroom Attendant Gate Attendant Parking Attendant Turnstile Attendant Usher				24.17
(2) Barrier Attendant (Racing) Change Room Attendant Curtain Attendant Door Attendant Fence Attendant Kennel Attendant/Dog Leader Ride Operator Stalls Attendant (Racing) Ticket Collector/Examiner Track Attendant				24.17
(3) Scoreboard Operator Scratching Board Operator/ Writer (Racing)				24.17
(4) Parking Fee Collector Kennel Supervisor Programme Seller				24.17
(5) Change Cashier Gate Keeper Ticket/Token Seller Turnstile Operator				24.17
(6) Scales – Assistant Starter (Racing)				24.17
(7) Supervisor of less than 10 employees				24.17

- (8) Supervisor of 10 or more employees 24.17

The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.

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

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

The State Wage Case increase is to be applied to the rates of pay in this award by dividing the flat dollar increase by 38 (and round to the nearest cent)

**73. Timber Workers Award No. 36 of 1950**

**Clause 52. - RATES OF PAY: Delete subclause (3) of this clause and insert the following in lieu thereof:**

- (3) Wages

The minimum rate of wage for employees covered by this award, excluding those employees provided for in subclause (4) hereof, shall be:

- (a) Timber Industry Employee:

	RATES	ASNA\$	TOTAL RATES
Group 1	349.40	569.20	918.60
Group 2	366.10	552.50	918.60
Group 3	388.60	557.80	946.40
Group 4	409.50	562.90	972.40
Group 5	441.20	575.80	1017.00
Group 6	462.10	582.70	1044.80

- (b) The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.

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

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

**74. Timber Yard Workers Award No. 11 of 1951**

**Clause 29. - WAGES: Delete subclause (1) of this clause and insert the following in lieu thereof:**

- (1) The minimum rates of wages payable to employees employed in classifications contained in subclause (2) of this clause shall be as follows:

Broadbanded Groups	Base Rate	Supplementary Payment	Arbitrated Safety Net Adjustment	Total Minimum Weekly Rate (38 Hours)
	\$	\$	\$	\$
1	284.80	40.60	593.20	918.60
2	299.50	42.50	576.60	918.60
3	319.20	45.40	581.80	946.40
4	337.40	48.10	586.90	972.40
5	365.20	52.00	599.80	1017.00
6	383.50	54.60	606.70	1044.80

**75. Vehicle Builders' Award 1971**

**Clause 9. - WAGES AND SUPPLEMENTARY PAYMENTS: Delete subclause (1) of this clause and insert the following in lieu thereof:**

- (1) The minimum award rate payable weekly to adult employees (other than apprentices) classified under a defined level as specified in Clause 6. - Definitions of this Award, shall be made up of a base rate, plus a supplementary payment and safety net adjustment, giving a total weekly award rate as follows:

CLASSIFICATION Employees (expressed as a percentage of the Vehicle Building Tradesperson Level I Rate):	Adult Rate	Base Rate	Supple- mentary Payment	Safety Net Adjustment	Total Rate Per Week	Vehicle Building Trades- person Level 1 %
	\$	\$	\$	\$	\$	%
Advanced Tradesperson/Production Technician						
Vehicle Building		471.70	70.60	638.00	1180.30	130.0
Vehicle Building Tradesperson - Level IV		417.30	62.50	617.70	1097.50	115.0
Vehicle Building Tradesperson - Level III		399.10	59.80	613.30	1072.20	110.0
Vehicle Building Tradesperson - Level II		381.00	57.10	606.70	1044.80	105.0
Vehicle Building Tradesperson - Level I		362.90	54.30	599.80	1017.00	100.0
Vehicle Builder - Level IV		335.30	50.20	586.90	972.40	92.4
Vehicle Builder - Level III		317.10	47.50	581.80	946.40	87.4
Vehicle Builder - Level II		297.60	44.50	576.50	918.60	82.0
Vehicle Builder - Level I		283.00	42.40	593.20	918.60	78.0

**76. Watchmakers' and Jewellers' Award, 1970**

**Clause 8. - WAGES: Delete subclause (1) of this clause and insert the following in lieu thereof:**

- (1) The minimum weekly rate of wage payable to adult employees covered by this award shall include the base rate plus the arbitrated safety net adjustment expressed hereunder, from the beginning of the first pay period commencing on or after 1 July 2024.

	Base Rate \$	Supple- mentary Payment \$	Arbitrated Safety Net Adjustments \$	Minimum Rates \$
(a) Watchmaker, Clockmaker watch and clock repairer	365.20	52.00	599.80	1017.00
(b) Jeweller, setter, general jeweller's tradesman and engraver	365.20	52.00	599.80	1017.00
(c) Process Worker % of trade				
Grade 1 78				918.60
Grade 2 80	292.16	36.80	589.64	918.60
Grade 3 85	310.42	40.60	578.58	929.60

**77. Wine Industry (WA) Award 2005**

**Clause 4.2 – WAGES: Delete subclause (1) of this clause and insert the following in lieu thereof:**

- (1) Adult Employees  
The weekly minimum rate of pay will be as follows:

Grade	Base Rate \$	Relativity %	Safety Net Adjustment \$	Supplementary Payment \$	Total Weekly Rate \$
1	284.80	78.0	593.20	40.60	918.60
2	299.50	82.0	586.30	83.70	969.50
3	319.20	87.4	593.30	94.00	1006.50
4	337.40	92.4	605.70	97.80	1040.90
5	365.20	100.0	612.60	99.30	1077.10



## AWARDS/AGREEMENTS AND ORDERS—Variation of—

2025 WAIRC 00214

**APPLICATION PURSUANT TO SECTION 80BH TO NAME LOCAL GOVERNMENT, RACING AND CEMETERIES UNION (WA) AS A PARTY TO THE CITY OF GOSNELLS WASTE COLLECTION ENTERPRISE AGREEMENT 2022**

<b>PARTIES</b>	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION LOCAL GOVERNMENT, RACING AND CEMETERIES UNION (WA)	<b>APPLICANT</b>
	-v-	
	CITY OF GOSNELLS	
	TRANSPORT WORKERS UNION WESTERN AUSTRALIAN MUNICIPAL, ADMINISTRATIVE, CLERICAL AND SERVICES UNION OF EMPLOYEES	<b>RESPONDENTS</b>
<b>CORAM</b>	SENIOR COMMISSIONER R COSENTINO	
<b>DATE</b>	FRIDAY, 4 APRIL 2025	
<b>FILE NO/S</b>	APPL 10 OF 2025	
<b>CITATION NO.</b>	2025 WAIRC 00214	

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**Result** Order issued

**Representation**

<b>Applicant</b>	Mr K Trainer
<b>First Respondent</b>	Mr T Hastings
<b>Second Respondent</b>	Mr L Slaney
<b>Third Respondent</b>	Mr R Knox

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*Order*

WHEREAS the Local Government, Racing and Cemeteries Employees Union (WA) (**LGRCEU**) has applied to the Commission for an order pursuant to s 80BH of the *Industrial Relations Act 1979* (WA) naming the LGRCEU as a party to the *City of Gosnells Waste Collection Enterprise Agreement 2022*;

AND WHEREAS the City of Gosnells is the employer party to the Agreement;

AND WHEREAS pursuant to s 80BG, the Agreement is taken to refer to the Western Australian Municipal, Administrative, Clerical and Services Union (**WASU**) and the Transport Workers Union (WA) (**TWU**);

AND WHEREAS the employer, the TWU and the WASU have each been served with a copy of LGRCEU's application;

AND WHEREAS the WASU has filed a Response indicating that it supports the LGRCEU's application;

AND WHEREAS the City of Gosnells has filed a Response indicating that it supports the LGRCEU's application;

AND WHEREAS the TWU has not responded to nor opposed the application;

AND WHEREAS the parties were content for the matter to be determined on the papers;

AND WHEREAS the Commission is satisfied that:

- (a) The LGRCEU is an industrial association of employees registered under s 67 of the Act; and
- (b) The Agreement is a new State instrument under s 80BB of the IR Act.

AND WHEREAS the Commission is of the opinion that the Agreement applies to employees who are eligible to be members of the LGRCEU;

NOW THEREFORE, the Commission, pursuant to the powers conferred under s 80BH of the Act, hereby orders –

THAT the Local Government, Racing and Cemeteries Employees Union (WA) be named party to the *City of Gosnells Waste Collection Enterprise Agreement 2022*.

[L.S.]

(Sgd.) R COSENTINO,  
Senior Commissioner.

2025 WAIRC 00351

**REVIEW OF COMMERCIAL TRAVELLERS AND SALES REPRESENTATIVES' AWARD 1978 PURSUANT TO S  
40B OF THE INDUSTRIAL RELATIONS ACT 1979 (WA)**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**CITATION** : 2025 WAIRC 00351  
**CORAM** : SENIOR COMMISSIONER R COSENTINO  
**HEARD** : TUESDAY, 10 JUNE 2025  
**DELIVERED** : THURSDAY, 12 JUNE 2025  
**FILE NO.** : APPL 39 OF 2023  
**BETWEEN** : COMMISSION'S OWN MOTION  
 Applicant  
 AND  
 (NOT APPLICABLE)  
 Respondent

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**CatchWords** : Industrial Law (WA) – Commission’s own motion – Section 40B(1) of the *Industrial Relations Act 1979* (WA) – Award variation – *Commercial Travellers and Sales Representatives' Award 1978* – 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)  
*Long Service Leave Act 1958* (WA)  
*Minimum Conditions of Employment Act 1993* (WA)

**Result** : Award Varied

**Representation:**

Mr R Dobson on behalf of the Hon. Minister for Industrial Relations

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

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

*City of Cockburn v Western Australia Municipal, Administrative, Clerical and Services Union of Employees (WASU) & Ors* [2023] WAIRC 00787; (2023) 103 WAIG 1723

*Reasons for Decision*

- 1 The Western Australian Industrial Relations **Commission** of its own motion, initiated this matter for variation of the *Commercial Travellers and Sales Representatives' Award 1978* 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 of the IR Act;
  - (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, and the United Workers **Union** 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 Mr Dobson on behalf of 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 10 June 2025 for the purpose of affording interested persons an opportunity to be heard in relation to those proposed variations.
- 7 The Minister indicated support for the proposed variations with some further minor variations to correct typographical errors.
- 8 I determined that it is appropriate to vary the Award by deleting all current provisions and substituting the Award in its entirety. I issued Order [2025] WAIRC 00344 giving immediate effect to the Award variations.
- 9 In the following paragraphs, I set out briefly the rationale for the Award variations.

**Clause 1 – Title**

- 10 The title of the Award has been modernised.
- 11 The year of the Award has been removed from its title, consistent with contemporary practice.

**Clause 2 - Arrangements**

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

**Old Clause 5 - Term**

- 13 This clause has been deleted as it is now obsolete.

**New Clause 5 – Definitions**

- 14 This clause has been renumbered from clause 6.
- 15 The clause has been rearranged so the definitions are in alphabetical order.
- 16 Definitions have been incorporated for ‘ordinary hourly rate’, and to define ‘Union’ as the United Workers Union (WA).
- 17 The reference to the Western Australia Shop Assistants’ and Warehouse Employees Industrial Union of Workers has been updated to reflect that Union’s current name as the Shop, Distributive and Allied Employees’ Association of Western Australia.
- 18 The defined term ‘Sales Representative’ replaces ‘Commercial Traveller/Sales Representative.’

**Clause 6 – Contract of Employment**

- 19 This clause has been renumbered from clause 13 which was previously titled ‘Contract of Employment and Termination’.
- 20 Provisions relating to termination are now contained in a separate clause 8.
- 21 Definitions for full-time, part-time and casual employees are incorporated. The relevant parts of old clause 22 – Part-Time Workers now appear in this clause.
- 22 The clause now requires written agreement about the number of days a part-time employee is required to work.

**Clause 7 – Flexible Working Arrangements Requests**

- 23 This is a new clause reflecting the ability to make a request for flexible work arrangements in line with the provisions of the MCE Act.

**Clause 8 – Termination of Employment**

- 24 This clause substantively replicates the provisions about termination previously contained in clause 13 of the Award.
- 25 Reference to an employee forfeiting pay where notice of termination is not given is removed, as being potentially inconsistent with s 17C of the MCE Act.

**Clause 9 – Introduction of Change**

- 26 The old clause 25 has been moved to clause 9 without substantive changes.

**Clause 10 – Redundancy**

- 27 The old clause 26 has been moved to clause 10.
- 28 The structure of the clause has been changed slightly so that the exclusion for employers who engage less than 15 employees applies only to the severance pay provisions, consistent with the *Termination, Change and Redundancy General Order* [2005] WAIRC 01715; (2005) 85 WAIG 1681 (General Order).
- 29 The severance pay provisions have also been amended to align with the General Order, as the existing clause contained less favourable provisions compared with the General Order in some respects.
- 30 The redundant provisions about superannuation benefits have been removed. These provisions were likely inconsistent with the General Order. Reference to the Commonwealth Employment Service, which no longer exists, has been replaced by reference to Centrelink.

- 31 References to 'transmission of business' have been changed to the more contemporary term 'transfer of business'.
- 32 The exclusion for employees whose employment is terminated for 'malingering, inefficiency or neglect of duty' has been removed as these words do not accurately describe the criteria for summary dismissal.

**Clause 11 – Wages**

- 33 This clause has been renumbered from clause 7.
- 34 References to arbitrated safety net adjustments have been removed as obsolete and unnecessary.
- 35 Minor changes have been made to simplify the structure of the clause.
- 36 The probationary rates of pay have been varied to ensure they are not less than the statutory minimum.

**Clause 12 – Overtime and Penalty Rates**

- 37 The title of this clause is changed from 'Special Rates' and is renumbered from clause 8.
- 38 The overtime rates have been changed to be expressed as a percentage of the ordinary hourly rate. The application of overtime rates is extended to all work in excess of ordinary hours.

**Clause 13 – Supported Wage System**

- 39 This clause replaces the old clause 20 – Aged and Infirm Workers which was outdated and discriminatory.

**Clause 14 – Superannuation**

- 40 This clause replaces clause 23 which was titled 'Occupational Superannuation'. The old clause was out-of-date and inconsistent with Commonwealth superannuation legislation in many respects. Those outdated provisions have been removed.

**Clause 16 – Vehicle Provisions & Clause 17 – Air Conditioning**

- 41 These clauses have been renumbered from clause 10 and clause 19. The motor vehicle allowance rates have been increased for CPI (Perth-Transport subcategory) since the rates were last revised in 2006. The air-conditioning allowance of \$4.65 per week previously contained in old clause 19 has been incorporated into the motor vehicle allowance, by increasing the weekly allowance by this amount.

**Clause 18 – Payment of Wages**

- 42 This clause has been renumbered from clause 11. Minor variations have been made to simplify the clause and remove reference to payment of wages by cheque.

**Clause 19 – Records**

- 43 This clause has been renumbered from clause 12 and is simplified by referring to the relevant provisions of the IR Act about keeping records, providing pay slips and providing access for inspection.

**Clause 20 – Public Holidays**

- 44 Variations have been made to update the Award in line with the public holiday provisions of the MCE Act, including reference to Easter Sunday as a public holiday.

**Clause 21 – Annual Leave**

- 45 Annual leave was previously dealt with in clause 15. It was inconsistent with the MCE Act in several respects.
- 46 The new clause aligns leave provisions with the MCE Act and retains the existing provisions for 17.5% annual leave loading, and additional leave for Country Sales Representatives who work away on weekends.

**Clause 22 – Personal Leave**

- 47 Sick leave was previously dealt with in clause 16. It was inconsistent with the MCE Act provisions about personal leave in several respects.
- 48 Clause 22 is now aligned with the personal leave provisions of the MCE Act.
- 49 The existing provisions about replacement of annual leave with personal leave, and transferring leave balances in circumstances of a transfer of business are retained.

**Clause 23 – Bereavement Leave**

- 50 This clause is renumbered from clause 17. The existing provisions were inconsistent with the MCE Act in several respects.
- 51 The Award has been updated in line with the provisions of the MCE Act.

**Clause 24 – Long Service Leave**

- 52 This clause is renumbered from clause 18.
- 53 The clause has been updated to replace the reference to the Western Australian Industrial Gazette as a source of long service leave entitlements, and in lieu, refer to the *Long Service Leave Act 1958* (WA).

**Clause 25 – Family and Domestic Violence Leave**

- 54 This is a new clause. It incorporates the provisions of the *Fair Work Act 2009* (Cth) (FW Act) and the MCE Act concerning paid and unpaid family and domestic violence leave.

**Clause 26 – Parental Leave**

- 55 This is a new clause. It incorporates the provisions of the FW Act concerning parental leave. State system employers and employees are subject to the National Employment Standards about parental leave under Division 5 of Part 2-2 of the FW Act because of Part 6-3 of the FW Act.

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

- 56 This clause replaces ‘Appendix – Resolution of Disputes Requirement’ of the Award. Redundant provisions of the Appendix have been removed, without altering the substantive scheme of the dispute resolution mechanism.

#### **Schedule 1**

- 57 Only the title of this schedule has changed. It was called ‘Schedule of Respondents’. It is now more accurately called ‘Schedule 1 – Industries and Respondents’, noting that the scope clause cross-references the industries listed in the Schedule.

#### **Other Changes**

- 58 Clause 2A ‘State Wage Case Principles - September 1989’ has been deleted as being obsolete.
- 59 Former clause 24 ‘Enterprise Agreements’ has been deleted as it was likely invalid, being contrary to the principles set out in *City of Cockburn v Western Australia Municipal, Administrative, Clerical and Services Union of Employees (WASU) & Ors* [2023] WAIRC 00787; (2023) 103 WAIG 1723.
- 60 Gendered language has been removed.
- 61 The word ‘worker’ has been replaced with the word ‘employee’ throughout the Award for consistency.
- 62 Clauses have been renumbered and cross-referencing updated accordingly.
- 63 The terms ‘Commercial Traveller’ and ‘Country Traveller’ have been replaced with ‘Sales Representative’ and ‘Country Sales Representative’ wherever they appear.
- 64 Percentages and numbers expressed in words have been replaced by numerals and symbols where appropriate.

#### **Order**

- 65 The variations contained in the schedule to these reasons took immediate effect, in line with the Order issued [2025] WAIRC 00344.

66

#### Schedule

Delete the entire contents of the *Commercial Travellers and Sales Representatives' Award 1978* (with the exception of the variation record table, which shall remain annexed to the Award marked as superseded and struck through) and insert the following in lieu thereof:

#### **Commercial Sales Representatives' Award (WA)**

#### PART 1 – GENERAL

#### 1. - TITLE

This award shall be known as the Commercial Sales Representatives' Award.

#### 1B. - MINIMUM ADULT AWARD WAGE

- (1) No employee aged 21 or more shall be paid less than the minimum adult award wage unless otherwise provided by this clause.
- (2) The minimum adult award wage for full-time employees aged 21 or more working under an award that provides for a 38-hour week is \$918.60 per week.  
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.  
The minimum adult award wage is payable from the beginning of the first pay period commencing on or after 1 July 2024.
- (3) The minimum adult award wage is deemed to include all State Wage order adjustments from State Wage Case decisions.
- (4) Unless otherwise provided in this clause adults 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.
- (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 *Minimum Conditions of Employment Act 1993*.
- (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 *Minimum Conditions of Employment Act 1993*.

- (7) Liberty to apply is reserved in relation to any special category of employees not included here or otherwise in relation to the application of the minimum adult award wage.
- (8) Subject to this clause the minimum adult award wage shall –
- (a) Apply to all work in ordinary hours.
  - (b) Apply to the calculation of overtime and all other penalty rates, superannuation, payments during any period of paid leave and for all purposes of this award.
- (9) **Minimum Adult Award Wage**
- The rates of pay in this award include the minimum weekly wage for employees aged 21 or more payable under the 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.
- Increases under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset the minimum wage.
- (10) **Adult Apprentices**
- (a) Notwithstanding the provisions of this clause, the minimum adult apprentice wage for a full-time apprentice aged 21 years or more working under an award that provides for a 38-hour week is \$762.80 per week.
  - (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.
  - (c) The minimum adult apprentice wage is payable from the beginning of the first pay period commencing on or after 1 July 2024.
  - (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.
  - (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.
  - (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.

## 2. - ARRANGEMENT

### PART 1 – GENERAL

1. Title
- 1B. Minimum Adult Award Wage
2. Arrangement
3. Scope
4. Area
5. Definitions

### PART 2 – EMPLOYMENT RELATIONSHIP

6. Contract of Employment
7. Flexible Working Arrangements
8. Termination of Employment
9. Introduction of Change
10. Redundancy

### PART 3 – WAGES AND ALLOWANCES

11. Wages
12. Overtime and Penalty Rates
13. Supported Wage System
14. Superannuation
15. Expenses and Accommodation
16. Vehicle Provisions
17. Air Conditioning
18. Payment of Wages
19. Records

### PART 4 – LEAVE

20. Public Holidays
21. Annual Leave
22. Personal Leave
23. Bereavement Leave
24. Long Service Leave
25. Family and Domestic Violence Leave
26. Parental Leave

### PART 5 – OTHER

27. Union Notices and Posting of Award  
28. Dispute Resolution

Schedule 1 – Industries and Respondents

3. - SCOPE

This award shall apply to all employees employed in the callings listed in clause 11 - Wages by employers engaged in the industries set out in Schedule 1 to this award.

4. - AREA

This award shall operate throughout the State of Western Australia.

5 - DEFINITIONS

- (1) “Country Sales Representative” means a Sales Representative who spends at least three nights each week away from their normal place of residence but shall not include an employee transferred to a “country residence”.
- (2) “Ordinary hourly rate” means the applicable weekly rate of pay specified under clause 11 - Wages divided by 38.
- (3) “Probationary Sales Representative” shall mean an employee engaged in the occupation of a Sales Representative, but who has had less than nine months' experience as a Sales Representative.
- (4) “Sales Representative” shall mean an employee who is employed:
- (a) away from or substantially away from the employer's place of business; and
  - (b) wholly or mainly for the purpose of soliciting orders or promoting business;
- but shall not include:
- (i) persons selling Motor Vehicles or attachments or Motor Cycles;
  - (ii) persons eligible to be members of the Shop, Distributive and Allied Employees' Association of Western Australia, in accordance with the rules of that union as they existed on 1st March, 1979; or
  - (iii) persons employed in the calling of Motor Vehicle Drivers wholly or mainly for the purpose of delivering goods to retail establishments.
- (5) “Union” means the United Workers Union (WA).

PART 2 – EMPLOYMENT RELATIONSHIP

6. - CONTRACT OF EMPLOYMENT

- (1) An employee will be engaged as a full-time or part-time employee.
- (2) A full-time employee is engaged to work an average of 38 hours per week.
- (3) A part-time employee is an employee engaged to work less than 38 hours per week.
- (4) Before starting full-time or part-time employment, the employer and the employee must agree in writing on the number of days to be worked by the employee.
- (5) Part-time employees are entitled to be paid the ordinary hourly rate for their classification in respect of all hours worked by the employee.

7. - FLEXIBLE WORKING ARRANGEMENT REQUESTS

Employees may make a request for a flexible working arrangement in accordance with s 39F and s 39G of the *Minimum Conditions of Employment Act 1993* (WA). Any such request must be dealt with and determined in accordance with Part 4A of the *Minimum Conditions of Employment Act 1993* (WA).

8. - TERMINATION OF EMPLOYMENT

- (1) An employer must give the employee written notice of termination in accordance with the following table:
- | <u>Period of Continuous Service</u>         | <u>Period of Notice</u> |
|---|-------------------------|
| Not more than 3 years                       | 2 weeks                 |
| More than 3 years but not more than 5 years | 3 weeks                 |
| More than 5 years                           | 4 weeks                 |
- (2) Employees over 45 years of age with two or more years of continuous service at the time of termination, shall receive an additional week's notice.
- (3) Where the relevant notice is not provided, the employee shall be entitled to payment in lieu. Provided that employment may be terminated by part of the period of notice and part payment in lieu.
- (4) In calculating any payment in lieu of notice, the employer must pay the employee an amount that is equal to, or exceeds, the total of all amounts that, if the employee's employment had continued until the end of the required notice period, the employer would have become liable to pay to the employee because of the employment continuing during that period. That total must be worked out on the basis of:
- (a) the employee's ordinary hours of work (even if they are not standard hours); and
  - (b) the amounts ordinarily payable to the employee in respect of those hours, including for example, allowances, loadings and penalties; and

- (c) any other amounts payable under the employee's contract of employment.
- (5) The period of notice in this clause shall not apply in the case of dismissal for serious misconduct, that is, misconduct of a kind such that it would be unreasonable to require the employer to continue the employment during the notice period.
- (6) Notice of Termination by Employee:  
Two weeks' notice shall be necessary for an employee to terminate the engagement.

9. - INTRODUCTION OF CHANGE

- (1) Employer's Duty to Notify
  - (a) Where an employer has made a definite decision to introduce major changes in production, program, 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 the Union.
  - (b) "Significant effects" include termination of employment, major changes in the composition; operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities; promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and restructuring of jobs. Provided that where the award makes provision for alteration of any of the matters referred to herein, an alteration shall be deemed not to have significant effect.
- (2) Employer's Duty to Discuss Change
  - (a) The employer shall discuss with the employees affected and the Union inter alia, 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/or their Union in relation to the changes.
  - (b) The discussion shall commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in subclause (1)(a) hereof.
  - (c) For the purpose of such discussion, the employer shall provide 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.

10. - REDUNDANCY

- (1) Discussions Before Terminations:
  - (a) Where the 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 employees directly affected and with the Union.
  - (b) The discussions shall take place as soon as is practicable and shall cover, amongst other matters, the reasons the proposed terminations are required, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any terminations on the employees concerned.
  - (c) For the purposes of the discussion the employer shall, as soon as practicable, provide in writing to the employees concerned and the Union, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of employees normally employed and the period over which the terminations are likely to be carried out.

Provided that the employer shall not be required to disclose confidential information; the disclosure of which would be detrimental to the employer's interests.

- (2) Transfer to Lower Paid Duties  
Where an employee is transferred to lower paid duties for reasons set out in subclause (1) above, the employee shall be entitled to the same period of notice of transfer as they would have been entitled to if they had been terminated, and the employer may 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 rate for the number of weeks of notice still owing.

- (3) Severance Pay  
This subclause (3) applies to employers who engage 15 or more employees at the time of any redundancies.  
In addition to the period of notice provided in clause 8. – Termination of Employment, a permanent employee whose employment is terminated for reasons set out above shall be entitled to the following amount of severance pay in respect of a continuous period of service -

Period of continuous service severance pay	
less than 1 year	nil
1 year but less than 2 years	4 weeks' pay
2 years but less than 3 years	6 weeks' pay
3 years but less than 4 years	7 weeks' pay

4 years but less than 5 years	8 weeks' pay
5 years but less than 6 years	10 weeks' pay
6 years but less than 7 years	11 weeks' pay
7 years but less than 8 years	13 weeks' pay
8 years but less than 9 years	14 weeks' pay
9 years but less than 10 years	16 weeks' pay
10 years and over	12 weeks' pay

'Weeks' pay' means the ordinary time rate of pay for the employee concerned.

Provided that the severance payments shall not exceed the amount which the employee would have earned if employment with the employer had proceeded to the employee's normal retirement date.

(4) Employee Leaving During Notice

An employee whose employment is terminated for reasons set out in subclause (1) above 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 in accordance with clause 8 – Termination of Employment.

(5) Alternative Employment

The employer in a particular redundancy case, may make an application to the Commission to have the general severance pay prescription varied if the employer obtains acceptable alternative employment for an employee.

(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) Notice to Centrelink

Where a decision has been made to terminate the services of 15 or more employees in the circumstances outlined in subclause (1) above, the employer shall notify Centrelink thereof as soon as possible giving relevant information, including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

(8) Transfer of Business

(a) Where a business is transferred from one employer (in this subclause called "the old employer") to another employer (in this subclause called "the new employer") and an employee who at the time of such transfer was an employee of the old employer in that business becomes an employee of the new employer:

(i) The continuity of the employment of the employee shall be deemed not to have been broken by reason of such transfer, and

(ii) The period of employment which the employee has had with the old employer or any prior transfer shall be deemed to be service of the employee with the new employer.

(b) In this subclause "business" and "transfer" has the same meaning and effect as in the *Long Service Leave Act 1958 (WA)*.

(9) 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 the employer 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.

(10) Employees Exempted

This clause shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, or in cases where employees are engaged for a specific period of time or for a specified task or tasks.

(11) Incapacity to Pay

An employer in a particular redundancy case may make an application to the Commission to have the general severance pay prescription varied on the basis of the employer's incapacity to pay.

PART 3 – WAGES AND ALLOWANCES

11. - WAGES

(1) The following shall be the minimum weekly rates of wages payable to full-time employees covered by this award with effect from the beginning of the first pay period commencing on or after 1 July 2024.

- |      |                                      |
|------|--------------------------------------|
| (a)  | Award<br>Rate \$                     |
| (i)  | Sales Representative 1017.00         |
| (ii) | Country Sales Representative 1062.80 |
- (b) During the first three months in the industry in which the employer is engaged, an employee classified in (a)(i) or (a)(ii) above, shall be paid 91% of the appropriate rate of pay rounded to the nearest ten cents.
- (c) A Probationary Sales Representative classified in (a)(i) or (a)(ii) above, shall be paid 91% of the appropriate rate of pay rounded to the nearest ten cents.

- (2) Provided that a Sales Representative required by their employer to make periodic visits to country areas which necessitates them staying away from their normal place of residence for three or more nights in any one week, shall be paid as a Country Sales Representative for that week.
- (3) Where an employee is engaged on a "commission only" basis or on a "commission and retainer" basis they shall be paid per week not less than the relevant minimum rate of pay prescribed in this award. Where an employee is employed on a "commission only" or "retainer and commission" basis the period in relation to which commission shall be calculated shall not be more than one month. The balance of commission outstanding after payment of the minimum remuneration as provided for by this clause shall be paid to the employee not later than one week following the last day of the said period.
- At the time of payment of commission each employee shall be furnished with sufficient information to enable the employee to check the correctness of the amount of commission paid.

#### 12. - OVERTIME AND PENALTY RATES

- (1) A full-time or part-time employee directed by the employer to perform any work after 6.00 pm Monday to Friday inclusive, or in excess of 38 hours in a week will be paid at a rate of 150% of the applicable minimum hourly rate set out in clause 11 - Wages.
- (2) An employee required by the employer to attend the employer's show rooms, trade fairs, exhibitions, or agricultural shows or sales conferences, or attend for stock taking purposes after 6.00 p.m. Monday to Friday inclusive, shall be paid at the rate of 150% of the ordinary hourly rate per hour with a minimum payment of two hours. Provided that the minimum payment of two hours shall not apply where the attendance at such functions is contiguous with the usual hours of work.
- (3) An employee required to work on a Saturday, Sunday or on a public holiday prescribed in clause 20 - Public Holidays of this award shall be paid at the rate of 200% of the ordinary hourly rate per hour, with a minimum of three hours payment.

#### 13. - SUPPORTED WAGE SYSTEM

- (1) Definitions
- 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:
- (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.
- (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.
- (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* (Cth), as amended from time to time, or any successor to that scheme.
- (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: [www.jobaccess.gov.au](http://www.jobaccess.gov.au).
- (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.
- (2) Eligibility Criteria
- (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.

- (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.
- (3) Supported Wage Rates
- (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:
- | Assessed Capacity | % of Prescribed Award Rate |
|-------------------|----------------------------|
| 10%               | 10%                        |
| 20%               | 20%                        |
| 30%               | 30%                        |
| 40%               | 40%                        |
| 50%               | 50%                        |
| 60%               | 60%                        |
| 70%               | 70%                        |
| 80%               | 80%                        |
| 90%               | 90%                        |
- (b) Provided that the minimum amount payable must not be less than the amount set by the Western Australian Industrial Relations Commission under s 50A(1)(a)(iii) of the *Industrial Relations Act 1979* (WA).
- (c) Where an employee's assessed capacity is 10%, they must receive a high degree of assistance and support.
- (4) Assessment of Capacity
- (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.
- (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.
- (5) Lodgement of SWS Wage Assessment Agreement
- (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.
- (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.
- (6) Review of Assessment
- 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.
- (7) Other Terms and Conditions of Employment
- 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.
- (8) Workplace Adjustment
- 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.
- (9) Trial Period
- (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.
- (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.
- (c) The minimum amount payable to the employee during the trial period must be no less than the amount set by the Western Australian Industrial Relations Commission under s 50A(1)(a)(iii) of the *Industrial Relations Act 1979* (WA).
- (d) Work trials should include induction or training as appropriate to the job being trialled.

- (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.

#### 14. - SUPERANNUATION

- (1) The *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth) deals with the superannuation rights and obligations of employers and employees.
- (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.
- (3) 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.
- (4) The employer shall notify the employee of the entitlement to nominate a complying superannuation fund or scheme as soon as practicable.
- (5) 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.
- (6) The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by a employee.

#### 15. - EXPENSES AND ACCOMMODATION

- (1) The wages paid are to be exclusive of all reasonable expenses actually incurred in the discharge of the Sales Representative's duties and such expenses shall be paid weekly. Where reasonably ascertainable, the expenses payable under this clause are to be paid in advance.
- (2) Expenses for reasonable hotel or motel accommodation are to be paid to Sales Representatives when in country areas.

#### 16. - VEHICLE PROVISIONS

- (1) (a) Where an employee is required to use a vehicle supplied by their employer, the expenses of operating and maintaining that vehicle shall be borne by the employer.
- (b) Provided that where an employee has incurred a personal insurance excess and as a result the net cost to the employer to restore damage to that employer's vehicle following an accident is greater than otherwise would have been the case, the excess cost shall be met by the employee concerned.
- (2) Where an employee is required by their employer to use their own vehicle in the course of their duties, they shall be paid an allowance not less than that provided for in the table set out in this subclause. Notwithstanding anything contained in this clause, the employer, by agreement with the employee, may make any other arrangement as to car allowance not less favourable to the employee than that provided by this clause.
- (a) Sales Representative:
- (i) Up to 2.5 litre \$242.20 per week plus 24 cents per kilometre.
- (ii) Over 2.5 litre \$294.00 per week plus 28 cents per kilometre.
- (b) Country Sales Representative:
- (i) Up to 2.5 litre - \$290.90 per week plus 24 cents per kilometre.
- (ii) Over 2.5 litre - \$362.20 per week plus 28 cents per kilometre.
- (c) For the purpose of this clause, travelling to and from the employee's home shall be regarded as employer's business.
- (d) The per week allowances prescribed in paragraphs (a) and (b) of this subclause are payable during the employee's absence on paid leave as provided by this award.
- (3) A part-time employee who provides their own vehicle in accordance with subclause (2) of this clause shall be paid 20% of the appropriate per week allowance prescribed in subclause (2) of this clause together with the appropriate per kilometre running cost prescribed therein for each day of employment.

#### 17. - AIR CONDITIONING

Where the employer provides a motor vehicle for use by an employee working under the terms of this award, such motor vehicle shall be fitted with and continue to be fitted with an air-conditioning unit in reasonable operating order.

#### 18. - PAYMENT OF WAGES

- (1) Wages shall be paid at least monthly, at the discretion of the employer.
- (2) As soon as practicable after the date of termination, an employee shall be paid all wages and allowances to which the employee is entitled.
- (3) The method of payment of wages may, at the discretion of the employer, be in cash or by payment into an account, specified by the employee, with a bank or financial institution.

19. - RECORDS

- (1) The employer shall keep records relating to all employees and provide pay slips in accordance with s 49D and s 49DA of the *Industrial Relations Act 1979* (WA).
- (2) The employer must produce its records for inspection in accordance with s 49E of the *Industrial Relations Act 1979* (WA).

## PART 4 – LEAVE

20. - PUBLIC HOLIDAYS

- (1)
  - (a) 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 mentioned in Schedule 1 of the *Minimum Conditions of Employment Act 1993* (WA). Provided that another day may be taken as a holiday by written agreement between the parties in lieu of any of the days mentioned in Schedule 1 of the *Minimum Conditions of Employment Act 1993* (WA). Such agreement must be signed by the employer and the employee.
  - (b) When 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 and when 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.
  - (c) An employer may request that an employee work on a day or part day that is a public holiday if the request is reasonable. The employee may refuse the request if it is not reasonable, or the refusal is reasonable. The factors which determine whether a request or refusal are reasonable are set out in s 30 of the *Minimum Conditions of Employment Act 1993* (WA).
  - (d) When work is performed on any of the days mentioned in paragraph (a) the employee shall be paid in accordance with subclause (3) of clause 12. – Overtime and Penalty Rates for each hour of such work.

21. - ANNUAL LEAVE

- (1) Annual leave is as provided for by the *Minimum Conditions of Employment Act 1993* (WA).
- (2)
  - (a) During a period of annual leave an employee shall be paid a loading of 17.5% calculated on the employee's ordinary wage (excluding commissions).
  - (b) The loading prescribed by this subclause shall not apply to proportionate leave on termination.
- (3) For each four weekends a Country Sales Representative is absent from their home in the course of the employer's business, there shall be added one day to the employee's annual leave. Provided that such additional leave shall not exceed two weeks per annum.

22. - PERSONAL LEAVE

- (1) Personal leave is as provided for in the *Minimum Conditions of Employment Act 1993* (WA).
- (2)
  - (a) Subject to the provisions of this subclause an employee who suffers personal ill health or injury during the time when the employee is absent on annual leave may apply for and the employer shall grant paid personal leave in place of paid annual leave.
  - (b) Application for replacement shall be made within seven days of resuming work and then only if the employee was confined to their place of residence or a hospital as a result of personal ill health or injury for a period of seven consecutive days or more and the employee produces a certificate from a registered medical practitioner that the employee was so confined.
  - (c) Replacement of paid annual leave by paid personal leave shall not exceed the period of paid personal leave to which the employee was entitled at the time the employee proceeded on annual leave and shall not be made with respect to fractions of a day.
  - (d) Where paid personal leave has been granted by the employer in accordance with paragraphs (a), (b) and (c) of this subclause, that portion of the annual leave equivalent to the paid personal leave is hereby replaced by the paid personal leave.
  - (e) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in clause 21 - Annual Leave shall be deemed to have been paid with respect to the replaced annual leave.
- (3) Where a business has been transferred from one employer to another and the employee's employment has been deemed continuous in accordance with the *Long Service Leave Act 1958* (WA), the paid personal leave standing to the credit of the employee at the date of transfer from service with the old employer shall stand to the credit of the employee at the commencement of service with the new employer and may be claimed in accordance with the provisions of this clause.

23. - BEREAVEMENT LEAVE

Bereavement leave is as provided for in the *Minimum Conditions of Employment Act 1993* (WA).

24. - LONG SERVICE LEAVE

The provisions of the *Long Service Leave Act 1958* (WA) shall be deemed to be part of this award.

25. - FAMILY AND DOMESTIC VIOLENCE LEAVE

Family and domestic violence leave is as provided for in Division 7 of Part 2-2 of the *Fair Work Act 2009* (Cth)

and the *Minimum Conditions of Employment Act 1993* (WA).

26. - PARENTAL LEAVE

Parental leave is as provided for in accordance with Division 5 of Part 2-2 of the *Fair Work Act 2009* (Cth).

PART 5 – OTHER

27. - UNION NOTICES AND POSTING OF AWARD

- (1) An employer shall provide a notice board in its establishment upon which an accredited Union representative shall be permitted to post formal Union notices, signed or countersigned by the representative posting them. Any notice posted on such a board not signed or countersigned may be removed by an accredited Union representative or the employer.
- (2) A copy of this award if supplied by the Union shall be allowed to be posted on the notice board referred to in subclause (1) of this clause.

28. - DISPUTE RESOLUTION

- (1) The following procedures shall apply in connection with questions, disputes or difficulties arising under this award.
  - (a) The persons directly involved, or representatives of person/s directly involved, shall discuss the question, dispute or difficulty as soon as is practicable.
  - (b)
    - (i) If these discussions do not result in a settlement, the question, dispute or difficulty shall be referred to senior management for further discussion.
    - (ii) Discussions at this level will take place as soon as practicable.
- (2) The terms of any agreed settlement should be jointly recorded.
- (3) Any settlement reached which is contrary to the terms of this award shall not have effect unless and until that conflict is resolved to allow for it.
- (4) Nothing in this clause shall be read so as to exclude an organisation party to or bound by the award from representing its members.
- (5) Any question, dispute or difficulty not settled may be referred to the Western Australian Industrial Relations Commission provided it is required that persons involved in the question, dispute or difficulty shall confer among themselves and make reasonable attempts to resolve questions, disputes or difficulties before taking those matters to the Commission.

SCHEDULE 1 - INDUSTRIES AND RESPONDENTS

ABRASIVES, MANUFACTURERS AND/OR DISTRIBUTORS

ADHESIVES, MANUFACTURERS AND/OR DISTRIBUTORS

AGRICULTURAL SUPPLIES MANUFACTURERS AND/OR DISTRIBUTORS

AIR COMPRESSORS AND/OR SUPPLIES, MANUFACTURERS AND/OR DISTRIBUTORS

AIR CONDITIONING, MANUFACTURERS AND/OR DISTRIBUTORS

AIR CONDITIONING EQUIPMENT PARTS, MANUFACTURERS AND/OR DISTRIBUTORS

AIR TOOLS AND ACCESSORIES, MANUFACTURERS AND/OR DISTRIBUTORS

ALUMINIUM MANUFACTURERS AND/OR DISTRIBUTORS

Dowell Aluminium Windows (WA) - 60 Belmont Avenue, Belmont

AMUSEMENT DEVICES, AND/OR GAMES MANUFACTURERS AND/OR DISTRIBUTORS

ART MATERIALS, MANUFACTURERS AND/OR DISTRIBUTORS

Hi-Light Marking Supplies - 144 Camboon Road, Morley

ASBESTOS PRODUCTS, MANUFACTURERS AND/OR DISTRIBUTORS

AUDIO VISUAL EQUIPMENT MANUFACTURERS AND/OR DISTRIBUTORS

AUTOMOTIVE SPARE PARTS & ACCESSORIES, MANUFACTURERS AND/OR DISTRIBUTORS

BAG AND/OR SACK, MANUFACTURERS AND/OR DISTRIBUTORS

BEARING, MANUFACTURERS AND/OR DISTRIBUTORS

BELTING MANUFACTURERS AND/OR DISTRIBUTORS

BATTERIES, MANUFACTURERS AND/OR DISTRIBUTORS

BLINDS, MANUFACTURERS AND/OR DISTRIBUTORS

BOOKBINDERS SUPPLIES, MANUFACTURERS AND/OR DISTRIBUTORS

BOOKSELLERS WHOLESALE

BOXES AND/OR CARTONS AND/OR CANNISTERS AND/OR CANS MANUFACTURERS AND/OR DISTRIBUTORS

BRASSWARE, MANUFACTURERS AND/OR DISTRIBUTORS

BUILDINGS, PRE-FABRICATED, MANUFACTURERS AND/OR DISTRIBUTORS

BUILDING SUPPLIES, MANUFACTURERS AND/OR DISTRIBUTORS

BRUSH MANUFACTURERS AND/OR DISTRIBUTORS  
CAMPING EQUIPMENT AND/OR CANVAS GOODS, MANUFACTURERS AND/OR DISTRIBUTORS  
CEMENT AND/OR LIME MANUFACTURERS AND/OR DISTRIBUTORS  
CERAMICS MANUFACTURERS AND/OR DISTRIBUTORS  
CHEMICALS, MANUFACTURERS AND/OR DISTRIBUTORS  
CHINA AND/OR GLASSWARE AND/OR EARTHENWARE MANUFACTURERS AND/OR DISTRIBUTORS  
CLEANING EQUIPMENT AND/OR SUPPLIES MANUFACTURERS AND/OR DISTRIBUTORS  
CLOTHING AND/OR CLOTHING SUPPLIES MANUFACTURERS AND/OR DISTRIBUTORS  
CONFECTIONERY, MANUFACTURERS AND/OR DISTRIBUTORS  
CORDIAL AND/OR AERATED WATERS, MANUFACTURERS AND/OR DISTRIBUTORS  
CORK, MANUFACTURERS AND/OR DISTRIBUTORS  
COSMETICS AND/OR PERFUME MANUFACTURERS AND/OR DISTRIBUTORS  
CUTLERY MANUFACTURERS AND/OR DISTRIBUTORS  
DENTAL SUPPLIES AND/OR EQUIPMENT, MANUFACTURERS AND/OR DISTRIBUTORS  
DISPLAY EQUIPMENT, MANUFACTURERS AND/OR DISTRIBUTORS  
DRUMS, MANUFACTURERS AND/OR DISTRIBUTORS  
ELECTRIC CABLE AND/OR WIRE MANUFACTURING AND/OR DISTRIBUTORS  
ELECTRICAL EQUIPMENT MANUFACTURERS AND/OR DISTRIBUTORS  
ELECTRICAL APPLIANCES MANUFACTURERS AND/OR DISTRIBUTORS  
ELECTRONIC PARTS MANUFACTURERS AND/OR DISTRIBUTORS  
ENGINEERING AND/OR ENGINEERING SUPPLIES MANUFACTURERS AND/OR DISTRIBUTORS  
ENGRAVING AND/OR METAL STAMPING, MANUFACTURERS AND/OR DISTRIBUTORS  
ESCALATORS AND/OR ELEVATORS AND/OR LIFTS, MANUFACTURERS AND/OR DISTRIBUTORS  
FELT MANUFACTURERS AND/OR DISTRIBUTORS  
FIBREGLASS AND/OR PLASTIC PRODUCTS MANUFACTURERS AND/OR DISTRIBUTORS  
FLOOR COVERINGS AND/OR TREATMENTS, MANUFACTURERS AND/OR DISTRIBUTORS  
FLOWERS AND/OR PLANTS MANUFACTURERS AND/OR DISTRIBUTORS  
FLOUR MANUFACTURERS AND/OR DISTRIBUTORS  
FOOD AND/OR FOOD PRODUCTS, MANUFACTURERS AND/OR DISTRIBUTORS  
FURNITURE AND/OR FURNISHINGS AND/OR BEDDING MANUFACTURERS AND/OR DISTRIBUTORS  
FURS AND/OR PELTS AND/OR SKINS MANUFACTURERS AND/OR DISTRIBUTORS  
GAS APPLIANCES AND/OR BURNERS AND/OR SUPPLIES MANUFACTURERS AND/OR DISTRIBUTORS  
GAS, INDUSTRIAL AND/OR MEDICAL MANUFACTURERS AND/OR DISTRIBUTORS  
GIFTWARE AND/OR SOFT GOODS AND/OR TOYS MANUFACTURERS AND/OR DISTRIBUTORS  
GLASS MANUFACTURERS AND/OR DISTRIBUTORS  
GROCERY MANUFACTURERS AND/OR DISTRIBUTORS  
HAIRDRESSING SUPPLIES, MANUFACTURERS AND/OR DISTRIBUTORS  
HARDWARE, MANUFACTURERS AND/OR DISTRIBUTORS  
INSTRUMENTS, MANUFACTURERS AND/OR DISTRIBUTORS  
INSULATING MATERIALS, MANUFACTURERS AND/OR DISTRIBUTORS  
JEWELLERY AND/OR GEMSTONES MANUFACTURERS AND/OR DISTRIBUTORS  
Soklich Trading Co - Kenwick Road, Orange Grove  
KITCHENWARE MANUFACTURERS AND/OR DISTRIBUTORS  
LABELS AND/OR TICKETS AND/OR TAGS AND/OR TRANSFERS, MANUFACTURERS AND/OR DISTRIBUTORS  
LABORATORY EQUIPMENT, MANUFACTURERS AND/OR DISTRIBUTORS  
LEATHER GOODS MANUFACTURERS AND/OR DISTRIBUTORS  
MANUFACTURERS AGENTS AND/OR IMPORT AGENTS  
MATCH MANUFACTURERS AND/OR DISTRIBUTORS  
METAL MANUFACTURERS AND/OR DISTRIBUTORS

MACHINERY GENERAL, MANUFACTURERS AND/OR DISTRIBUTORS  
MACHINERY BUSINESS, MANUFACTURERS AND/OR DISTRIBUTORS  
MACHINERY AGRICULTURAL, MANUFACTURERS AND/OR DISTRIBUTORS  
MARINE EQUIPMENT AND/OR SUPPLIES, MANUFACTURERS AND/OR DISTRIBUTORS  
MINING AND/OR QUARRYING EQUIPMENT AND/OR SUPPLIES, MANUFACTURERS  
AND/OR DISTRIBUTORS  
OFFICE & BUSINESS SYSTEMS AND/OR EQUIPMENT AND/OR SUPPLIES, MANUFACTURERS  
AND/OR DISTRIBUTORS  
OIL MERCHANTS AND/OR REFINES AND/OR DISTRIBUTORS  
OIL DRILLING EQUIPMENT AND/OR SUPPLIES  
OPTICAL SUPPLIES  
PAPER AND/OR PACKAGING MATERIALS AND/OR PRODUCTS AND/OR EQUIPMENT MANUFACTURERS AND/OR  
DISTRIBUTORS  
PAINT AND/OR PAINTERS SUPPLIES, MANUFACTURERS AND/OR DISTRIBUTORS  
PET FOOD AND/OR REQUISITES AND/OR PET SHOP SUPPLIES  
PHARMACEUTICAL PRODUCTS AND/OR MEDICAL SUPPLIES AND/OR EQUIPMENT  
MANUFACTURERS AND/OR DISTRIBUTORS  
PHOTOGRAPHIC AND/OR CINEMATOGRAPHIC EQUIPMENT AND/OR REQUISITES  
MANUFACTURERS AND DISTRIBUTORS  
PLUMBING EQUIPMENT AND/OR SUPPLIES, MANUFACTURERS AND/OR DISTRIBUTORS  
    Solahart - 530 Albany Highway, Victoria Park  
POTTERY AND/OR STONWARE, MANUFACTURERS AND/OR DISTRIBUTORS  
PRINTERS AND/OR PRINTING SUPPLIES  
PUMPS AND MOTORS AND/OR PARTS MANUFACTURERS AND/OR DISTRIBUTORS  
REFRIGERATION EQUIPMENT MANUFACTURERS AND/OR DISTRIBUTORS  
RAZOR AND RAZOR BLADE, MANUFACTURERS AND/OR DISTRIBUTORS  
ROPE AND/OR TWINE, MANUFACTURERS AND/OR DISTRIBUTORS  
RUBBER PRODUCTS, MANUFACTURERS AND/OR DISTRIBUTORS  
SCHOOL SUPPLIES, MANUFACTURERS AND/OR DISTRIBUTORS  
SIGNS, MANUFACTURERS AND/OR DISTRIBUTORS  
SECURITY SYSTEMS, AND/OR EQUIPMENT, MANUFACTURERS AND/OR DISTRIBUTORS  
SPORTING GOODS, MANUFACTURERS AND/OR DISTRIBUTORS  
STATIONERY SUPPLIES, MANUFACTURERS AND/OR DISTRIBUTORS  
SURVEYORS EQUIPMENT AND/OR SUPPLIES, MANUFACTURERS AND/OR DISTRIBUTORS  
TIMBER AND TIMBER PRODUCTS, MANUFACTURERS AND/OR DISTRIBUTORS  
TOBACCO AND TOBACCO PRODUCTS, MANUFACTURERS AND/OR DISTRIBUTORS  
TOOLS, MANUFACTURERS AND/OR DISTRIBUTORS  
TOWELS, MANUFACTURERS AND/OR DISTRIBUTORS  
VALVES, MANUFACTURERS AND/OR DISTRIBUTORS  
WELDING EQUIPMENT AND/OR SUPPLIES, MANUFACTURERS AND/OR DISTRIBUTORS  
WHEELS AND/OR CASTORS, MANUFACTURERS AND/OR DISTRIBUTORS  
WINE AND SPIRITS, MANUFACTURERS AND/OR DISTRIBUTORS  
COMMUNICATION AND/OR MUSIC AND/OR AMPLIFICATION SYSTEMS, MANUFACTURERS AND/OR  
DISTRIBUTORS  
HOUSEHOLD APPLIANCES, MANUFACTURERS AND/OR DISTRIBUTORS  
STOCKFOODS, MANUFACTURERS AND/OR DISTRIBUTORS  
ADVERTISING



2025 WAIRC 00344

**REVIEW OF COMMERCIAL TRAVELLERS AND SALES REPRESENTATIVES' AWARD 1978 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, 10 JUNE 2025

FILE NO/S

APPL 39 OF 2023

CITATION NO.

2025 WAIRC 00344

Result

Award varied

Representation

Mr R Dobson on behalf of the Hon Minister for Industrial Relations

*Order*

HAVING heard from Mr Dobson and pursuant to the powers conferred under the *Industrial Relations Act 1979 (WA)*, the Commission hereby orders –

THAT the *Commercial Travellers and Sales Representatives' Award 1978* be varied in accordance with the attached Schedule and that the variations shall have effect from the date of this Order.

(Sgd.) R COSENTINO,  
Senior Commissioner.

[L.S.]

Schedule

Delete the entire contents of the *Commercial Travellers and Sales Representatives' Award 1978* (with the exception of the variation record table, which shall remain annexed to the Award marked as superseded and struck through) and insert the following in lieu thereof:

**Commercial Sales Representatives' Award (WA)**

PART 1 – GENERAL

1. - TITLE

This award shall be known as the Commercial Sales Representatives' Award.

1B. - MINIMUM ADULT AWARD WAGE

- (1) No employee aged 21 or more shall be paid less than the minimum adult award wage unless otherwise provided by this clause.
- (2) The minimum adult award wage for full-time employees aged 21 or more working under an award that provides for a 38-hour week is \$918.60 per week.  
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.  
The minimum adult award wage is payable from the beginning of the first pay period commencing on or after 1 July 2024.
- (3) The minimum adult award wage is deemed to include all State Wage order adjustments from State Wage Case decisions.
- (4) Unless otherwise provided in this clause adults 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.
- (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 *Minimum Conditions of Employment Act 1993*.
- (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 *Minimum Conditions of Employment Act 1993*.

- (7) Liberty to apply is reserved in relation to any special category of employees not included here or otherwise in relation to the application of the minimum adult award wage.
- (8) Subject to this clause the minimum adult award wage shall –
- (a) Apply to all work in ordinary hours.
  - (b) Apply to the calculation of overtime and all other penalty rates, superannuation, payments during any period of paid leave and for all purposes of this award.
- (9) **Minimum Adult Award Wage**
- The rates of pay in this award include the minimum weekly wage for employees aged 21 or more payable under the 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.
- Increases under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset the minimum wage.
- (10) **Adult Apprentices**
- (a) Notwithstanding the provisions of this clause, the minimum adult apprentice wage for a full-time apprentice aged 21 years or more working under an award that provides for a 38-hour week is \$762.80 per week.
  - (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.
  - (c) The minimum adult apprentice wage is payable from the beginning of the first pay period commencing on or after 1 July 2024.
  - (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.
  - (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.
  - (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.

## 2. - ARRANGEMENT

### PART 1 – GENERAL

1. Title
- 1B. Minimum Adult Award Wage
2. Arrangement
3. Scope
4. Area
5. Definitions

### PART 2 – EMPLOYMENT RELATIONSHIP

6. Contract of Employment
7. Flexible Working Arrangements
8. Termination of Employment
9. Introduction of Change
10. Redundancy

### PART 3 – WAGES AND ALLOWANCES

11. Wages
12. Overtime and Penalty Rates
13. Supported Wage System
14. Superannuation
15. Expenses and Accommodation
16. Vehicle Provisions
17. Air Conditioning
18. Payment of Wages
19. Records

### PART 4 – LEAVE

20. Public Holidays
21. Annual Leave
22. Personal Leave
23. Bereavement Leave
24. Long Service Leave
25. Family and Domestic Violence Leave
26. Parental Leave

### PART 5 – OTHER

27. Union Notices and Posting of Award  
28. Dispute Resolution

Schedule 1 – Industries and Respondents

3. - SCOPE

This award shall apply to all employees employed in the callings listed in clause 11 - Wages by employers engaged in the industries set out in Schedule 1 to this award.

4. - AREA

This award shall operate throughout the State of Western Australia.

5 - DEFINITIONS

- (1) “Country Sales Representative” means a Sales Representative who spends at least three nights each week away from their normal place of residence but shall not include an employee transferred to a “country residence”.
- (2) “Ordinary hourly rate” means the applicable weekly rate of pay specified under clause 11 - Wages divided by 38.
- (3) “Probationary Sales Representative” shall mean an employee engaged in the occupation of a Sales Representative, but who has had less than nine months' experience as a Sales Representative.
- (4) “Sales Representative” shall mean an employee who is employed:
- (a) away from or substantially away from the employer's place of business; and
  - (b) wholly or mainly for the purpose of soliciting orders or promoting business;
- but shall not include:
- (i) persons selling Motor Vehicles or attachments or Motor Cycles;
  - (ii) persons eligible to be members of the Shop, Distributive and Allied Employees' Association of Western Australia, in accordance with the rules of that union as they existed on 1st March, 1979; or
  - (iii) persons employed in the calling of Motor Vehicle Drivers wholly or mainly for the purpose of delivering goods to retail establishments.
- (5) “Union” means the United Workers Union (WA).

PART 2 – EMPLOYMENT RELATIONSHIP

6. - CONTRACT OF EMPLOYMENT

- (1) An employee will be engaged as a full-time or part-time employee.
- (2) A full-time employee is engaged to work an average of 38 hours per week.
- (3) A part-time employee is an employee engaged to work less than 38 hours per week.
- (4) Before starting full-time or part-time employment, the employer and the employee must agree in writing on the number of days to be worked by the employee.
- (5) Part-time employees are entitled to be paid the ordinary hourly rate for their classification in respect of all hours worked by the employee.

7. - FLEXIBLE WORKING ARRANGEMENT REQUESTS

Employees may make a request for a flexible working arrangement in accordance with s 39F and s 39G of the *Minimum Conditions of Employment Act 1993* (WA). Any such request must be dealt with and determined in accordance with Part 4A of the *Minimum Conditions of Employment Act 1993* (WA).

8. - TERMINATION OF EMPLOYMENT

- (1) An employer must give the employee written notice of termination in accordance with the following table:
- | <u>Period of Continuous Service</u>         | <u>Period of Notice</u> |
|---|-------------------------|
| Not more than 3 years                       | 2 weeks                 |
| More than 3 years but not more than 5 years | 3 weeks                 |
| More than 5 years                           | 4 weeks                 |
- (2) Employees over 45 years of age with two or more years of continuous service at the time of termination, shall receive an additional week's notice.
- (3) Where the relevant notice is not provided, the employee shall be entitled to payment in lieu. Provided that employment may be terminated by part of the period of notice and part payment in lieu.
- (4) In calculating any payment in lieu of notice, the employer must pay the employee an amount that is equal to, or exceeds, the total of all amounts that, if the employee's employment had continued until the end of the required notice period, the employer would have become liable to pay to the employee because of the employment continuing during that period. That total must be worked out on the basis of:
- (a) the employee's ordinary hours of work (even if they are not standard hours); and
  - (b) the amounts ordinarily payable to the employee in respect of those hours, including for example, allowances, loadings and penalties; and

- (c) any other amounts payable under the employee's contract of employment.
- (5) The period of notice in this clause shall not apply in the case of dismissal for serious misconduct, that is, misconduct of a kind such that it would be unreasonable to require the employer to continue the employment during the notice period.
- (6) Notice of Termination by Employee:  
Two weeks' notice shall be necessary for an employee to terminate the engagement.

9. - INTRODUCTION OF CHANGE

- (1) Employer's Duty to Notify
  - (a) Where an employer has made a definite decision to introduce major changes in production, program, 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 the Union.
  - (b) "Significant effects" include termination of employment, major changes in the composition; operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities; promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and restructuring of jobs. Provided that where the award makes provision for alteration of any of the matters referred to herein, an alteration shall be deemed not to have significant effect.
- (2) Employer's Duty to Discuss Change
  - (a) The employer shall discuss with the employees affected and the Union inter alia, 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/or their Union in relation to the changes.
  - (b) The discussion shall commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in subclause (1)(a) hereof.
  - (c) For the purpose of such discussion, the employer shall provide 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.

10. - REDUNDANCY

- (1) Discussions Before Terminations:
  - (a) Where the 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 employees directly affected and with the Union.
  - (b) The discussions shall take place as soon as is practicable and shall cover, amongst other matters, the reasons the proposed terminations are required, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any terminations on the employees concerned.
  - (c) For the purposes of the discussion the employer shall, as soon as practicable, provide in writing to the employees concerned and the Union, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of employees normally employed and the period over which the terminations are likely to be carried out.

Provided that the employer shall not be required to disclose confidential information; the disclosure of which would be detrimental to the employer's interests.

- (2) Transfer to Lower Paid Duties  
Where an employee is transferred to lower paid duties for reasons set out in subclause (1) above, the employee shall be entitled to the same period of notice of transfer as they would have been entitled to if they had been terminated, and the employer may 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 rate for the number of weeks of notice still owing.

- (3) Severance Pay  
This subclause (3) applies to employers who engage 15 or more employees at the time of any redundancies.  
In addition to the period of notice provided in clause 8. – Termination of Employment, a permanent employee whose employment is terminated for reasons set out above shall be entitled to the following amount of severance pay in respect of a continuous period of service -

Period of continuous service severance pay	
less than 1 year	nil
1 year but less than 2 years	4 weeks' pay
2 years but less than 3 years	6 weeks' pay
3 years but less than 4 years	7 weeks' pay

4 years but less than 5 years	8 weeks' pay
5 years but less than 6 years	10 weeks' pay
6 years but less than 7 years	11 weeks' pay
7 years but less than 8 years	13 weeks' pay
8 years but less than 9 years	14 weeks' pay
9 years but less than 10 years	16 weeks' pay
10 years and over	12 weeks' pay

'Weeks' pay' means the ordinary time rate of pay for the employee concerned.

Provided that the severance payments shall not exceed the amount which the employee would have earned if employment with the employer had proceeded to the employee's normal retirement date.

(4) Employee Leaving During Notice

An employee whose employment is terminated for reasons set out in subclause (1) above 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 in accordance with clause 8 – Termination of Employment.

(5) Alternative Employment

The employer in a particular redundancy case, may make an application to the Commission to have the general severance pay prescription varied if the employer obtains acceptable alternative employment for an employee.

(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) Notice to Centrelink

Where a decision has been made to terminate the services of 15 or more employees in the circumstances outlined in subclause (1) above, the employer shall notify Centrelink thereof as soon as possible giving relevant information, including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

(8) Transfer of Business

(a) Where a business is transferred from one employer (in this subclause called "the old employer") to another employer (in this subclause called "the new employer") and an employee who at the time of such transfer was an employee of the old employer in that business becomes an employee of the new employer:

(i) The continuity of the employment of the employee shall be deemed not to have been broken by reason of such transfer, and

(ii) The period of employment which the employee has had with the old employer or any prior transfer shall be deemed to be service of the employee with the new employer.

(b) In this subclause "business" and "transfer" has the same meaning and effect as in the *Long Service Leave Act 1958 (WA)*.

(9) 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 the employer 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.

(10) Employees Exempted

This clause shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, or in cases where employees are engaged for a specific period of time or for a specified task or tasks.

(11) Incapacity to Pay

An employer in a particular redundancy case may make an application to the Commission to have the general severance pay prescription varied on the basis of the employer's incapacity to pay.

PART 3 – WAGES AND ALLOWANCES

11. - WAGES

(1) The following shall be the minimum weekly rates of wages payable to full-time employees covered by this award with effect from the beginning of the first pay period commencing on or after 1 July 2024.

- |                                   |                  |
|-----------------------------------|------------------|
| (a)                               | Award<br>Rate \$ |
| (i) Sales Representative          | 1017.00          |
| (ii) Country Sales Representative | 1062.80          |
- (b) During the first three months in the industry in which the employer is engaged, an employee classified in (a)(i) or (a)(ii) above, shall be paid 91% of the appropriate rate of pay rounded to the nearest ten cents.
- (c) A Probationary Sales Representative classified in (a)(i) or (a)(ii) above, shall be paid 91% of the appropriate rate of pay rounded to the nearest ten cents.

- (2) Provided that a Sales Representative required by their employer to make periodic visits to country areas which necessitates them staying away from their normal place of residence for three or more nights in any one week, shall be paid as a Country Sales Representative for that week.
- (3) Where an employee is engaged on a "commission only" basis or on a "commission and retainer" basis they shall be paid per week not less than the relevant minimum rate of pay prescribed in this award. Where an employee is employed on a "commission only" or "retainer and commission" basis the period in relation to which commission shall be calculated shall not be more than one month. The balance of commission outstanding after payment of the minimum remuneration as provided for by this clause shall be paid to the employee not later than one week following the last day of the said period.
- At the time of payment of commission each employee shall be furnished with sufficient information to enable the employee to check the correctness of the amount of commission paid.

#### 12. - OVERTIME AND PENALTY RATES

- (1) A full-time or part-time employee directed by the employer to perform any work after 6.00 pm Monday to Friday inclusive, or in excess of 38 hours in a week will be paid at a rate of 150% of the applicable minimum hourly rate set out in clause 11 - Wages.
- (2) An employee required by the employer to attend the employer's show rooms, trade fairs, exhibitions, or agricultural shows or sales conferences, or attend for stock taking purposes after 6.00 p.m. Monday to Friday inclusive, shall be paid at the rate of 150% of the ordinary hourly rate per hour with a minimum payment of two hours. Provided that the minimum payment of two hours shall not apply where the attendance at such functions is contiguous with the usual hours of work.
- (3) An employee required to work on a Saturday, Sunday or on a public holiday prescribed in clause 20 - Public Holidays of this award shall be paid at the rate of 200% of the ordinary hourly rate per hour, with a minimum of three hours payment.

#### 13. - SUPPORTED WAGE SYSTEM

- (1) Definitions
- 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:
- (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.
- (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.
- (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* (Cth), as amended from time to time, or any successor to that scheme.
- (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: [www.jobaccess.gov.au](http://www.jobaccess.gov.au).
- (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.
- (2) Eligibility Criteria
- (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.

- (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.
- (3) Supported Wage Rates
- (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:
- | Assessed Capacity | % of Prescribed Award Rate |
|-------------------|----------------------------|
| 10%               | 10%                        |
| 20%               | 20%                        |
| 30%               | 30%                        |
| 40%               | 40%                        |
| 50%               | 50%                        |
| 60%               | 60%                        |
| 70%               | 70%                        |
| 80%               | 80%                        |
| 90%               | 90%                        |
- (b) Provided that the minimum amount payable must not be less than the amount set by the Western Australian Industrial Relations Commission under s 50A(1)(a)(iii) of the *Industrial Relations Act 1979* (WA).
- (c) Where an employee's assessed capacity is 10%, they must receive a high degree of assistance and support.
- (4) Assessment of Capacity
- (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.
- (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.
- (5) Lodgement of SWS Wage Assessment Agreement
- (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.
- (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.
- (6) Review of Assessment
- 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.
- (7) Other Terms and Conditions of Employment
- 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.
- (8) Workplace Adjustment
- 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.
- (9) Trial Period
- (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.
- (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.
- (c) The minimum amount payable to the employee during the trial period must be no less than the amount set by the Western Australian Industrial Relations Commission under s 50A(1)(a)(iii) of the *Industrial Relations Act 1979* (WA).
- (d) Work trials should include induction or training as appropriate to the job being trialled.

- (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.

#### 14. - SUPERANNUATION

- (1) The *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth) deals with the superannuation rights and obligations of employers and employees.
- (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.
- (3) 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.
- (4) The employer shall notify the employee of the entitlement to nominate a complying superannuation fund or scheme as soon as practicable.
- (5) 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.
- (6) The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by a employee.

#### 15. - EXPENSES AND ACCOMMODATION

- (1) The wages paid are to be exclusive of all reasonable expenses actually incurred in the discharge of the Sales Representative's duties and such expenses shall be paid weekly. Where reasonably ascertainable, the expenses payable under this clause are to be paid in advance.
- (2) Expenses for reasonable hotel or motel accommodation are to be paid to Sales Representatives when in country areas.

#### 16. - VEHICLE PROVISIONS

- (1) (a) Where an employee is required to use a vehicle supplied by their employer, the expenses of operating and maintaining that vehicle shall be borne by the employer.
- (b) Provided that where an employee has incurred a personal insurance excess and as a result the net cost to the employer to restore damage to that employer's vehicle following an accident is greater than otherwise would have been the case, the excess cost shall be met by the employee concerned.
- (2) Where an employee is required by their employer to use their own vehicle in the course of their duties, they shall be paid an allowance not less than that provided for in the table set out in this subclause. Notwithstanding anything contained in this clause, the employer, by agreement with the employee, may make any other arrangement as to car allowance not less favourable to the employee than that provided by this clause.
- (a) Sales Representative:
- (i) Up to 2.5 litre \$242.20 per week plus 24 cents per kilometre.
- (ii) Over 2.5 litre \$294.00 per week plus 28 cents per kilometre.
- (b) Country Sales Representative:
- (i) Up to 2.5 litre - \$290.90 per week plus 24 cents per kilometre.
- (ii) Over 2.5 litre - \$362.20 per week plus 28 cents per kilometre.
- (c) For the purpose of this clause, travelling to and from the employee's home shall be regarded as employer's business.
- (d) The per week allowances prescribed in paragraphs (a) and (b) of this subclause are payable during the employee's absence on paid leave as provided by this award.
- (3) A part-time employee who provides their own vehicle in accordance with subclause (2) of this clause shall be paid 20% of the appropriate per week allowance prescribed in subclause (2) of this clause together with the appropriate per kilometre running cost prescribed therein for each day of employment.

#### 17. - AIR CONDITIONING

Where the employer provides a motor vehicle for use by an employee working under the terms of this award, such motor vehicle shall be fitted with and continue to be fitted with an air-conditioning unit in reasonable operating order.

#### 18. - PAYMENT OF WAGES

- (1) Wages shall be paid at least monthly, at the discretion of the employer.
- (2) As soon as practicable after the date of termination, an employee shall be paid all wages and allowances to which the employee is entitled.
- (3) The method of payment of wages may, at the discretion of the employer, be in cash or by payment into an account, specified by the employee, with a bank or financial institution.

#### 19. - RECORDS

- (1) The employer shall keep records relating to all employees and provide pay slips in accordance with s 49D and s 49DA of the *Industrial Relations Act 1979* (WA).
- (2) The employer must produce its records for inspection in accordance with s 49E of the *Industrial Relations Act 1979* (WA).

#### PART 4 – LEAVE

#### 20. - PUBLIC HOLIDAYS

- (1)
  - (a) 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 mentioned in Schedule 1 of the *Minimum Conditions of Employment Act 1993* (WA). Provided that another day may be taken as a holiday by written agreement between the parties in lieu of any of the days mentioned in Schedule 1 of the *Minimum Conditions of Employment Act 1993* (WA). Such agreement must be signed by the employer and the employee.
  - (b) When 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 and when 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.
  - (c) An employer may request that an employee work on a day or part day that is a public holiday if the request is reasonable. The employee may refuse the request if it is not reasonable, or the refusal is reasonable. The factors which determine whether a request or refusal are reasonable are set out in s 30 of the *Minimum Conditions of Employment Act 1993* (WA).
  - (d) When work is performed on any of the days mentioned in paragraph (a) the employee shall be paid in accordance with subclause (3) of clause 12. – Overtime and Penalty Rates for each hour of such work.

#### 21. - ANNUAL LEAVE

- (1) Annual leave is as provided for by the *Minimum Conditions of Employment Act 1993* (WA).
- (2)
  - (a) During a period of annual leave an employee shall be paid a loading of 17.5% calculated on the employee's ordinary wage (excluding commissions).
  - (b) The loading prescribed by this subclause shall not apply to proportionate leave on termination.
- (3) For each four weekends a Country Sales Representative is absent from their home in the course of the employer's business, there shall be added one day to the employee's annual leave. Provided that such additional leave shall not exceed two weeks per annum.

#### 22. - PERSONAL LEAVE

- (1) Personal leave is as provided for in the *Minimum Conditions of Employment Act 1993* (WA).
- (2)
  - (a) Subject to the provisions of this subclause an employee who suffers personal ill health or injury during the time when the employee is absent on annual leave may apply for and the employer shall grant paid personal leave in place of paid annual leave.
  - (b) Application for replacement shall be made within seven days of resuming work and then only if the employee was confined to their place of residence or a hospital as a result of personal ill health or injury for a period of seven consecutive days or more and the employee produces a certificate from a registered medical practitioner that the employee was so confined.
  - (c) Replacement of paid annual leave by paid personal leave shall not exceed the period of paid personal leave to which the employee was entitled at the time the employee proceeded on annual leave and shall not be made with respect to fractions of a day.
  - (d) Where paid personal leave has been granted by the employer in accordance with paragraphs (a), (b) and (c) of this subclause, that portion of the annual leave equivalent to the paid personal leave is hereby replaced by the paid personal leave.
  - (e) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in clause 21 - Annual Leave shall be deemed to have been paid with respect to the replaced annual leave.
- (3) Where a business has been transferred from one employer to another and the employee's employment has been deemed continuous in accordance with the *Long Service Leave Act 1958* (WA), the paid personal leave standing to the credit of the employee at the date of transfer from service with the old employer shall stand to the credit of the employee at the commencement of service with the new employer and may be claimed in accordance with the provisions of this clause.

#### 23. - BEREAVEMENT LEAVE

Bereavement leave is as provided for in the *Minimum Conditions of Employment Act 1993* (WA).

#### 24. - LONG SERVICE LEAVE

The provisions of the *Long Service Leave Act 1958* (WA) shall be deemed to be part of this award.

#### 25. - FAMILY AND DOMESTIC VIOLENCE LEAVE

Family and domestic violence leave is as provided for in Division 7 of Part 2-2 of the *Fair Work Act 2009* (Cth)

and the *Minimum Conditions of Employment Act 1993* (WA).

#### 26. - PARENTAL LEAVE

Parental leave is as provided for in accordance with Division 5 of Part 2-2 of the *Fair Work Act 2009* (Cth).

#### PART 5 – OTHER

#### 27. - UNION NOTICES AND POSTING OF AWARD

- (1) An employer shall provide a notice board in its establishment upon which an accredited Union representative shall be permitted to post formal Union notices, signed or countersigned by the representative posting them. Any notice posted on such a board not signed or countersigned may be removed by an accredited Union representative or the employer.
- (2) A copy of this award if supplied by the Union shall be allowed to be posted on the notice board referred to in subclause (1) of this clause.

#### 28. - DISPUTE RESOLUTION

- (1) The following procedures shall apply in connection with questions, disputes or difficulties arising under this award.
  - (a) The persons directly involved, or representatives of person/s directly involved, shall discuss the question, dispute or difficulty as soon as is practicable.
  - (b)
    - (i) If these discussions do not result in a settlement, the question, dispute or difficulty shall be referred to senior management for further discussion.
    - (ii) Discussions at this level will take place as soon as practicable.
- (2) The terms of any agreed settlement should be jointly recorded.
- (3) Any settlement reached which is contrary to the terms of this award shall not have effect unless and until that conflict is resolved to allow for it.
- (4) Nothing in this clause shall be read so as to exclude an organisation party to or bound by the award from representing its members.
- (5) Any question, dispute or difficulty not settled may be referred to the Western Australian Industrial Relations Commission provided it is required that persons involved in the question, dispute or difficulty shall confer among themselves and make reasonable attempts to resolve questions, disputes or difficulties before taking those matters to the Commission.

#### SCHEDULE 1 - INDUSTRIES AND RESPONDENTS

ABRASIVES, MANUFACTURERS AND/OR DISTRIBUTORS

ADHESIVES, MANUFACTURERS AND/OR DISTRIBUTORS

AGRICULTURAL SUPPLIES MANUFACTURERS AND/OR DISTRIBUTORS

AIR COMPRESSORS AND/OR SUPPLIES, MANUFACTURERS AND/OR DISTRIBUTORS

AIR CONDITIONING, MANUFACTURERS AND/OR DISTRIBUTORS

AIR CONDITIONING EQUIPMENT PARTS, MANUFACTURERS AND/OR DISTRIBUTORS

AIR TOOLS AND ACCESSORIES, MANUFACTURERS AND/OR DISTRIBUTORS

ALUMINIUM MANUFACTURERS AND/OR DISTRIBUTORS

Dowell Aluminium Windows (WA) - 60 Belmont Avenue, Belmont

AMUSEMENT DEVICES, AND/OR GAMES MANUFACTURERS AND/OR DISTRIBUTORS

ART MATERIALS, MANUFACTURERS AND/OR DISTRIBUTORS

Hi-Light Marking Supplies - 144 Camboon Road, Morley

ASBESTOS PRODUCTS, MANUFACTURERS AND/OR DISTRIBUTORS

AUDIO VISUAL EQUIPMENT MANUFACTURERS AND/OR DISTRIBUTORS

AUTOMOTIVE SPARE PARTS & ACCESSORIES, MANUFACTURERS AND/OR DISTRIBUTORS

BAG AND/OR SACK, MANUFACTURERS AND/OR DISTRIBUTORS

BEARING, MANUFACTURERS AND/OR DISTRIBUTORS

BELTING MANUFACTURERS AND/OR DISTRIBUTORS

BATTERIES, MANUFACTURERS AND/OR DISTRIBUTORS

BLINDS, MANUFACTURERS AND/OR DISTRIBUTORS

BOOKBINDERS SUPPLIES, MANUFACTURERS AND/OR DISTRIBUTORS

BOOKSELLERS WHOLESALE

BOXES AND/OR CARTONS AND/OR CANNISTERS AND/OR CANS MANUFACTURERS AND/OR DISTRIBUTORS

BRASSWARE, MANUFACTURERS AND/OR DISTRIBUTORS

BUILDINGS, PRE-FABRICATED, MANUFACTURERS AND/OR DISTRIBUTORS

BUILDING SUPPLIES, MANUFACTURERS AND/OR DISTRIBUTORS

BRUSH MANUFACTURERS AND/OR DISTRIBUTORS  
CAMPING EQUIPMENT AND/OR CANVAS GOODS, MANUFACTURERS AND/OR DISTRIBUTORS  
CEMENT AND/OR LIME MANUFACTURERS AND/OR DISTRIBUTORS  
CERAMICS MANUFACTURERS AND/OR DISTRIBUTORS  
CHEMICALS, MANUFACTURERS AND/OR DISTRIBUTORS  
CHINA AND/OR GLASSWARE AND/OR EARTHENWARE MANUFACTURERS AND/OR DISTRIBUTORS  
CLEANING EQUIPMENT AND/OR SUPPLIES MANUFACTURERS AND/OR DISTRIBUTORS  
CLOTHING AND/OR CLOTHING SUPPLIES MANUFACTURERS AND/OR DISTRIBUTORS  
CONFECTIONERY, MANUFACTURERS AND/OR DISTRIBUTORS  
CORDIAL AND/OR AERATED WATERS, MANUFACTURERS AND/OR DISTRIBUTORS  
CORK, MANUFACTURERS AND/OR DISTRIBUTORS  
COSMETICS AND/OR PERFUME MANUFACTURERS AND/OR DISTRIBUTORS  
CUTLERY MANUFACTURERS AND/OR DISTRIBUTORS  
DENTAL SUPPLIES AND/OR EQUIPMENT, MANUFACTURERS AND/OR DISTRIBUTORS  
DISPLAY EQUIPMENT, MANUFACTURERS AND/OR DISTRIBUTORS  
DRUMS, MANUFACTURERS AND/OR DISTRIBUTORS  
ELECTRIC CABLE AND/OR WIRE MANUFACTURING AND/OR DISTRIBUTORS  
ELECTRICAL EQUIPMENT MANUFACTURERS AND/OR DISTRIBUTORS  
ELECTRICAL APPLIANCES MANUFACTURERS AND/OR DISTRIBUTORS  
ELECTRONIC PARTS MANUFACTURERS AND/OR DISTRIBUTORS  
ENGINEERING AND/OR ENGINEERING SUPPLIES MANUFACTURERS AND/OR DISTRIBUTORS  
ENGRAVING AND/OR METAL STAMPING, MANUFACTURERS AND/OR DISTRIBUTORS  
ESCALATORS AND/OR ELEVATORS AND/OR LIFTS, MANUFACTURERS AND/OR DISTRIBUTORS  
FELT MANUFACTURERS AND/OR DISTRIBUTORS  
FIBREGLASS AND/OR PLASTIC PRODUCTS MANUFACTURERS AND/OR DISTRIBUTORS  
FLOOR COVERINGS AND/OR TREATMENTS, MANUFACTURERS AND/OR DISTRIBUTORS  
FLOWERS AND/OR PLANTS MANUFACTURERS AND/OR DISTRIBUTORS  
FLOUR MANUFACTURERS AND/OR DISTRIBUTORS  
FOOD AND/OR FOOD PRODUCTS, MANUFACTURERS AND/OR DISTRIBUTORS  
FURNITURE AND/OR FURNISHINGS AND/OR BEDDING MANUFACTURERS AND/OR DISTRIBUTORS  
FURS AND/OR PELTS AND/OR SKINS MANUFACTURERS AND/OR DISTRIBUTORS  
GAS APPLIANCES AND/OR BURNERS AND/OR SUPPLIES MANUFACTURERS AND/OR DISTRIBUTORS  
GAS, INDUSTRIAL AND/OR MEDICAL MANUFACTURERS AND/OR DISTRIBUTORS  
GIFTWARE AND/OR SOFT GOODS AND/OR TOYS MANUFACTURERS AND/OR DISTRIBUTORS  
GLASS MANUFACTURERS AND/OR DISTRIBUTORS  
GROCERY MANUFACTURERS AND/OR DISTRIBUTORS  
HAIRDRESSING SUPPLIES, MANUFACTURERS AND/OR DISTRIBUTORS  
HARDWARE, MANUFACTURERS AND/OR DISTRIBUTORS  
INSTRUMENTS, MANUFACTURERS AND/OR DISTRIBUTORS  
INSULATING MATERIALS, MANUFACTURERS AND/OR DISTRIBUTORS  
JEWELLERY AND/OR GEMSTONES MANUFACTURERS AND/OR DISTRIBUTORS  
Soklich Trading Co - Kenwick Road, Orange Grove  
KITCHENWARE MANUFACTURERS AND/OR DISTRIBUTORS  
LABELS AND/OR TICKETS AND/OR TAGS AND/OR TRANSFERS, MANUFACTURERS AND/OR DISTRIBUTORS  
LABORATORY EQUIPMENT, MANUFACTURERS AND/OR DISTRIBUTORS  
LEATHER GOODS MANUFACTURERS AND/OR DISTRIBUTORS  
MANUFACTURERS AGENTS AND/OR IMPORT AGENTS  
MATCH MANUFACTURERS AND/OR DISTRIBUTORS  
METAL MANUFACTURERS AND/OR DISTRIBUTORS

MACHINERY GENERAL, MANUFACTURERS AND/OR DISTRIBUTORS  
MACHINERY BUSINESS, MANUFACTURERS AND/OR DISTRIBUTORS  
MACHINERY AGRICULTURAL, MANUFACTURERS AND/OR DISTRIBUTORS  
MARINE EQUIPMENT AND/OR SUPPLIES, MANUFACTURERS AND/OR DISTRIBUTORS  
MINING AND/OR QUARRYING EQUIPMENT AND/OR SUPPLIES, MANUFACTURERS  
AND/OR DISTRIBUTORS  
OFFICE & BUSINESS SYSTEMS AND/OR EQUIPMENT AND/OR SUPPLIES, MANUFACTURERS  
AND/OR DISTRIBUTORS  
OIL MERCHANTS AND/OR REFINES AND/OR DISTRIBUTORS  
OIL DRILLING EQUIPMENT AND/OR SUPPLIES  
OPTICAL SUPPLIES  
PAPER AND/OR PACKAGING MATERIALS AND/OR PRODUCTS AND/OR EQUIPMENT MANUFACTURERS AND/OR  
DISTRIBUTORS  
PAINT AND/OR PAINTERS SUPPLIES, MANUFACTURERS AND/OR DISTRIBUTORS  
PET FOOD AND/OR REQUISITES AND/OR PET SHOP SUPPLIES  
PHARMACEUTICAL PRODUCTS AND/OR MEDICAL SUPPLIES AND/OR EQUIPMENT  
MANUFACTURERS AND/OR DISTRIBUTORS  
PHOTOGRAPHIC AND/OR CINEMATOGRAPHIC EQUIPMENT AND/OR REQUISITES  
MANUFACTURERS AND DISTRIBUTORS  
PLUMBING EQUIPMENT AND/OR SUPPLIES, MANUFACTURERS AND/OR DISTRIBUTORS  
    Solahart - 530 Albany Highway, Victoria Park  
POTTERY AND/OR STONWARE, MANUFACTURERS AND/OR DISTRIBUTORS  
PRINTERS AND/OR PRINTING SUPPLIES  
PUMPS AND MOTORS AND/OR PARTS MANUFACTURERS AND/OR DISTRIBUTORS  
REFRIGERATION EQUIPMENT MANUFACTURERS AND/OR DISTRIBUTORS  
RAZOR AND RAZOR BLADE, MANUFACTURERS AND/OR DISTRIBUTORS  
ROPE AND/OR TWINE, MANUFACTURERS AND/OR DISTRIBUTORS  
RUBBER PRODUCTS, MANUFACTURERS AND/OR DISTRIBUTORS  
SCHOOL SUPPLIES, MANUFACTURERS AND/OR DISTRIBUTORS  
SIGNS, MANUFACTURERS AND/OR DISTRIBUTORS  
SECURITY SYSTEMS, AND/OR EQUIPMENT, MANUFACTURERS AND/OR DISTRIBUTORS  
SPORTING GOODS, MANUFACTURERS AND/OR DISTRIBUTORS  
STATIONERY SUPPLIES, MANUFACTURERS AND/OR DISTRIBUTORS  
SURVEYORS EQUIPMENT AND/OR SUPPLIES, MANUFACTURERS AND/OR DISTRIBUTORS  
TIMBER AND TIMBER PRODUCTS, MANUFACTURERS AND/OR DISTRIBUTORS  
TOBACCO AND TOBACCO PRODUCTS, MANUFACTURERS AND/OR DISTRIBUTORS  
TOOLS, MANUFACTURERS AND/OR DISTRIBUTORS  
TOWELS, MANUFACTURERS AND/OR DISTRIBUTORS  
VALVES, MANUFACTURERS AND/OR DISTRIBUTORS  
WELDING EQUIPMENT AND/OR SUPPLIES, MANUFACTURERS AND/OR DISTRIBUTORS  
WHEELS AND/OR CASTORS, MANUFACTURERS AND/OR DISTRIBUTORS  
WINE AND SPIRITS, MANUFACTURERS AND/OR DISTRIBUTORS  
COMMUNICATION AND/OR MUSIC AND/OR AMPLIFICATION SYSTEMS, MANUFACTURERS AND/OR  
DISTRIBUTORS  
HOUSEHOLD APPLIANCES, MANUFACTURERS AND/OR DISTRIBUTORS  
STOCKFOODS, MANUFACTURERS AND/OR DISTRIBUTORS  
ADVERTISING



2025 WAIRC 00315

**REVIEW OF THE DRAUGHTSMEN'S, TRACERS', PLANNERS' AND TECHNICAL OFFICERS' AWARD 1979  
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**

WEDNESDAY, 21 MAY 2025

**FILE NO/S**

APPL 43 OF 2023

**CITATION NO.**

2025 WAIRC 00315

**Result**

Application discontinued

*Order*

THE Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979 (WA)*, hereby orders –  
THAT this matter be and is hereby discontinued.

(Sgd.) R COSENTINO,

Senior Commissioner.

[L.S.]

2025 WAIRC 00316

**REVIEW OF THE FURNITURE TRADES INDUSTRY AWARD 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**

WEDNESDAY, 21 MAY 2025

**FILE NO/S**

APPL 44 OF 2023

**CITATION NO.**

2025 WAIRC 00316

**Result**

Application discontinued

*Order*

THE Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979 (WA)*, hereby orders –  
THAT this matter be and is hereby discontinued.

(Sgd.) R COSENTINO,

Senior Commissioner.

[L.S.]

**NOTICES—Award/Agreement matters—**

2025 WAIRC 00342

Level 17, 111 St Georges Terrace, Perth

Ph: (08) 9420 4444

Application No. APPL 4 OF 2020

**SECTION 40B APPLICATION TO VARY THE  
RESTAURANT, TEAROOM AND CATERING WORKERS' AWARD**

NOTICE is given that the Commission, of its Own Motion, pursuant to section 40B of the *Industrial Relations Act 1979* (WA), intends to vary the *Restaurant, Tearoom and Catering Workers' Award*.

The proposed variations may be viewed at the Commission's website at [www.wairc.wa.gov.au](http://www.wairc.wa.gov.au) and are being made for the purpose of updating and modernising the *Restaurant, Tearoom and Catering Workers' Award*.

A copy of the application and the proposed variations may also be inspected at my office by appointment at Level 17, 111 St Georges Terrace, Perth.

A hearing for the purpose of affording interested persons an opportunity to be heard in relation to the proposed variations will be held at the Commission, Level 18, 111 St Georges Terrace Perth on Thursday, the 17th day of July 2025 at 10:30 am.

Any person who wishes to be heard in relation to the proposed variations should contact Commissioner Kucera's Chambers by email at [Chambers-Kucera@wairc.wa.gov.au](mailto:Chambers-Kucera@wairc.wa.gov.au).

(Sgd.) S BASTIAN,  
Registrar.

[L.S.]

10 June 2025

**INDUSTRIAL MAGISTRATE—Claims before—**

2025 WAIRC 00317

**INDUSTRIAL MAGISTRATES COURT OF WESTERN AUSTRALIA**

**CITATION** : 2025 WAIRC 00317  
**CORAM** : INDUSTRIAL MAGISTRATE D. SCADDAN  
**HEARD** : WEDNESDAY, 9 APRIL 2025, THURSDAY, 10 APRIL 2025  
**DELIVERED** : THURSDAY, 29 MAY 2025  
**FILE NO.** : M 231 OF 2021  
**BETWEEN** : ALEX THOMAS

**CLAIMANT**

AND

PARKERVILLE CHILDREN &amp; YOUTH CARE INCORPORATED

**RESPONDENT**

**CatchWords** : INDUSTRIAL LAW – Modern award coverage – Social and community services sector – Classification of Assigned Care Worker within *Social Community, Home Care and Disability Services Industry Award 2010* [MA000100] – Alleged contravention of terms of modern award on pay rates for classification – Alleged failure to pay in full for work performed

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

**Instrument** : *Social Community, Home Care and Disability Services Industry Award 2010*  
*Crisis Assistance, Supported Housing Industry – Western Australia Interim Award 2011*

**Case(s) referred to in reasons:** : *Re The Australian Industry Group* [2024] FWCFB 385  
*Transport Workers Union of Australia v Coles Supermarkets Australia Pty Ltd* [2014] FCAFC 148; (2014) 245 IR 449  
*City of Wanneroo v Australian Municipal, Administrative, Clerical and Services Union* [2006] FCA 813; (2006) 153 IR 426  
*Transport Workers' Union of Australia v Linfox Australia Pty Ltd* [2014] FCA 829; (2014) 318 ALR 54

*Kucks v CSR Ltd* [1996] IRCA 166; (1996) 66 IR 182

*Amcor Limited v Construction, Forestry, Mining and Energy Union* [2005] HCA 10; (2005) 214 ALR 56

*Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Excelior Pty Ltd* [2013] FCA 638

*Bis Industries Limited v Constructions, Forestry, Maritime, Mining and Energy Union* [2021] FCA 1374

*Fair Work Ombudsman v Complete Windscreens (SA) Pty Ltd* [2016] FCA 621

*Fair Work Ombudsman v Da Adamo Nominees Pty Ltd No 4* [2015] FCCA 1178

*Sethi v Bhavsar* [2020] WASCA 52

*Nobarani v Mariconte* [2018] HCA 36; (2018) 265 CLR 236

**Result** : The claim is dismissed.

**Representation:**

Claimant : In person

Respondent : Mr SM. Billing (of counsel) and with him, Mr A. Ceklic (of counsel)

**REASONS FOR DECISION**

**Introduction**

- 1 Alex Thomas (Mr Thomas) was employed by Parkerville Children & Youth Care Incorporated (the respondent) as an Assigned Case Worker (ACW) in the Belmont Youth Program (BYP) from 9 July 2012 to 20 August 2021.
- 2 The BYP is part of a residential program implemented by the respondent who is contracted to provide out of home care and services to young people under the age of 18 (Young People in Care or Young Person in Care) in the statutory care of the Director-General of the Department of Communities (the Department).<sup>1</sup>
- 3 The respondent has no independent authority with respect to the statutory care of Young People in Care.
- 4 The respondent endeavoured to provide a safe and therapeutic home environment for vulnerable Young People in Care, staffed by ACWs and Therapeutic Carers (TC) who gave direct 24-hour care in the home on a shift-based roster. One of the issues in dispute in this claim is the roles and responsibilities of an ACW as compared to a TC.
- 5 An ACW was allocated one Young Person in Care with generally higher needs, whereas a TC was allocated four to five Young People in Care. Although both roles worked within a home environment, and there is overlap between the roles, there are also some differences.
- 6 The fundamental difference between the two roles, as alleged by Mr Thomas, is that the ACW role incorporates case management exceeding that of a TC, and the ACW role is characteristic of a social and community services employee level B4 in Schedule B of the *Social, Community, Home Care and Disability Services Industry Award 2010* (SCHADS) (Level B4), a modern award. This is the second issue in dispute, being the application of the SCHADS to Mr Thomas's employment.
- 7 For the duration of Mr Thomas's employment, the respondent applied the *Crisis Assistance, Supported Housing Industry – Western Australian Interim Award 2011* (CASHI Award), a state award, to his employment.<sup>2</sup>
- 8 In or around December 2020, the Australian Services Union – Western Australian Branch informed the respondent that, in its view, amongst other things, the respondent was a national system employer, rather than a state system employer, and that the respondent's employees were covered by SCHADS, not the CASHI Award.<sup>3</sup>
- 9 This led to a protracted review of the respondent's operations, which resulted in a determination by the Fair Work Ombudsman (FWO) in or around December 2022 that the respondent was a national system employer, and an indication by the respondent that two modern awards applied to its employees, relevantly that the SCHADS applied to all employees other than clinical staff.<sup>4</sup>
- 10 There was also an indication that the respondent was engaging in a program of reconciling any consequential underpayments to current and former employees, including Mr Thomas.
- 11 This came to a halt in late 2023 to early 2024 when the respondent made an application to the Fair Work Commission (FWC) disputing the FWO's determination about the SCHADS coverage of TCs in the social and community services sector and the application of other provisions under the SCHADS. The respondent sought to 'clarify award coverage in respect of persons undertaking therapeutic care duties in the social and community services sector' on the basis that in its view it was ambiguous or uncertain whether TCs fell within the classifications listed in Schedule B of the SCHADS: *Re The Australian Industry Group* [2024] FWCFB 385 (*Application Decision*) at [2] and [7].
- 12 Notably, the respondent's application to the FWC did not expressly refer to any ambiguity or uncertainty of coverage related to ACWs. It is not clear why this was the case, but from snippets of the respondent's evidence and its submissions, the following explanations are possible:
  - (a) the respondent changed its care model and no longer employed ACWs; or
  - (b) the respondent considered that ACWs and TCs performed the same role, and that any distinction between the two roles did not substantially change their classification under the SCHADS.

- 13 However, there always remained a residual coverage issue because it is clear from the respondent's communications to its employees that the reconciliation of any underpayments would include former employees, including Mr Thomas, who was an ACW. Further, from Mr Thomas's perspective this approach is disingenuous, and its purpose is to escape liability to him and others like him.
- 14 On 25 September 2024, the FWC amended the definition of 'social and community services sector' in SCHADS and associated clauses in Schedule B.<sup>5</sup> The amendment does not apply to Mr Thomas' employment period with the respondent.
- 15 There is some sympathy for Mr Thomas's perception where the respondent's grounds relied upon in support of part of its application in the *Application Decision* give the distinct impression it did not contest the overall application of the SCHADS to its care employees, nor does it resist any amendment to the SCHADS. However, it appears the respondent relies on the responsibilities of TCs that do not exactly mirror the evidence of the responsibilities of ACWs at the time Mr Thomas was employed.<sup>6</sup>
- 16 Therefore, some care needs to be taken with respect to the respondent's preferred position in the *Application Decision*, which is; the FWC found ambiguity in the definition of 'social and community services sector' relating to the provision of personal care in the SCHADS as it relates to TCs, therefore the Court should similarly find such ambiguity as it relates to ACWs. This position neglects any distinction between the role of TC and ACW, which is a matter for evidence. It is also a matter for evidence as to the skills and duties of the ACW role and how this is assessed against the classification criteria under Schedule B of the SCHADS.
- 17 The third issue in dispute between the parties is the amount, if any, of any alleged underpayment if the Court finds that both the SCHADS covered Mr Thomas's employment by the respondent *and* the role of an ACW is classified as Level B4. In respect of this issue, the respondent says that if the Court finds the SCHADS covers Mr Thomas's employment by the respondent, his role as an ACW is classified as social and community sector services employee level 2 (Level B2) and there is no underpayment, because Mr Thomas was paid a higher rate of pay under the CASHI Award.

#### **What is Claimed?**

- 18 Mr Thomas claims an underpayment of \$106,728.94 for the period 31 December 2015 to 25 September 2021, interest of 6% on the judgment amount and, pursuant to s 546 of the *Fair Work Act 2009* (Cth) (FWA), the imposition of a civil penalty.
- 19 In claiming an underpayment, Mr Thomas alleges the respondent has contravened s 45 of the FWA in that the respondent has contravened a term of the SCHADS by failing to pay him an amount required to be paid at Level B4, and contravened s 323 of the FWA in that the respondent has failed to pay him in full for the performance of work.<sup>7</sup>
- 20 Schedule I to this decision sets out the law relevant to jurisdiction, practice and procedure of the Industrial Magistrates Court in determining this case. Relevant to matters identified under the heading, 'Jurisdiction' in Schedule I, I am satisfied: the respondent is a national system employer; and Mr Thomas was an individual who was employed by the respondent and is a national system employee.

#### **The Parties' Evidence**

- 21 Mr Thomas relied upon his own evidence contained in a written statement dated 20 December 2024 and a number of documents were also referred to and tendered into evidence. Mr Thomas also gave oral evidence.
- 22 The respondent relied upon the evidence of Lauren Walter (Ms Walter), Manager of Group Foster Care, in a witness statement dated 31 January 2025 and the evidence of Jonathon Rylatt (Mr Rylatt), Executive Manager of one of the respondent's programs, in a witness statement dated 31 January 2025. Both referred to documents annexed to their statements and also gave oral evidence.

#### **Brief Outline of the Respondent's Operations at BYP**

- 23 The following summary is taken from Mr Rylatt's witness statement, including the BYP policies and processes manual annexed to his witness statement,<sup>8</sup> and the example Therapeutic Care Plan (TCP) tendered by the respondent.<sup>9</sup>
- 24 The respondent's Out of Home Care Program (OOHC) between 2009 and 2024 consisted of three services:
- Services one and two were Family Group Homes and BYP providing care in homes owned by the respondent or the Department, staffed by ACWs and TCs and typically accommodating four to five Young People in Care; and
  - Service three was Therapeutic Foster Care provided by volunteer foster carers in their own homes.
- 25 The three services were almost entirely funded by the State of Western Australia.
- 26 The purpose of services one and two (including BYP) was to provide a home-like environment for Young People in Care, who were predominantly disadvantaged in some way. BYP provided medium to long-term placements for Young People in Care aged between 12 and 18 years of age. Referrals to BYP were made by the Department and were assessed by senior managers for the respondent.
- 27 The policies and processes at BYP were heavily regulated as prescribed in the BYP policies and processes manual. Notably, BYP staff were required to comply with the respondent's policies and processes, and senior management were responsible for ensuring the BYP policies and processes manual was reviewed, updated and current.
- 28 The BYP policies and processes manual outlined what was required and expected of all BYP staff, including ACWs, regarding the Young People in Care. For example, the BYP policies and processes manual provided for wake times and bedtimes, use of electronic devices and television and computer systems. It also provided for the use of duress alarms and discharge from BYP, amongst other things.
- 29 Young People in Care had individual TCPs, which is based on a template document devised by the respondent to coincide with the ultimate responsibility of the Department for the overall care and goals of Young People in Care.

- 30 The Department always assumed the ultimate responsibility for Young People in Care, and to that extent a Departmental Case Manager or worker was responsible for any decisions as it related to the care of the Young People in Care.
- 31 That is, the individual TCP was informed by the Department and the Departmental Case Manager's care plan for Young People in Care.
- 32 The TCP is, in essence, a communication tool for the Department and staff at BYP so that everyone involved in a Young Person in Care's care is aware of and engaged in the care, including on a day-to-day basis.
- 33 ACWs and TCs both lived with the Young People in Care in homes on a 24-hour shift roster so as to provide supervision and a safe, stable and consistent home-like environment.
- 34 ACWs and TCs were supervised by Team Leaders who worked standard office hours and who did not provide a live-in function.

#### **Mr Thomas' Employment**

- 35 While Mr Thomas commenced employment with the respondent in 2012, on 19 January 2016 he was offered a new contract of employment (the Offer Letter)<sup>10</sup>. The relevant terms in the Offer Letter included that his terms and conditions were those set out in the Offer Letter, its attached Annexure and under the CASHI Award.
- 36 He was employed full-time to work an average of 38 hours per week worked across seven days in accordance with a roster or other arrangement determined by his manager to meet the operational requirements of the ACW position. His rostered hours included overnight shifts.
- 37 The ACW position was classified as Level 3 in the CASHI Award and his salary level commenced at Level 3.3. His annual salary was \$63,416 per annum.<sup>11</sup> Clause 5.3 of the Offer Letter provided that his:

[A]nnual salary as outlined [in cl 5.2] is designed to cover and offset the Award entitlements set out in Annexure A. The salary has been calculated to reflect the payments due to [him] under the Award for working the standard shift roster applicable to work at the [BYP]. The employer reserves the right to amend the shift roster and will provide notice of change in accordance with the Award.

- 38 Annexure A to the Offer Letter provided for the inclusions in the annual salary, including first aid allowance; ordinary time hours; payment of overtime for no meal break; payment for meals with clients; shift work and annual leave loading. It did not provide for the inclusion of overtime under cl 21 of the CASHI Award.

#### **SCHADS Coverage**

- 39 A modern award made by the FWC does not impose an obligation or give an entitlement unless the award applies to the employer and the employee.<sup>12</sup> An award applies to the employer and the employee if the award covers each of them.<sup>13</sup> An award covers an employer and an employee if the award is expressed to cover each of them.<sup>14</sup> The starting point to determine award coverage are the words of the award itself. More specifically, it is 'the objective meaning of the words used [in the relevant award] bearing in mind the context in which they appear and the purpose they are intended to serve'.<sup>15</sup>
- 40 Resolution of the claim involves, in small part, the construction of terms in a modern award.
- 41 The principles applicable to the interpretation of industrial instruments are well known. In summary, the interpretation of an industrial instrument begins with consideration of the natural and ordinary meaning of the words used.<sup>16</sup> An industrial instrument is to be interpreted in light of its industrial context and purpose and must not be interpreted in a vacuum divorced from industrial realities.<sup>17</sup> An industrial instrument must make sense according to the basic conventions of the English language.<sup>18</sup> The circumstances of the origin and use of a clause is relevant to an understanding of what is likely to have been intended by its use.<sup>19</sup> Narrow and pedantic approaches to the interpretation of an industrial instrument are misplaced.<sup>20</sup>
- 42 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.
- 43 Industrial instruments are usually not drafted with careful attention to form by persons who are experienced in drafting documents that have legal effect.
- 44 The following is also relevant:
- Ascertaining the intention of the parties begins with a consideration of the ordinary meaning of the words of the instrument. Ascertaining the ordinary meaning of the words requires attention to the context and purpose of the clause being construed.<sup>21</sup>
  - Context may appear from the text of the instrument taken as a whole, its arrangement and the place of the provision under construction. The context includes the history of the instrument and the legal background against which the instrument was made and in which it was to operate.<sup>22</sup>
- 45 Clause 4.1 of the SCHADS provides that the award covers employers throughout Australia in the:
- (a) crisis assistance and supported housing sector;
  - (b) social and community services sector;
  - (c) home care sector;
  - (d) family day care scheme sector;
- and their employees in the classifications listed in Schedule B to Schedule E to the exclusion of any other modern award.
- 46 The respondent did not refer to, or rely upon, any of the exclusions in clauses 4.2 to 4.5 of the SCHADS.

- 47 Neither party referred to, or relied upon, the sectors referred to in cl 4.1(a), (c) and (d) of the SCHADS. The definitions of ‘family day care scheme sector’ and ‘home care sector’ in cl 3.1 of the SCHADS plainly do not apply to the respondent’s operations. The definition of ‘crisis assistance and supported housing sector’ in cl 3.1 is unhelpful but where neither party sought to argue the respondent’s operations came within that sector (whatever it might be), I will not consider it further.
- 48 The respondent admitted it was an employer that undertook work in the *social and community services sector*,<sup>23</sup> but this did not extend to the employment of persons undertaking personal care work, including therapeutic care at BYP, under the then definition in cl 3.1 of the SCHADS.
- 49 Therefore, for Mr Thomas to be covered by the SCHADS, he must prove on the balance of probabilities that:
- (a) the respondent is in the social and community services sector; and
  - (b) he is employed by the respondent; and
  - (c) his employment is in the classifications listed in Schedule B.
- 50 Mr Thomas litigated his claim on a particular basis: the classification for an ACW was Level B4, not Level B1 or Level B2.
- 51 The respondent defended Mr Thomas’s claim on the basis that Mr Thomas’s employment was not covered by SCHADS because, as an ACW, his employment was not in the classifications listed in Schedule B where the work performed by ACWs was the provision of therapeutic care and direct personal care to Young People in Care, and at the time this type of care was limited to work within disability services.
- 52 Alternatively, if the Court found Mr Thomas’s employment was covered by SCHADS, the respondent says his employment classification was not Level B4 but was Level B2.
- 53 Therefore, in this case, where the significant common issue in dispute is Mr Thomas’s classification within the SCHADS (leaving aside whether the SCHADS covers Mr Thomas’s employment), and where that issue is one of the elements to be determined for the purposes of determining if the SCHADS covered Mr Thomas’s employment, this issue will be discussed first.
- 54 That is, does Mr Thomas’s employment as an ACW fall within the classification in Schedule B of the SCHADS? Mr Thomas’s case is that his employment as an ACW fell within the classification Level B4.

#### **Is an ACW classified within Schedule B of the SCHADS?**

- 55 Schedule II to these reasons set out the classification structure in Schedule B in the SCHADS.
- 56 Clause 13.1 of the SCHADS provides that the definitions for the classification levels in cls 15 to 17 are contained in Schedules B to F. Clause 15 applies to social and community sector services employees. Clause 13.3 of the SCHADS provides for the progression of employees from one pay point to the next and for the movement to a higher classification, which may only occur by way of promotion or re-classification.
- 57 The classifications in Schedule B, consistent with the classifications in Schedule C, are divided into sub-categories of criteria that employees at the various levels may have. Schedules D and E, relevant to family day care and home care, do not have the same level of detail, likely consistent with the employment being undertaken in a less formal environment.
- 58 The classifications in Schedule B (and C) are hierarchical, where Level B1 is the lowest level and Level B8 is the highest level. It is fair to say that the expectations, responsibilities and requirements of any positions under the classifications increases as the level increases.
- 59 The criteria for each classification level includes a broad statement of the characteristics and the responsibilities of the particular level, the requirements of the position, which is further sub-divided into skills, knowledge, experience, qualifications and/or training, organisational relationships, and extent of authority.
- 60 It is also fair to say that employees classified under Schedule B are likely to work in a wide range of roles, from the provision of direct care to individuals to the management of staff and organisational responsibilities and may have little or no tertiary or post-graduate qualifications.
- 61 It will be necessary to focus on these criteria, particularly those applicable to Level B4, to determine whether the ACW role comes within the Schedule B classification relied upon by Mr Thomas.
- 62 In determining the award classification which is ‘most appropriate’ of an employee’s position, regard is had to the primary purpose of the employment, the range of tasks for which the employee is trained, and the classification which is the ‘most comprehensive match’ with the work in question.<sup>24</sup>
- 63 The focus is upon the identification of the skills and duties required of an employee who is called upon to perform the function that is required to be performed by the employer. The individual performance of a particular employee (e.g. quality and quantity of work, capacity for more complex work) is less relevant than the skills and duties necessary to perform the function required to be performed by the employee.<sup>25</sup>

#### **Mr Thomas’s Undisputed Evidence**

- 64 One of the difficulties with Mr Thomas’s evidence is that he was prone to making conclusionary statements, even when given an opportunity to further explain his evidence. This resulted in gaps in his evidence. It also created an impression there was a degree of obfuscation about what his role, in fact, entailed, and that he tailored parts of his evidence to fit within Level B4.
- 65 However, parts of his evidence were undisputed and was supported by other evidence.
- 66 During his employment with the respondent, Mr Thomas did not hold any formal qualifications. He commenced a Diploma of Community Services in or around late 2019, but it was unclear if he completed this qualification when he ceased employment. If he did complete this qualification, it was towards the end of his employment with the respondent.

- 67 Mr Thomas commenced full-time youth work in 2010, following which he was employed by the respondent in 2012 as an ACW at BYP.
- 68 The following aspects of the work undertaken by Mr Thomas as an ACW at BYP were not disputed by the parties:
- (a) providing direct care and support to principally one Young Person in Care (hence the title of the ACW role) in a home environment, with direct care and support being provided to more than one Young Person in Care depending on the shift roster. By way of example, during a night shift there would be one ACW in attendance responsible for more than one Young Person in Care;
  - (b) the direct care included assisting the Young Person in Care to self-care; provide meals where required; attend school or other training or external appointments; complete homework; get ready for bed; and maintain a routine;
  - (c) the support included providing a safe home like environment, including some domestic tasks such as cleaning; eating an evening meal with the Young Person in Care; attending recreational activities; speaking with the Young Person in Care about the Department's policies; advocating on the Young Person in Care's behalf and ensuring they understand their rights; and providing emotional support;
  - (d) communication with various stakeholders, including communicating with the Department, school, other persons like family in the Young Person in Care's life to ensure stakeholders know what is happening with the Young Person in Care; and
  - (e) administrative tasks, including maintaining care plans and case notes and records for the Young Person in Care; reporting incidents; attending team and stakeholder meetings; sending correspondence to the Department and other stakeholders; managing a budget for the household and keeping the relevant financial records; undertaking training when required; and from time to time orientating a new ACW to BYP.
- 69 Mr Thomas agreed that as an ACW:
- (a) no staff report to him;
  - (b) he had no ongoing supervisory role;
  - (c) he had no authority to approve staff overtime or staff leave;
  - (d) he did not undertake any performance review of other staff;
  - (e) he was required to follow the respondent's BYP policies and procedures;
  - (f) he did not develop any of the BYP policies and procedures, but he may have given feedback on the policies and procedures from time to time; and
  - (g) he was required to complete the respondent's TCP, but he did not develop the TCP.
- 70 The real issue in dispute was the role 'case management' played in the ACW position, with Mr Thomas emphasising this aspect of the ACW position occupied a significant part of the position and/or was a distinguishing feature to the TC position, warranting the ACW position being classified at a higher level than that suggested by the respondent. The respondent considers the two positions as generally identical and that any differences between the two had no substantial effect on the appropriate classification. That is, and put simply, if SCHADS covered Mr Thomas's employment, the appropriate classification was Level B2, the same as a TC.

#### **Mr Thomas's Evidence on the Role of Case Management**

- 71 Mr Thomas heavily leaned into the role of case management in the ACW position, which he said involved participating in the assessment, intake and discharge of the Young Person in Care; developing and implementing care plans and safety plans; collaborating with the Young Person in Care and their family along with various stakeholders; providing counselling and professional support to the Young Person in Care and their families to build on existing strengths and address issues and advocating for best outcomes for the Young Person in Care.<sup>26</sup>
- 72 When asked to expand on this, Mr Thomas admitted that the 'case management' mainly involved one Young Person in Care and involved liaising with their case worker at the Department and other stakeholders. This also involved, on his evidence, 'developing... Care Plans'<sup>27</sup> and being responsible for and implementing it for the Young Person in Care. He said he contributed to safety planning for the Young Person in Care and attended multi-disciplinary team meetings contributing to the overall care of the Young Person in Care. While Mr Thomas admitted the TC role also did many of the same 'case management' functions, he said an ACW did it to a higher degree.
- 73 On Mr Thomas's evidence, the distinguishing difference between the ACW position and the TC position was a TC did not attend multi-disciplinary team meetings and did not contribute to the same degree to the care planning and safety planning for a Young Person in Care.
- 74 Mr Thomas relied upon documents to support his evidence, including the:
- BYP policies and processes manual; and
  - Job Description Form (JDF) for ACWs<sup>28</sup> and TCs.<sup>29</sup>
- 75 It was apparent Mr Thomas took particular issue with what he perceived as a reduction in the ACW role by reference to the TC role.

#### **The Respondent's Evidence on the Role of Case Management**

- 76 In his oral evidence, Mr Rylatt said 'case management' as a concept has different meanings (depending on the context). He agreed the use of the phrase was problematic in terms of the ACW role and considered 'case work' was a better phrase to use

for the role. In that sense, Mr Rylatt said the respondent did not have the statutory case management for Young People in Care, but the respondent undertook case work for individual children.

- 77 The Department had the overall case management for Young People in Care, which was reviewed by the Department on a yearly basis and was thereafter operationalised by the respondent's individual TCP.
- 78 Case management involved management of the care team but on an individual level it involved the operational alignment to individual TCPs. Relative to the ACW role, ACWs worked within a care team within the framework of the Department's care plan and the TCP by having direct contact with the Young People in Care and providing input into the care plan along with the Young People in Care and other team members.
- 79 Mr Thomas referred Mr Rylatt to point six in the BYP policies and processes manual,<sup>30</sup> entitled 'Case Management'. Mr Rylatt said that case management was undertaken in collaboration with others and that many of the actions detailed in point six were similar to TCs for the OOH. He termed the requirements in point six as consistent with case work rather than case management, where case management required strategic oversight.
- 80 Mr Rylatt maintained that the administrative role or task undertaken by ACWs was minor in nature, and did not comprise a major part of the role, consistent with the role of TCs. In particular, Mr Rylatt said the respondent was responsible for the TCP which was reviewed every two weeks. There was a care team meeting every six weeks, which included the ACW along with other team members. This involved a review of the TCP requiring about one to two hours of administrative work updating the TCP either before or after the team meeting. Mr Rylatt's evidence is the ACW role is a direct care role for the majority of the time with about 30 minutes per day spent on administrative tasks such as updating the TCP.
- 81 In her witness statement, Ms Walter stated the administrative tasks by ACWs included sending correspondences, inputting data into the respondent's TCP to record decisions made by the Department or other team members, such as psychologists, documenting care in the TCP, taking meeting notes at team meetings.<sup>31</sup>
- 82 Ms Walter said ACWs did not have authority to make autonomous decisions about Young People in Care without reference to a Team Leader. In her view, the terms 'case work' and 'case management' were used interchangeably, with the ACW position not having any role in making decisions for Young People in Care in relation to the TCP or the Department's care plan. She considered the ACW was assigned to do one-on-one case work with one young person with limited administrative functions and some ability to influence decisions relative to the young person consistent with advocating on their behalf.
- 83 In terms of the amount of time spent on administrative tasks, Ms Walter said the writing of daily notes on the care plans took very little time, updating the care plans for care team meetings took approximately one hour for the fortnightly meeting and about one hour for the six-weekly meeting.

#### **JDF for ACW and TC – Case Management**

- 84 The JDF for the ACW role relied upon by Mr Thomas under the heading of '1. Case Management' provides the following duties and responsibilities:<sup>32</sup>
- 1.1 Take an active role in the assessment, intake and discharge process for children and young people.
  - 1.2 Develop and implement a comprehensive, holistic and best practice care plan with young people who are at risk, homeless or at risk of homelessness, their families (where appropriate) and other stakeholders.
  - 1.3 Work therapeutically with young people and their families towards either achieving reconciliation or developing alternative plans for the young people to live independently from their families.
  - 1.4 Assess the family dynamics as well as other areas of young peoples' lives, looking at both strengths and restraints and developing strategies to address restraints.
  - 1.5 Provide counselling and evidence-based information to young people and their families to address health issues, conflict management, communication skills, anger management and developmental issues.
  - 1.6 Work collaboratively with the Department of Communities – Child Protection and Family Support and other key stakeholders.
  - 1.7 Advocate for the best possible outcomes for the children and young people who are in out of home care.
- 85 The case management responsibility is predicated on a position purpose where it is stated:
- This position assumes case management responsibility for the young person and his family with a holistic and all-encompassing emphasis whilst ensuring that practices and processes within the programmes are consistent with the philosophies, ethos and values of Parkerville Children and Youth Care.<sup>33</sup>
- 86 The other duties and responsibilities in the ACW JDF include:
- (a) Direct Care, including:
    - 2.1 Provide emotional support, encouragement and guidance, focussing on solutions to the problems.
    - 2.2 Maintain a consistent environment with an established routine where expectations and consequences are clear and reality based.
    - 2.3 Provide a model of socially and legally acceptable behaviour and "on-the-spot" counselling through the avenue of day-to-day life events.
    - 2.4 Assist young people to develop recreational and social skills through activities, outings, camps, participating in community groups, classes and sporting clubs.

- 2.5 Ensure that information, resources, equipment and encouragement are provided for the young people to accomplish necessary tasks in current developmental stages.
  - 2.6 Encourage self-care and promote independent living skills in all areas relevant to the young people, such as, health, dental and hygiene [practises].
  - 2.7 Provide opportunities for the young people to pursue religious/spiritual practises in and outside the residence in accordance with the young peoples' families' beliefs or of his/her own choosing, where appropriate.
  - 2.8 Ensure an appropriate level of safety for young people at home and on outings and teach young people to keep themselves safe.<sup>34</sup>
- (b) Communication, including maintenance of case notes in accordance with the respondent's processes, attendance at team and agency meetings, writing incident reports (if required), liaising with community groups, arranging case discussions with the Department.
  - (c) Maintenance, including ensuring the home is maintained and repaired and is clean.
  - (d) Other duties as required and identified, including promoting the respondent's mission and values.
- 87 The JDF for the TC role under the heading of '2. Case Management' provides the following duties and responsibilities:<sup>35</sup>
- (a) Implement the Individual Care Plan for each child (which is developed by the team, in consultation with others and encompasses all areas of the child's life) in a supportive, planned and purposeful manner, including observation, recording, monitoring and feedback to the Team Leader and other professional staff.
  - (b) Implement and support contact arrangements for children with natural parents and extended family members.
  - (c) Work cooperatively with volunteers and holiday hosts and facilitate/allow access to the children by other Parkerville staff and volunteers.
- 88 The other duties and responsibilities in the TC JDF include:
- (a) Direct Care, including:
    - 1.1 Perform a range of child care and development tasks such as maintaining the physical environment, domestic duties, attending to health and medical requirements of children, play and recreational activities and educational needs;
    - 1.2 Provide day to day care for children in ways which meet their developmental needs, and have a positive effect on their self-esteem, attachment and security, in accordance with duty of care requirements and agency processes and philosophies;
    - 1.3 Provide appropriate support and assistance to deal with the problems of everyday life to children who may display a number of behaviours associated with abuse/neglect, trauma, attachment, separation, grief and loss; and
    - 1.4 Assist children to develop social skills, problem solving and independent living skills as appropriate to their age and developmental level.<sup>36</sup>
  - (b) Administrative Duties, including write file notes and appropriate records, participate in ongoing supervision and attend relevant training as required, attend regular care team meetings, staff meetings and participate in care planning, take responsibility for the maintenance and upkeep of property and contents, manage household expenditure within a monthly budget and comply with organisational requirements for financial record keeping and reporting; and
  - (c) Other duties as required or requested.

#### **BYP Policies and Processes Manual – Case Management**

- 89 The part of the BYP policies and processes manual relied upon by Mr Thomas under the heading of '6.0 Case Management' relevantly provides the following duties and responsibilities:
- Each assigned Case Worker is responsible for the day-to-day case management of a young person. Although full time staff are allocated assigned clients while on shift at Belmont Youth Programme, case workers are responsible for meeting the case management needs of all clients as required at the time. The Manager of Belmont Youth Programme is available to oversee case management of all clients and provide support and guidance to assigned workers through care teams, supervision and meetings as required.<sup>37</sup>
- 90 The ACW role is then split into two broad duties: case management; and program responsibilities.
- 91 Primary case management duties include input into assessments; development of individual care plans and review; obtaining personal information of the Young Person in Care; explaining the respondent's policies; making available in the home various information; communicating with external stakeholders and recording the communications and assisting the Young People in Care in obtaining legal information via the Department case managers.
- 92 Program responsibilities include direct care; recording daily logs when on shift; updating the relevant database with all correspondence and other records; completing records and incident reports; complete handover checklists for each shift; checking the home at the beginning and end of shift including necessary cleaning; handing over to the next shift; prepare house meetings; collate the necessary paperwork when on shift for care team meetings; report property and maintenance issues; be present in the main area of the house when on duty with another ACW; ensure an afternoon snack is available; prepare evening meals when on the day shift; eat evening meals with the Young People in Care; update care plans weekly; support the Young

People in Care with homework or attending recreational activities and assisting the Young People in Care to get ready for and prepare for bed.

#### **Individual Performance Review – Case Management**

93 Mr Thomas also relied upon the respondent's Individual Performance Review documents<sup>38</sup> in support of his submission regarding the significance of case management in the ACW role.

94 As the title of the documents suggest, these documents assess Mr Thomas's performance against established JDF criteria with his strengths and areas for improvement identified. In general terms, Mr Thomas's strengths and interests appeared to be in the direct care to the Young People in Care, rather than the administrative tasks.

#### **Mr Thomas's Evidence on Care Planning and Safety Planning**

95 Mr Thomas also relied on the role of the ACW in care and safety planning, although this aspect of the role carried less significance to the case management role.

96 According to Mr Thomas he authored, implemented and developed TCPs and safety plans for Young People in Care. It was difficult to establish what, in fact, Mr Thomas's role was with respect to the TCPs and safety planning, however, by way of example he relied upon an example care plan he had completed for a Young Person in Care.<sup>39</sup>

97 The example TCP is a generic template document prepared by the respondent with the relevant component parts completed by Mr Thomas. It is specific to the individual Young Person in Care and the areas to be 'authored' are governed by the document itself, which is consistent with Mr Rylatt's and Ms Walter's evidence about the TCP.

#### **The Respondent's Evidence on Care Planning and Safety Planning**

98 In contrast, the example care plan relied upon by the respondent, authored by a Team Leader at the Department,<sup>40</sup> consistent with its statutory responsibility, shows substantial input. This document directs the input in the TCP for Young People in Care.

99 Mr Rylatt's evidence is that the ACW role (and the TC role) did not extend to the independent development or strategic oversight of TCPs. He suggested both roles included 'minor administrative tasks', such as inputting care plan data and information during care meetings, which were operational and supportive in nature.<sup>41</sup>

100 Ms Walter's evidence is the ACW role inputted data into the respondent's online TCP, which essentially recorded decisions made by other professional staff. ACWs could not make decisions contained in the TCP on their own.<sup>42</sup>

101 The BYP policies and processes manual at '4.0 Care Planning'<sup>43</sup> required all Young People in Care to have an individual TCP which was authored and maintained by the ACW, but all care team members were expected to contribute and maintain the TCP. That is, it was a collaborative, rather than individual, function.

102 In addition, the ACW role was to update the TCP following care team meetings and review the TCP with the Young People in Care.

103 At '4.10 Department Care Plan and Cultural Plans' the Department was required to prepare an overall care plan for each Young People in Care which was reviewed yearly. The ACW role was to prepare a summary of the preceding 12 months prior to the yearly review.

104 The BYP policies and processes manual at '10.0 Safety Plans', required a safety plan where there was an identified risk to Young People in Care.<sup>44</sup> It appears that the staff member who identified the risk was required to prepare a plan. Again, the safety plan template was prepared by the respondent and completed by the particular staff member with a Team Leader having responsibility for it being updated.

105 The requirements of care planning are also referred to in the ACW and TC JDF in almost identical terms save that the ACW JDF includes the development of the TCP. Both roles also require the writing of file notes.

#### **Mr Thomas's Evidence on Attendance at Care Team Meetings**

106 Mr Thomas referred to the ACW's attendance at various care team meetings, which he said was not a feature of the TC role.<sup>45</sup>

107 Mr Thomas's evidence was, in essence, that the ACW took an active role in care team meetings.

#### **Other Evidence on Attendance at Care Team Meetings**

108 The ACW and TC JDFs require both roles to attend regular care team meetings.

109 The BYP policies and processes manual at '5.0 Care Team' provided for a fortnightly team meeting attended by all BYP staff (on duty) and stakeholders.<sup>46</sup> The agenda was set and the meeting chaired by a BYP Programme Manager. It was expected that all staff would contribute towards agenda items, discussions and advocate for the Young People in Care.

110 The functions of the care team are set out in the same section with the BYP staff member's responsibility being to arrange the care team meeting schedules, chair the meeting and record discussions and actions in the relevant database.

111 The respondent relied upon two examples of care team meeting notes attended by Mr Thomas.<sup>47</sup> One of the meeting notes was created by Mr Thomas and the other created by another staff member. Both notes are on a template form, are brief and contain a summary of actions for the particular Young Person in Care.

#### **Qualifications**

112 The ACW JDF provides the essential selection criteria for the role as:

1. Associate Diploma and/or relevant experience to undertake the range of activities required for the role.
2. Understanding and experience in case management and advocacy for youth.
3. Ability to communicate with and respond to youth and families and to maintain boundaries.

4. Willingness to develop skills through further professional development in working therapeutically with youth and their families.
5. Skills in residential care, including care and maintenance of the physical environment, working with individual and groups of young people through using everyday life events and special activities.
6. Ability to document and report incidents and behaviour succinctly and objectively.
7. Strong interpersonal skills.<sup>48</sup>

113 The TC JDF provides the essential selection criteria for the role as:

1. A relevant tertiary qualification (at least Diploma level) or at least 3 years of relevant experience;
2. Skills in caring for children and an understanding of child development;
3. Demonstrated capacity to work as a member of a multi-disciplinary team;
4. Personal skills and commitment to maintain the home as a clean, safe, secure environment for children in care;
5. Demonstrated ability to provide care experience appropriate to the emotional and social needs of the children and set behaviour limits which are appropriate and non-punitive;
6. Skills in communicating with and responding to children and young people – including the ability to engage with them in a positive manner;
7. A high level of energy, flexibility and creativity;
8. Commitment to continuing professional development;
9. Understanding of legislation and standards relevant to the position (including OSH legislation).<sup>49</sup>

#### **Relevant Findings on the ACW Role**

- 114 I find the principal purpose of the ACW role is contained in Mr Rylatt's witness statement, which is to provide direct care to Young People in Care by providing emotional support, maintaining a routine in a home-like environment and encouraging independence.<sup>50</sup> That is, the primary focus and purpose of the role is on the wellbeing and needs of the Young Person in Care. The primary focus and purpose of the role is not on the completion of paperwork and administrative tasks, although I accept that this is part of the role, just not the primary or substantive part of the role.
- 115 While Mr Thomas sought to emphasise the increased case management and care planning roles of the ACW, as compared to those of a TC, I do not accept that these aspects of the ACW role formed the primary purpose of the role.
- 116 To the extent that the ACW's role involves case management, it, in fact, involves management of principally one Young Person in Care on a micro level, where the case management concerned managing the Young Person in Care's day-to-day activities (howsoever that manifests) while the ACW is on shift in a controlled and prescribed manner.
- 117 This is not to say there are not challenges in doing so, depending upon the needs and complexities of the Young Person in Care. However, the case management goes hand-in-glove with the principal purpose of the ACW role to support and nurture the Young Person in Care in a home-like environment.
- 118 To the extent the ACW's role involves care and safety planning it, in fact, involves using the respondent's TCP template in a mainly prescriptive manner to record the day-to-day case notes enabling continuous communication from shift to shift and to and from various care team members and stakeholders. It also involves the provision of summaries from time to time to the principal care agency, the Department, and where required at care team meetings.
- 119 While the ACW role had a degree of autonomy in authoring their content into the TCP, they had limited, if any, autonomy in terms of the overall goals for the Young People in Care, which, again, resided with the Department. That is, an ACW had no responsibility for any strategic direction or goals for the Young People in Care, and, in fact, were more responsible for facilitating and implementing the goals set out by the Department by using the respondent's TCP template.
- 120 In terms of attending and participating in care team meetings, the ACW was an attendee and, no doubt, provided information helpful to reviewing and assessing the care and goals of Young People in Care, but this was no more than what could reasonably be expected in a 'multi-disciplinary' team meeting. That is, different people bring different information to the table from which those in the decision-making roles make the decisions relevant to Young People in Care. I do not accept the ACW role extended to making decisions about the overall goals and care of Young People in Care, even if their input was part of the information assisting in that decision-making.
- 121 None of this is to undermine the value of the work undertaken by ACWs involving challenging and disadvantaged Young People in Care. However, simply put, the ACW role was hands-on, on the ground, in a highly structured home-like environment providing parental-style support to principally one Young Person in Care on a shift roster with other ACWs.
- 122 To this extent, there are many similarities between the role of a ACW and the role of a TC. In particular, both are hands-on, on the ground, in a highly structured home-like environment providing parental-style support for Young People in Care on a shift roster. However, the care requirements of Young People in Care cared for by TCs are less complex, hence they were responsible for approximately four Young People in Care. This is reflected in *some* differences in the ACW JDF.
- 123 Notwithstanding this, the similarities of the key duties and responsibilities, including the position purpose, of the ACW and TC roles outweigh the modest differences. This also extends to the essential selection criteria for each role, which is substantially identical in effect if not in the words used.
- 124 True enough, there are administrative functions and the need to record how care was given and undertaken, but this was to support the primary purpose, and was not, of itself, the primary purpose.

### Evaluating the ACW Role to the Schedule B Classifications

#### Level B4

- 125 Mr Thomas included a matrix in his submissions where he sought to cross reference ACW skills and responsibilities he considered mirrored the requirements of Level B4. However, the matrix tailored Mr Thomas's opinion about aspects of the ACW role to the criteria referred to in Level B4, rather than providing an evaluation of the role.
- 126 The Level B4 includes general and specific characteristics for the level.<sup>51</sup>
- 127 I accept that of those characteristics the ACW role works under restricted general direction in functions that require the application of skills and knowledge appropriate to the work where the guidelines and procedures are established. I also accept that the ACW role requires knowledge or skills gained through either qualifications and/or relevant experience to undertake the range of activities. However, I do not accept that the ACW role is expected to, or does contribute knowledge in *establishing* procedures in the appropriate work-related field. The ACW role is subject to the respondent's established policies and procedures in a highly regulated environment. Further, I do not accept that the ACW role is required to *supervise* various functions within a work area or activities of a complex nature. The nature of the ACW role is that it supervises one or more Young People in Care and completes associated tasks in doing so.
- 128 I do not accept the ACW role contains a substantial component of supervision beyond supervising the Young People in Care, which is part of the primary purpose of the role. The ACW role does not undertake any supervision of any other staff. I also do not accept the ACW role is required to provide specialist expertise or advice in their relevant discipline. Leaving aside whether conceptually the notion of *relevant discipline* applies to the ACW role, the role provides generalised support and direct care to Young People in Care, including encouragement, guidance and modelling of 'good' behaviour. This does not encompass, in my view, specialist expertise or advice, which is within the purview of the Department or more senior people employed by the respondent.
- 129 I accept the ACW role requires a sound knowledge of the BYP program and the policies and processes manual and associated documents. I also accept that the ACW role requires skills in time management, organising their own work and planning. However, it does not involve doing so with respect to other staff either as a component of the position or to achieve specific objectives. However, contextually, these skills are within a highly regulated system.
- 130 I do not accept the ACW role is expected to set outcomes and develop work methods where the general work procedures are not defined. To the contrary, the ACW role works within clearly defined policies and procedures and is expected to implement care set by the Department. I accept the ACW role has some limited input into the respondent's TCP on an individual basis, but not in a way that develops the overall goals and care of Young People in Care.
- 131 Accordingly, while the ACW role has *some* features characteristic of the Level B4 in B.4.1, on balance it does not exhibit or require the majority of characteristics required of a Level B4 position.
- 132 The Level B4 responsibilities are to contribute to the operational objectives of the workplace which may include a number of identified criteria.<sup>52</sup>
- 133 I do not accept the ACW role undertakes activities or contributes critical knowledge and skills where procedures are not clearly defined. The BYP policies and processes manual regulates the ACW role with little, if any, scope to act autonomously outside these policies and procedures.
- 134 I also do not accept the ACW role identifies specific or desired performance outcomes. The ACW position is required to adhere to certain standards and is reviewed yearly on how they perform in the role. Similarly, the ACW role is not expected to set outcomes and develop work methods where general work procedures are not defined or expected to exercise judgment or contribute critical knowledge or skills where procedures are not clearly defined. The BYP policies and processes manual is prescriptive, and all staff are required to adhere to the policies and procedures contained within it. Any contribution by an ACW is limited to feedback in an operational capacity.
- 135 The ACW role does not provide administrative support of a complex nature to senior employees. The administrative function of the ACW position is limited to using the respondent's templates in a prescriptive manner, albeit that the ACW role contributes to and is responsible for the content. The ACW role does not provide assistance on grant applications; or develop, control and administer a records management service; undertake computer operations requiring technical expertise or apply computer programming knowledge or provide a reference or research information service.
- 136 In my view, the ACW role is not within the specialised field contemplated by Level B4 such that the position liaises with other professionals at a technical or professional level, leads a team within a specialised project, performs a range of planning functions or assists senior employees with the planning and co-ordination of a community program of a complex nature.
- 137 The aspects of the ACW role that *may* come within the responsibilities contemplated in Level B4 include exercising responsibility for various functions within a work area and undertaking a wide range of activities associated with program activity or service delivery. However, these responsibilities are of such a level of generality that when considered in the context of the other areas of responsibilities, I am not persuaded that the inclusion of these responsibilities elevates the ACW role's responsibilities to the level contemplated by Level B4.
- 138 The Level B4 requirements for a position include certain skills, knowledge, experience, qualifications and/or training.<sup>53</sup>
- 139 The requirements of the ACW role does not require knowledge of statutory requirements relevant to work (although interestingly, the TC role does) or knowledge of the organisational programs and policies. The ACW JDF selection criteria is focussed on the employee having skills in residential care and being able to work with and communicate with young people, consistent with the ACW providing care to Young People in Care.

- 140 There is an expectation that the ACW will develop their skills and be able to document events appropriately. However, there is no apparent expectation that the ACW will come to the BYP with knowledge of the respondent's organisation, or the programs implemented by the BYP. It is reasonable to infer that this will develop over time *and* there is a comprehensive procedure and policies manual governing the role. In addition, there is a hierarchy of supervision.
- 141 In terms of qualifications, the Level B4 at B.4.3(b)(v) enables an employee to qualify for the classification via previous appointments or service. The ACW JDF provides that the qualification for the role is via an associate diploma or relevant experience, similar to the TC JDF. Therefore, both the ACW role and the TC role *could* qualify for the Level B4 classification on the basis of the prerequisites.
- 142 However, the ACW role does not supervise other staff or work in a specialised field, and it is arguable as to whether the ACW role works under general direction. In my view, the ACW role works under more restrictive direction albeit they may exercise some discretion within the restrictions provided by the BYP policies and processes manual.
- 143 Further, the extent of the authority of the ACW position is very limited.
- 144 Thus, overall, the requirements of the ACW role are more practical and experience-based (including developing experience) with an emphasis on skills, some knowledge and the ability to communicate with young people. That is, the essential requirements are consistent with having direct engagement with Young People in Care, rather than to undertake more complex or strategic responsibilities or to contribute to the respondent's existing processes, knowledge and outcomes.
- Level B2*
- 145 The respondent contends that if the SCHADS covers Mr Thomas's employment, the appropriate classification for the ACW role is Level B2. For the purposes of undertaking an evaluation of the ACW role against Level B2, I leave to one side the issue surrounding the definition of '*social and community services sector*'.
- 146 The Level B2 also includes general and specific characteristics for the level.<sup>54</sup>
- 147 I accept that the ACW role works under general guidance within the clearly defined guidelines of the BYP policies and processes manual and undertaking activities requiring the application of acquiring skills and knowledge, consistent with the requirements of the position.
- 148 I also accept that the ACW role's general features consist of performing functions which are defined by established routines, methods, standards and procedures by reference to the BYP policies and processes manual. Further, I also accept there is limited scope to exercise initiative in applying work practices and procedures. That is, the BYP policies and processes manual is prescriptive in its application, although I accept there may be some latitude depending on the circumstances. In addition, an ACW may contribute to the respondent's organisation, but this is limited mainly to feedback on existing policies and procedures or day to day operations.
- 149 The ACW role is expected to have an understanding of work procedures relevant to their area, but do not provide assistance to other employees beyond orientating new employees in the same role from time to time. I also accept that the ACW role is responsible for managing their time within certain constraints, including within a shift roster, and while on shift they may plan and organise the work to be done. However, they do not guide the work of lower classified employees. Similarly, it would be expected that the ACW role resolve minor work-related issues, but this would be within the limitations of the BYP policies and processes manual and subject to supervision by Team Leaders.
- 150 In my view, the ACW role exhibits the majority, if not all of, the features characteristic of the Level B2 classification in B.2.1.
- 151 The Level B2 responsibilities may include a number of identified criteria.<sup>55</sup>
- 152 I accept the ACW role undertakes a range of activities which requires the role to apply the procedures within the BYP policies and processes manual, and to the extent the role exercises initiative and judgement it is within those established procedures and guidelines and is subject to supervision.
- 153 In addition, the ACW role is required to achieve outcomes either set by the respondent or which are driven by the Department in terms of the overall care and goals for the Young People in Care. The ACW role assists with, rather than drives, administrative functions but the role does respond to enquiries. As stated, and found, this function is subservient to the main purpose of the ACW role.
- 154 Many of the other responsibilities identified in B.2.2(e) to (i) are relevant to other employment positions rather than relevant to the ACW role.
- 155 The responsibilities that are also relevant to the ACW role are contained in B.2.2(k) to (m), requiring consideration of the words '*as part of the delivery of disability services*'.
- 156 As indicated, I put that issue to one side. If the words '*as part of the delivery of disability services*' were not included in B.2.2(k) to (m), the ACW role would, in my view, clearly include those responsibilities of implementing client skills and activities programmes under limited supervision, providing personal care to Young People in Care, assisting in the development or implementation of care plans, and meal preparation.
- 157 Without reference to the words '*as part of the delivery of disability services*', these types of responsibilities go to the stated primary purpose of the ACW role and the TC role.
- 158 The Level B2 requirements for a position include certain skills, knowledge, experience, qualifications and/or training.<sup>56</sup>
- 159 I accept that the ACW role requires more than a basic skill in oral and written communication with Young People in Care and stakeholders, however, it is also anticipated that there will be skill progression. What is required is knowledge of *established* work practices and procedures, which are available via the BYP policies and processes manual and Team Leaders, and application of those policies and procedures to the workplace.

- 160 Consistent with the ACW role is the prerequisites of some form of either certificate or diploma qualification and/or previous experience in working with young people or other activities relevant to the ACW role.
- 161 In terms of organisational responsibilities and the extent of authority, the ACW role is subject to some form of supervision, maybe not on a day-to-day basis, but the role is not otherwise a wholly autonomous one. Further, the ACW role does not supervise other staff beyond orientating new staff from time to time. The ACW role work outcomes are monitored in the sense that team meetings will review the Young Person in Care's care and goals, which are ultimately set by the Department.
- 162 The ACW role is autonomous within a restricted framework, and to the extent the role exercises judgment it is within the same restricted framework.
- 163 Mr Thomas submitted that the CASHI Award level 3.3 classification indicia were more substantive than those required for Level B2 under the SCHADS. That is, Mr Thomas says he was recognised by the respondent as working at a level above that provided in Level B2 of the SCHADS. I have reviewed the indicia for a community services worker level 3 under the CASHI Award and, in my view, while there are some differences, the majority of the characteristics are very similar to Level B2 under the SCHADS. Additionally, the indicia for a community services worker level 3 under the CASHI Award do not meet the indicia for a Level B4 under the SCHADS. In my view, the indicia for community services worker level 4 under the CASHI Award is more consistent with the indicia for Level B4 of the SCHADS.

#### **Determination on ACW Role Classification**

- 164 With one caveat, the most appropriate classification for the ACW role is Level B2 of SCHADS. The one caveat is reconciling the words 'as part of the delivery of disability services' in Level B2, B.2.2(k) to (m), which also occur in the definition of 'social and community services sector'.
- 165 However, in saying that, even without reference to these words, the most appropriate classification of the ACW role would be Level B2 in terms of the overall characteristics of the role as against what is expected from a position in this level, the requirements of the ACW role, the prerequisites, the organisational relationships and the extent of the ACW role authority. In terms of responsibilities, the ACW role is, arguably, still capable of coming within the classification of Level B2, by reference to the responsibilities in B.2.2(a) to (c) and (j); it is that the responsibilities in (k) to (m) encapsulate a significant component of the essence of the role.
- 166 What I am not satisfied with and do not find, is that the Level B4 classification is the most appropriate for the ACW role.
- 167 The characteristics of the Level B4 classification anticipate an employee who is working in a position with a high degree of autonomy, likely in a specialised field or professional capacity, and is contributing to the operation of the workplace, rather than working on the ground level in a particular capacity.

#### **Outcome on Classification**

- 168 I am not satisfied Mr Thomas has proven on the balance of probabilities that the ACW role is or should be classified as Level B4.
- 169 Where this is the underlying basis for Mr Thomas's claim, and he did not litigate his claim on any alternative classification, his claim as it relates to classification fails.
- 170 That is, Mr Thomas alleges a contravention of the SCHADS by the respondent failing to pay him in full for wages at the classification Level B4 (that is, a contravention of s 45 and s 323 of the FWA), not at any other classification level.
- 171 However, given the respondent argued in the alternative that if the SCHADS applied to Mr Thomas's employment, the most appropriate classification to the ACW role was Level B2, I will also consider whether the SCHADS covered Mr Thomas's employment and the effect this may or may not have.

#### **Is the ACW Role Covered by SCHADS?**

- 172 Clause 3.1 defines 'social and community services sector' to mean:

[T]he provision of social and community services including social work, recreation work, welfare work, youth work or community development work, including organisations which primarily engage in policy, advocacy or representation on behalf of organisations carrying out such work and the provision of disability services including the provision of personal care and domestic and lifestyle support to a person with a disability in a community and/or residential setting including respite centre and day services.

- 173 None of the referred included services, such as social work, recreation work, welfare work or youth work, are defined in SCHADS.
- 174 However, the respondent in its submissions to the Full Bench of the FWC in the *Application Decision*<sup>57</sup> submitted it operated within the *social and community services sector*, and as such was an *employer* covered by the SCHADS.
- 175 The respondent seemed reluctant during the hearing to stand by this point, which was admitted in its amended response to the claimant's amended statement of claim.<sup>58</sup> This possibly created some confusion for Mr Thomas because while the respondent is an employer covered by the SCHADS, not every employee employed by the respondent will necessarily be covered by the SCHADS. That is, unless the employee's position comes within, relevantly, the classification in Schedule B, the employee, Mr Thomas, will not be covered by the SCHADS.
- 176 This confusion was compounded by the respondent's communication to its workforce, including former employees such as Mr Thomas, informing them of the following:

The Fair Work Ombudsman was also able to provide their views on Award coverage and applicability. I'm also pleased to let you know the Fair Work Ombudsman confirms Parkerville as a national systems employer, with the two main

Awards for our staffing cohort being the Health Professionals and Support Services Award (HPSS) for our clinical staff, and the Social Community, Housing and Disability Services (SCHADS) Award for everyone else.<sup>59</sup>

and

This time last year, I shared with you that the Fair Work Ombudsman had confirmed that Parkerville is a national systems employer, rather than a State entity as we had been advised previously.

This meant there were three main awards for our workforce, being the Health Professionals and Support Services Award (HPSS) for clinical staff, the Miscellaneous Award primarily for EET students, and the Social Community, Housing and Disability Services (SCHADS) Award for everyone else.

Following this confirmation, we immediately moved to identify and address historical underpayments and overpayment of some staff... and then have all roles independently *classified against the various award descriptors* before we could even get to the calculations.<sup>60</sup> (emphasis added)

- 177 Thereafter, the respondent applied to the FWC to ‘clear up the uncertainty around award coverage for our carers’ and to clarify the treatment of shifts including sleepover.<sup>61</sup> The respondent further informed its workforce that ‘Parkerville’s application challenges the position taken by the FWO about the application of the Award provisions to our carers – a position that is quite simply unaffordable for us, and for other providers across the sector who are grappling with the same issue.’<sup>62</sup> It is unclear whether this is in reference to coverage by the SCHADS or payment for sleepover shifts.
- 178 However, the respondent then informed its workforce that it had been issued with a compliance notice by the FWO where the details of the contravention included contravening clauses of the SCHADS. The respondent indicated it would continue to calculate and repay funds ‘as soon as reasonably practicable’.<sup>63</sup>
- 179 Against this background, it is readily apparent why Mr Thomas, and others in the same position as him, may feel aggrieved by the respondent now contesting coverage of their employment by reference to particular wording in Schedule B of the SCHADS.
- 180 I accept and I find that the respondent is an employer covered by the SCHADS based on its admission in this claim and its admissions to its workforce that it is an employer within the social and community services sector.
- 181 As already stated, one of the difficulties in the *Application Decision* is the apparent limited scope of the inquiry of the duties undertaken by only TCs in the Group Foster Care program. There is no obvious reference to the TC JDF (or the ACW JDF or BYP) and the respondent’s submissions are directed to only those enumerated responsibilities that make direct reference to personal care (relevant to this claim, in B.2.2(l) and (m)).<sup>64</sup>
- 182 Thereafter, the Full Bench of the FWC accepts there is ambiguity or uncertainty in respect of the coverage of the SCHADS as it relates to TCs.
- 183 To limit the enquiry of the classification of the ACW role in Mr Thomas’s claim in the manner suggested by the respondent, both by confining the assessment to consideration of B.2.2(l) and (m) and adopting the outcome reached in the *Application Decision*, does not focus on the skills and duties required of an employee who is called upon to perform the function that is required to be performed by the employer.
- 184 While the primary purpose of the ACW role is to provide direct care to Young People in Care, the direct care is not limited to planning, cooking or preparation of meals or providing personal care services.<sup>65</sup>
- 185 The ACW JDF outlines eight responsibilities or duties as it relates to direct care, including providing emotional support; maintaining a consistent environment; modelling behaviour; assisting in community engagement; maintaining safety in the home; provision of information and resources and the provision of opportunities for religious or cultural practices.<sup>66</sup>
- 186 The most relevant direct care responsibility in the ACW JDF to supervise or provide a ‘wide range of personal care services’ in B.2.2(l) of the SCHADS is the encouragement of self-care and promote independent living skills in all areas relevant to the young people, such as health, dental and hygiene practices.<sup>67</sup>
- 187 However, the ACW JDF is not limited to direct care of this type even if the ambit of personal care services was expanded to include domestic duties, assisting with schoolwork and arranging recreational activities as suggested by the respondent in its submissions in the *Application Decision*. As already discussed, it also includes duties and responsibilities relevant to case management, communication, maintenance and other duties as directed. Notably, cooking is considered a desirable prerequisite for the ACW role, not an essential criterion.<sup>68</sup>
- 188 Furthermore, the BYP policies and processes manual outlines the duties and responsibilities of the ACW role in more detail, which is broader than cooking and the provision of personal care services to Young People in Care.
- 189 I accept and I find that the duties and responsibilities of the ACW role required and specified by the respondent involves a range of activities, including the provision of direct care, requiring the application of established work procedures, being the BYP policies and processes manual and associated documents. I also accept and I find that the ACW role required the employee to exercise limited initiative and judgment within those guidelines.
- 190 I further find that where the Department required outcomes and goals as part of its care plans for Young People in Care, the ACW role via the TCP was required to achieve or at least facilitate those outcomes and goals. I also find that the ACW role was expected and required to respond to enquiries from stakeholders, including family members, on behalf of the Young People in Care.
- 191 Finally, I find the ACW role assisted with a variety of administrative functions, including but not limited to developing and implementing the TCP, preparation of meeting notes, and corresponding with stakeholders.

- 192 Accordingly, in relation to Level B2 at B.2.2 of the SCHADS, I find that the ACW role is a position which includes *some of the responsibilities* expected at that level, namely in B.2.2(a), (b), (c) and (j).
- 193 I further find that overall, the ACW role meets the characteristics in B.2.1 and the requirements in B.2.3 for the Level B2 classification.
- 194 Therefore, I am satisfied, and I find that the ACW role is classified as Level B2 in the SCHADS, and that an employee, including Mr Thomas, in the ACW role is covered by the SCHADS.
- 195 For the avoidance of doubt, that the responsibilities in B.2.2(l) and (m) may be excluded in their application to the ACW role by the inclusion of the words ‘as part of the delivery of disability services’ is not fatal to the overall assessment undertaken by the Court by reference to all of the duties and responsibilities expected by the respondent and what the role entails.

#### Is There an Underpayment?

- 196 The difficulty is that Mr Thomas litigated his claim on the basis that the contravention was the respondent failing to pay him in full at the Level B4 classification and his calculations are based on payments he says ought to have been made at Level B4, pay point 4.
- 197 The further difficulty is that Mr Thomas provides limited explanation for how he determined the calculations and the terms of the SCHADS he relied upon to construct his spreadsheet of the calculations.<sup>69</sup> Much of what is stated below is the Court attempting to reconstruct what appears to be the basis for Mr Thomas’s claim, rather than Mr Thomas proving any alleged underpayment at any alternative classification level.
- 198 However, Mr Thomas is unsuccessful in proving the ACW role is classified at Level B4, and that the respondent contravened the SCHADS or the FWA in failing to pay him in full at this classification. As a result, Mr Thomas is also unsuccessful in proving any alleged underpayment of \$106,728.94.
- 199 Further, a *possible* underpayment of some other amount is difficult to determine where there is no clear basis for the information relied upon by Mr Thomas to verify any other amount alleged to be underpaid.
- 200 Both parties provided calculations to the Court.<sup>70</sup> The respondent did so in the form of an aide memoire,<sup>71</sup> which was also provided to Mr Thomas.
- 201 Mr Thomas’s computations are predicated on the Court finding that the classification of the ACW role is Level B4 and uses the pay points for this level.
- 202 The respondent submitted that if the Court found the SCHADS covered Mr Thomas’s employment as an ACW, the relevant pay rate was pay point 4 for social and community services employee level 2 (relevant to Level B2).<sup>72</sup> This is the highest increment within level 2.
- 203 The parties used the same source documents for their respective calculations, being Mr Thomas’s payslips<sup>73</sup> and the respondent’s rosters.<sup>74</sup> However, the respondent also relied upon a printout of raw data of all time it says Mr Thomas worked between 30 June 2016 and 13 July 2020.<sup>75</sup>
- 204 During his employment, the respondent paid Mr Thomas in accordance with the CASHI Award at level 3.3.
- 205 According to the respondent, from 31 December 2015 to 30 August 2021, Mr Thomas was paid a total of \$355,864.42 (this amount excludes HELP deductions, which were deducted from the gross fortnightly pay and excludes superannuation payment and payments made under the then Job Keeper ‘top up’).
- 206 It should be noted that from approximately 4 August 2020 to the cessation of his employment with the respondent, Mr Thomas was on leave without pay or parental leave without pay, which may account for some discrepancies in the parties’ calculations.
- 207 The below table contrasts the parties’ differing positions:

	Date range	Claimed hours	Claimed overtime hours
Claimant	31/12/2015-3/08/2020 <sup>76</sup>	9,490	3,023
JR3	30/06/2016 – 13/07/2020 <sup>77</sup>	6,468	56
Respondent	31/12/2015 – 3/08/2020 <sup>78</sup>	7849.5	

- 208 One of the glaring issues in dispute as it relates to claimed hours is the number of claimed total hours and claimed overtime hours as alleged by Mr Thomas. From my own review of Mr Thomas’s calculations, it appears Mr Thomas may have included annual leave hours, sick leave hours and long service leave hours in his total number of claimed hours.
- 209 The respondent says Mr Thomas has overstated his total worked hours by about 1,700 hours and based on its calculation from the same source documents the total claimed work hours should be 7849.5 hours.
- 210 For my part, I was unable to reconcile the 9,490 hours claimed by Mr Thomas from the source documents. Using the respondent’s source document attached to Mr Rylatt’s witness statement extrapolated from the rosters<sup>79</sup> and using the ‘best case’ scenario for Mr Thomas to fill in the gaps between 1 January 2016 to 29 June 2016 and 13 July 2020 to 3 August 2020, the work hours calculated was 7,532.5,<sup>80</sup> which even falls short of the total work hours calculated by the respondent.
- 211 In addition, there was no clear explanation for how Mr Thomas calculated 3,023 hours of overtime hours, unless, as suggested in his oral evidence, he totalled all hours he says he worked in excess of 10 hours on any shift, along with overnight shifts worked in the first two to three months of 2016 before there was a roster change.
- 212 As best as could be established on Mr Thomas’s oral evidence, Mr Thomas quantified the hours of overtime he says he worked by reference to hours worked in excess of 10 hours pursuant to cl 28.1(a)(ii) of the SCHADS.
- 213 Clause 28.1(a)(ii) of the SCHADS provides overtime rates for full-time employees:

A full-time employee will be paid the following payments for all work done in addition to their rostered ordinary hours on any day and, in the case of day workers, for work done outside the span of hours under clause 25.2(a):

...

(ii) social and community services and crisis accommodation employees – for all authorised overtime on Monday to Saturday, payment will be made at the rate of time and a half for the first 3 hours and double time thereafter.

- 214 The respondent says that, consistent with its records, Mr Thomas was authorised to work overtime on the occasions provided in the overtime forms attached to Mr Rylatt's witness statement.<sup>81</sup>
- 215 Mr Rylatt's evidence is that all overtime hours worked by an ACW was required to be authorised and approved by their Team Leader and another manager. If overtime was worked, the respondent required the employee to submit an additional overtime timesheet for approval, which would be approved by a Team Leader and a senior manager.<sup>82</sup>
- 216 An ACW was not authorised to unilaterally decide to perform overtime without the express prior permission and authorisation from the respondent's managers.<sup>83</sup>
- 217 Similar to SCHADS, the CASHI Award at cl 21.1.1 provides that '[o]vertime will only be worked with the prior approval of the employer' (unless in emergency situations referred to in cl 21.1.2).
- 218 The words 'authorised overtime' in cl 28.1(a)(ii) of the SCHADS qualifies the payment of overtime for work done by Mr Thomas in addition to his rostered ordinary hours on any day. That is, an employee cannot of themselves determine whether they will be paid overtime for work done in addition to their rostered ordinary hours. The rationale being the employer retains control of the workplace and work practises and ought to have processes in place to manage employee workload and work time.
- 219 The uncontroverted evidence of Mr Rylatt was the respondent required two manager approval for the working of overtime and that an overtime timesheet was submitted and approved, as was done on the occasions Mr Thomas worked 'authorised overtime'.
- 220 Mr Thomas's case may have been that the respondent required him to work at times in excess of 10 hours per shift under the terms of the respondent's then rosters, and he was relying upon some other clause in the SCHADS to ground the payment for time worked over ordinary hours, such as cl 25.1(a)(ii) and cl 25.1(b) of the SCHADS.
- 221 In those circumstances, it may have been Mr Thomas's case that the respondent implicitly, via its rostering system, required him to work overtime.
- 222 Mr Thomas did not put his case in this way, even if this was his case, and this was not the case the respondent was required to answer to. The Court gleaned this from Mr Thomas's oral evidence and notations in boxes in AT1 to his Further and Better Particulars of Claim.
- 223 Therefore, the computation of overtime rates, if they applied, would likely be referable to other payment rates under the SCHADS, where Mr Thomas's employment was likely categorised as a shift worker under cl 25.2(b) rather than as a day worker under cl 25.2(a).
- 224 Identifying these difficulties does not address the issue of salary packaging under cl 14 of the SCHADS and cl 13.4 of the CASHI Award and what, if any, bearing this has where Mr Thomas was paid an annualised salary.
- 225 The respondent undertook a comparison of the amount that would be payable under the SCHADS at Level B2 pay point 4 if overtime was calculated where Mr Thomas worked:
- (a) more than 38 hours per week;<sup>84</sup> and
  - (b) more than eight hours per day,<sup>85</sup>
- by reference to the total time worked by Mr Thomas using the respondent's rosters (which is more than the Court was able to calculate).
- 226 On the respondent's suggested calculation most favourable to Mr Thomas, which is on more favourable terms than that relied upon by Mr Thomas,<sup>86</sup> the respondent suggests Mr Thomas would have been paid a total of \$291,653.39 if paid in accordance with Level B2 pay point 4 under the SCHADS. This amount does not include annual leave and sick leave.
- 227 According to the respondent, the amount payable to Mr Thomas for annual leave and sick leave under the SCHADS Level B2 pay point 4 is \$39,886.35 whereas Mr Thomas was paid \$50,977.56 for annual leave and sick leave under CASHI Award.
- 228 Thus, the total amount *suggested* by the respondent payable under the SCHADS for Level B2 pay point 4 for the same time period is \$331,539.74, which is less than the total amount paid to Mr Thomas by the respondent under the CASHI Award.
- 229 I am mindful Mr Thomas is a litigant in person, and the court's approach to the documents in which he expresses his case may require some flexibility.<sup>87</sup> The Court needs to ensure that any latitude give to one party as a litigant in person does not deprive the other party of their right to procedural fairness and a fair hearing.<sup>88</sup>
- 230 As already mentioned, Mr Thomas's claim has always been predicated on any underpayment arising from the respondent failing to pay him at classification Level B4 under the SCHADS, and that the respondent contravened the SCHADS and the FWA in doing so. There was no alternative position or calculations relied upon by Mr Thomas. I note that Mr Thomas said that he was not paid in full for the performance of work, referable to s 323 of the FWA, although this was in relation to his allegation that the respondent mischaracterised the ACW role classification. Having regard to the basis for Mr Thomas's claim and how he ran his claim, it was never conducted on the basis that even if the ACW role was classified as Level B2 under SCHADS, there was *still* an underpayment albeit of a lesser amount.

231 This was the case the respondent was required to answer to, albeit that it defended Mr Thomas's claim on three grounds, two in the alternative.

232 In my view, it is preferable for the Court not to speculate about what might have been had Mr Thomas's case been different.

#### Outcome

233 I am not satisfied that Mr Thomas has proven his claim to the requisite standard as I am not satisfied the ACW position is classified as a Level B4 position under the SCHADS, notwithstanding I found the SCHADS covered his employment by the respondent.

234 Furthermore, I am not satisfied Mr Thomas has proven to the requisite standard that the respondent is required to pay an amount to him under the SCHADS.

235 Accordingly, I am not satisfied Mr Thomas has proven to the requisite standard that the respondent contravened the SCHADS or the FWA by failing to pay him in full for the performance of work during the period claimed.

236 The claim is dismissed.

### D. SCADDAN

#### INDUSTRIAL MAGISTRATE

#### SCHEDULE I: Jurisdiction, Practice and Procedure of the Industrial Magistrates Court (WA)

##### Jurisdiction

- [1] An employee, an employee organisation or an inspector may apply to an eligible state or territory court for orders regarding a contravention of the civil penalty provisions identified in s 539(2) of the FWA.
- [2] The IMC, being a Court constituted by an industrial magistrate, is 'an eligible State or Territory court': FWA, s 12 (see definitions of 'eligible State or Territory court' and 'magistrates court'); *Industrial Relations Act 1979* (WA), s 81 and s 81B.
- [3] The application to the IMC must be made within six years after the day on which the contravention of the civil penalty provision occurred: FWA, s 544.
- [4] The civil penalty provisions identified in s 539 of the FWA include the terms of a modern award where the terms apply to give an entitlement to a person and to impose an obligation upon a respondent employer: FWA, s 46(1) and (2). A modern award applies if it covers the employee or the employee organisation and the employer, the modern award is in operation and no other provision of the FWA provides that the modern award does not apply: FWA, s 47(1) (when read with s 48 of the FWA).
- [5] An obligation upon an 'employer' covered by an agreement is an obligation upon a 'national system employer' and that term, relevantly, is defined to include 'a corporation to which paragraph 51(xx) of the Constitution applies': FWA, s 42, s 47, s 14 and s 12. An entitlement of an employee covered by an agreement is an entitlement of an 'employee' who is a 'national system employee' and that term, relevantly, is defined to include 'an individual so far as he or she is employed ... by a national system employer': FWA, s 42, s 47 and s 13.

##### Contravention

- [6] Where the IMC is satisfied that there has been a contravention of a civil penalty provision, the Court may make orders for an employer to pay to an employee an amount that the employer was required to pay under the modern award: FWA, s 545(3)(a).
- [7] The civil penalty provisions identified in s 539 of the FWA include:
  - Contravening a term of a modern award: FWA, s 45.
  - Failing to pay an amount in full for the performance of work: FWA, s 323.
- [8] An 'employer' has the statutory obligations noted above if the employer is a 'national system employer' and that term, relevantly, is defined to include 'a corporation to which paragraph 51(xx) of the Constitution applies': FWA, s 14 and s 12. The obligation is to an 'employee' who is a 'national system employee' and that term, relevantly, is defined to include 'an individual so far as he or she is employed ... by a national system employer': FWA, s 13.
- [9] Where the IMC is satisfied that there has been a contravention of a civil penalty provision, the Court may make orders for:
  - An employer to pay to an employee an amount that the employer was required to pay under the FWA: FWA, s 545(3).
  - A person to pay a pecuniary penalty: FWA, s 546.
- [10] In contrast to the powers of the Federal Court and the Federal Circuit Court, an eligible State or Territory court has no power to order payment by an entity other than the employer of amounts that the employer was required to pay under the FWA. For example, the IMC has no power to order that the director of an employer company make payments of amounts payable under the FWA: *Mildren v Gabbusch* [2014] SAIRC 15.

##### Burden and standard of proof

- [11] In an application under the FWA, the party making an allegation to enforce a legal right or to relieve the party of a legal obligation carries the burden of proving the allegation. The standard of proof required to discharge the burden is proof 'on the balance of probabilities'. In *Miller v Minister of Pensions* [1947] 2 All ER 372, 374, Lord Denning explained the standard in the following terms:

It must carry a reasonable degree of probability but not so high as is required in a criminal case. If the evidence is such that the tribunal can say: 'We think it more probable than not,' the burden is discharged, but, if the probabilities are equal, it is not.

[12] In the context of an allegation of the breach of a civil penalty provision of the Act it is also relevant to recall the observation of Dixon J said in *Briginshaw v Briginshaw* [1938] HCA 34; 60 CLR 336:

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters “reasonable satisfaction” should not be produced by inexact proofs, indefinite testimony, or indirect inferences. (362)

## **Schedule II: SCHADS Classification Structure**

### **B.1 Social and community services employee level 1**

#### **B.1.1 Characteristics of the level**

- (a) A person employed as a Social and community services employee level 1 works under close direction and undertakes routine activities which require the practical application of basic skills and techniques. They may include the initial recruit who may have limited relevant experience.
- (b) General features of work in this level consist of performing clearly defined activities with outcomes being readily attainable. Employees’ duties at this level will be closely monitored with instruction and assistance being readily available.
- (c) Freedom to act is limited by standards and procedures. However, with experience, employees at this level may have sufficient freedom to exercise judgment in the planning of their own work within those confines.
- (d) Positions at this level will involve employees in extensive on-the-job training including familiarisation with the goals and objectives of the workplace/
- (e) Employees will be responsible for the time management of their work and required to use basic numeracy, written and verbal communication skills, and where relevant, skills required to assist with personal care and lifestyle support.
- (f) Supervision of other staff or volunteers is not a feature at this level. However, an experienced employee may have technical oversight of a minor work activity.
- (g) At this level, employers are expected to offer substantial internal and/or external training.

#### **B.1.2 Responsibilities**

A position at this level may include some of the following inputs or those of a similar value:

- (a) undertake routine activities of a clerical and/or support nature;
- (b) undertake straightforward operation of keyboard equipment including data input and word processing at a basic level;
- (c) provide routine information including general reception and telephonist duties;
- (d) provide general stenographic duties;
- (e) apply established practices and procedures;
- (f) undertake routine office duties involving filing, recording, checking and batching of accounts, invoices, orders, stores requisitions and maintenance of an existing records system;
- (g) resident contact and interaction including attending to their personal care or undertaking generic domestic duties under direct or routine supervision and either individually or as part of a team as part of the delivery of social, community or disability services;
- (h) preparation of the full range of domestic duties including cleaning and food service, assistance to residents in carrying out personal care tasks under general supervision either individually or as part of a team as part of the delivery of social, community or disability services.

The minimum rate of pay for employees engaged in responsibilities which are prescribed by B.1.2(h) is pay point 2.

#### **B.1.3 Requirements of the position**

Some or all of the following are needed to perform work at this level:

- (a) **Skills, knowledge, experience, qualifications and/or training**
  - (i) developing knowledge of the workplace function and operation;
  - (ii) basic knowledge of administrative practices and procedures relevant to the workplace;
  - (iii) a developing knowledge of work practices and policies of the relevant work area;
  - (iv) basic numeracy, written and verbal communication skills relevant to the work area;
  - (v) at this level employers are required to offer substantial on-the-job training.
- (b) **Organisational relationships**  
Work under direct supervision.
- (c) **Extent of authority**
  - (i) Work outcomes are clearly monitored.

- (ii) Freedom to act is limited by standards and procedures.
- (iii) Solutions to problems are found in established procedures and instructions with assistance readily available.
- (iv) Project completion according to instructions and established procedures.
- (v) No scope for interpretation.

**(d) Progression**

An employee primarily engaged in responsibilities which are prescribed by B.1.2(g) will, if full-time, progress to pay point 2 on completion of 12 months' industry experience, or if part-time, on completion of 1976 hours of industry experience. **Industry experience** means 12 months of relevant experience gained over the previous 3 years.

**B.2 Social and community services employee level 2**

**B.2.1 Characteristics of the level**

- (a) A person employed as a Social and community services employee level 2 will work under general guidance within clearly defined guidelines and undertake a range of activities requiring the application of acquired skills and knowledge.
- (b) General features at this level consist of performing functions which are defined by established routines, methods, standards and procedures with limited scope to exercise initiative in applying work practices and procedures. Assistance will be readily available. Employees may be responsible for a minor function and/or may contribute specific knowledge and/or specific skills to the work of the organisation. In addition, employees may be required to assist senior workers with specific projects.
- (c) Employees will be expected to have an understanding of work procedures relevant to their work area and may provide assistance to lower classified employees or volunteers concerning established procedures to meet the objectives of a minor function.
- (d) Employees will be responsible for managing time, planning and organising their own work and may be required to oversee and/or guide the work of a limited number of lower classified employees or volunteers. Employees at this level could be required to resolve minor work procedural issues in the relevant work area within established constraints.
- (e) Employees who have completed an appropriate certificate and are required to undertake work related to that certificate will be appointed to this level. Where the appropriate certificate is a level 4 certificate the minimum rate of pay will be pay point 2.
- (f) Employees who have completed an appropriate diploma and are required to undertake work related to the diploma will commence at the second pay point of this level and will advance after 12 full-time equivalent months' satisfactory service.

**B.2.2 Responsibilities**

A position at this level may include some of the following:

- (a) undertake a range of activities requiring the application of established work procedures and may exercise limited initiative and/or judgment within clearly established procedures and/or guidelines;
- (b) achieve outcomes which are clearly defined;
- (c) respond to enquiries;
- (d) assist senior employees with special projects;
- (e) prepare cash payment summaries, banking reports and bank statements, post journals to ledger etc. and apply purchasing and inventory control requirements;
- (f) perform elementary tasks within a community service program requiring knowledge of established work practices and procedures relevant to the work area;
- (g) provide secretarial support requiring the exercise of sound judgment, initiative, confidentiality and sensitivity in the performance of work;
- (h) perform tasks of a sensitive nature including the provision of more than routine information, the receiving and accounting for moneys and assistance to clients;
- (i) assist in calculating and maintaining wage and salary records;
- (j) assist with administrative functions;
- (k) implementing client skills and activities programmes under limited supervision either individually or as part of a team as part of the delivery of disability services;
- (l) supervising or providing a wide range of personal care services to residents under limited supervision either individually or as part of a team as part of the delivery of social, community or disability services;
- (m) assisting in the development or implementation of resident care plans or the planning, cooking or preparation of the full range of meals under limited supervision either individually or as part of a team as part of the delivery of social, community or disability services;

- (n) possessing an appropriate qualification (as identified by the employer) at the level of certificate 4 or above and supervising the work of others (including work allocation, rostering and providing guidance) as part of the delivery of disability services as described above or in subclause B.1.2.

### **B.2.3 Requirements of the position**

Some or all of the following are needed to perform work at this level:

#### **(a) Skills, knowledge, experience, qualification and/or training**

- (i) basic skills in oral and written communication with clients and other members of the public;
- (ii) knowledge of established work practices and procedures relevant to the workplace;
- (iii) knowledge of policies relating to the workplace;
- (iv) application of techniques relevant to the workplace;
- (v) developing knowledge of statutory requirements relevant to the workplace;
- (vi) understanding of basic computing concepts.

#### **(b) Prerequisites**

- (i) an appropriate certificate relevant to the work required to be performed;
- (ii) will have attained previous experience in a relevant industry, service or an equivalent level of expertise and experience to undertake the range of activities required;
- (iii) appropriate on-the-job training and relevant experience; or
- (iv) entry point for a diploma without experience.

#### **(c) Organisational relationships**

- (i) work under regular supervision except where this level of supervision is not required by the nature of responsibilities under B.2.2 being undertaken;
- (ii) provide limited guidance to a limited number of lower classified employees.

#### **(d) Extent of authority**

- (i) work outcomes are monitored;
- (ii) have freedom to act within established guidelines;
- (iii) solutions to problems may require the exercise of limited judgment, with guidance to be found in procedures, precedents and guidelines. Assistance will be available when problems occur.

## **B.3 Social and community services employee level 3**

### **B.3.1 Characteristics of this level**

- (a) A person employed as a Social and community services employee level 3 will work under general direction in the application of procedures, methods and guidelines which are well established.
- (b) General features of this level involve solving problems of limited difficulty using knowledge, judgment and work organisational skills acquired through qualifications and/or previous work experience. Assistance is available from senior employees. Employees may receive instruction on the broader aspects of the work. In addition, employees may provide assistance to lower classified employees.
- (c) Positions at this level allow employees the scope for exercising initiative in the application of established work procedures and may require the employee to establish goals/objectives and outcomes for their own particular work program or project.
- (d) At this level, employees may be required to supervise lower classified staff or volunteers in their day-to-day work. Employees with supervisory responsibilities may undertake some complex operational work and may undertake planning and co-ordination of activities within a clearly defined area of the organisation including managing the day-to-day operations of a group of residential facility for persons with a disability.
- (e) Employees will be responsible for managing and planning their own work and that of subordinate staff or volunteers and may be required to deal with formal disciplinary issues within the work area.
- (f) Those with supervisory responsibilities should have a basic knowledge of the principles of human resource management and be able to assist subordinate staff or volunteers with on-the-job training. They may be required to supervise more than one component of the work program of the organisation.
- (g) Graduates with a three year degree that undertake work related to the responsibilities under this level will commence at no lower than pay point 3. Graduates with a four year degree that undertake work related to the responsibilities under this level will commence at no lower than pay point 4.

### **B.3.2 Responsibilities**

To contribute to the operational objectives of the work area, a position at this level may include some of the following:

- (a) undertake responsibility for various activities in a specialised area;
- (b) exercise responsibility for a function within the organisation;

- (c) allow the scope for exercising initiative in the application of established work procedures;
- (d) assist in a range of functions and/or contribute to interpretation of matters for which there are no clearly established practices and procedures although such activity would not be the sole responsibility of such an employee within the workplace;
- (e) provide secretarial and/or administrative support requiring a high degree of judgment, initiative, confidentiality and sensitivity in the performance of work;
- (f) assist with or provide a range of records management services, however the responsibility for the records management service would not rest with the employee;
- (g) proficient in the operation of the computer to enable modification and/or correction of computer software systems or packages and/or identification problems. This level could include systems administrators in small to medium sized organisations whose responsibility includes the security/integrity of the system;
- (h) apply computing programming knowledge and skills in systems development, maintenance and implementation under direction of a senior employee;
- (i) supervise a limited number of lower classified employees or volunteers;
- (j) allow the scope for exercising initiative in the application of established work procedures;
- (k) deliver single stream training programs;
- (l) co-ordinate elementary service programs;
- (m) provide assistance to senior employees;
- (n) where prime responsibility lies in a specialised field, employees at this level would undertake at least some of the following:
  - (i) undertake some minor phase of a broad or more complex assignment;
  - (ii) perform duties of a specialised nature;
  - (iii) provide a range of information services;
  - (iv) plan and co-ordinate elementary community-based projects or programs;
  - (v) perform moderately complex functions including social planning, demographic analysis, survey design and analysis.
- (o) in the delivery of disability services as described in subclauses B.1.2 or B.2.2, taking overall responsibility for the personal care of residents; training, co ordinating and supervising other employees and scheduling work programmes; and assisting in liaison and co-ordination with other services and programmes.

### B.3.3 Requirements of the job

Some or all of the following are needed to perform work at this level:

- (a) **Skills, knowledge, experience, qualifications and/or training**
  - (i) thorough knowledge of work activities performed within the workplace;
  - (ii) sound knowledge of procedural/operational methods of the workplace;
  - (iii) may utilise limited professional or specialised knowledge;
  - (iv) working knowledge of statutory requirements relevant to the workplace;
  - (v) ability to apply computing concepts.
- (b) **Prerequisites**
  - (i) entry level for graduates with a relevant three year degree that undertake work related to the responsibilities under this level—pay point 3;
  - (ii) entry level for graduates with a relevant four year degree that undertake work related to the responsibilities under this level—pay point 4;
  - (iii) associate diploma with relevant experience; or
  - (iv) relevant certificate with relevant experience, or experience attained through previous appointments, services and/or study of an equivalent level of expertise and/or experience to undertake the range of activities required.
- (c) **Organisational relationships**
  - (i) graduates work under direct supervision;
  - (ii) works under general supervision except where this level of supervision is not required by the nature of the responsibilities under B.3.2 being undertaken;
  - (iii) operate as member of a team;
  - (iv) supervision of other employees.
- (d) **Extent of authority**
  - (i) graduates receive instructions on the broader aspects of the work;

- (ii) freedom to act within defined established practices;
- (iii) problems can usually be solved by reference to procedures, documented methods and instructions. Assistance is available when problems occur.

#### **B.4 Social and community services employee level 4**

##### **B.4.1 Characteristics of this level**

- (a) A person employed as a Social and community services employee level 4 will work under general direction in functions that require the application of skills and knowledge appropriate to the work. Generally guidelines and work procedures are established.
- (b) General features at this level require the application of knowledge and skills which are gained through qualifications and/or previous experience in a discipline. Employees will be expected to contribute knowledge in establishing procedures in the appropriate work-related field. In addition, employees at this level may be required to supervise various functions within a work area or activities of a complex nature.
- (c) Positions may involve a range of work functions which could contain a substantial component of supervision. Employees may also be required to provide specialist expertise or advice in their relevant discipline.
- (d) Work at this level requires a sound knowledge of program, activity, operational policy or service aspects of the work performed with a function or a number of work areas.
- (e) Employees require skills in managing time, setting priorities, planning and organising their own work and that of lower classified staff and/or volunteers where supervision is a component of the position, to achieve specific objectives.
- (f) Employees will be expected to set outcomes and further develop work methods where general work procedures are not defined.

##### **B.4.2 Responsibilities**

To contribute to the operational objectives of the workplace, a position at this level may include some of the following:

- (a) undertake activities which may require the employee to exercise judgment and/or contribute critical knowledge and skills where procedures are not clearly defined;
- (b) perform duties of a specialised nature requiring the development of expertise over time or previous knowledge;
- (c) identification of specific or desired performance outcomes;
- (d) contribute to interpretation and administration of areas of work for which there are no clearly established procedures;
- (e) expected to set outcomes and further develop work methods where general work procedures are not defined and could exercise judgment and contribute critical knowledge and skills where procedures are not clearly defined;
- (f) although still under general direction, there is greater scope to contribute to the development of work methods and the setting of outcomes. However, these must be within the clear objectives of the organisation and within budgetary constraints;
- (g) provide administrative support of a complex nature to senior employees;
- (h) exercise responsibility for various functions within a work area;
- (i) provide assistance on grant applications including basic research or collection of data;
- (j) undertake a wide range of activities associated with program activity or service delivery;
- (k) develop, control and administer a records management service for the receipt, custody, control, preservation and retrieval of records and related material;
- (l) undertake computer operations requiring technical expertise and experience and may exercise initiative and judgment in the application of established procedures and practices;
- (m) apply computer programming knowledge and skills in systems development, maintenance and implementation;
- (n) provide a reference and research information service and technical service including the facility to understand and develop technologically based systems;
- (o) where the prime responsibility lies in a specialised field, employees at this level would undertake at least some of the following:
  - (i) liaise with other professionals at a technical/professional level;
  - (ii) discuss techniques, procedures and/or results with clients on straight forward matters;
  - (iii) lead a team within a specialised project;
  - (iv) provide a reference, research and/or technical information service;
  - (v) carry out a variety of activities in the organisation requiring initiative and judgment in the selection and application of established principles, techniques and methods;
  - (vi) perform a range of planning functions which may require exercising knowledge of statutory and legal requirements;

- (vii) assist senior employees with the planning and co-ordination of a community program of a complex nature.

#### B.4.3 Requirements of the position

Some or all of the following are needed to perform work at this level:

- (a) **Skills, knowledge, experience, qualifications and/or training**
  - (i) knowledge of statutory requirements relevant to work;
  - (ii) knowledge of organisational programs, policies and activities;
  - (iii) sound discipline knowledge gained through experience, training or education;
  - (iv) knowledge of the role of the organisation and its structure and service;
  - (v) specialists require an understanding of the underlying principles in the discipline.
- (b) **Prerequisites**
  - (i) relevant four year degree with one years relevant experience;
  - (ii) three year degree with two years of relevant experience;
  - (iii) associate diploma with relevant experience;
  - (iv) lesser formal qualifications with substantial years of relevant experience; or
  - (v) attained through previous appointments, service and/or study, an equivalent level of expertise and experience to undertake a range of activities,
- (c) Employees undertaking specialised services will be promoted to this level once they have had the appropriate experience and undertake work related to the responsibilities under this level.
- (d) Employees working as sole employees will commence at this level.
- (e) **Organisational relationships**
  - (i) works under general direction;
  - (ii) supervises other staff and/or volunteers or works in a specialised field.
- (f) **Extent of authority**
  - (i) required to set outcomes within defined constraints;
  - (ii) provides specialist technical advice;
  - (iii) freedom to act governed by clear objectives and/or budget constraints which may involve the contribution of knowledge in establishing procedures within the clear objectives and/or budget constraints where there are no defined established practices;
  - (iv) solutions to problems generally found in precedents, guidelines or instructions;
  - (v) assistance usually available.

<sup>1</sup> Exhibit 17 – Witness Statement of Jonathon Rylatt dated 31 January 2025 at [3] and [4].

<sup>2</sup> Exhibit 1 – Witness Statement of Alex Thomas and Attachments dated 20 December 2024 at [7] and AT2.

<sup>3</sup> Exhibit 1 at AT4.

<sup>4</sup> Exhibit 11 – Email forwarded by Jonathan Marin dated 24 July 2022 and Exhibit 12 – Email from respondent dated 21 December 2023.

<sup>5</sup> *Re The Australian Industry Group* [2024] FWCFB 385 (*Application Decision*).

<sup>6</sup> *Application Decision* at [2].

<sup>7</sup> Mr Thomas's Amended Statement of Claim lodged on 29 August 2024.

<sup>8</sup> Exhibit 17 at JR1

<sup>9</sup> Exhibit 15 – example Therapeutic Care Plan for Belmont Youth Programme.

<sup>10</sup> Exhibit 1 at AT3.

<sup>11</sup> Clause 5.2 of the Offer Letter.

<sup>12</sup> *Fair Work Act 2009* (Cth) (FWA) s 46.

<sup>13</sup> FWA s 47.

<sup>14</sup> FWA s 48(1).

<sup>15</sup> *Transport Workers Union of Australia v Coles Supermarkets Australia Pty Ltd* [2014] FCAFC 148; (2014) 245 IR 449 (*TWU v Coles Supermarkets*) at [22].

<sup>16</sup> *City of Wanneroo v Australian Municipal, Administrative, Clerical and Services Union* [2006] FCA 813; (2006) 153 IR 426, 438 (*City of Wanneroo*).

<sup>17</sup> *City of Wanneroo* 438, 440.

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- <sup>18</sup> *City of Wanneroo* 440.
- <sup>19</sup> *Transport Workers' Union of Australia v Linfox Australia Pty Ltd* [2014] FCA 829; (2014) 318 ALR 54.
- <sup>20</sup> *Kucks v CSR Ltd* [1996] IRCA 166; (1996) 66 IR 182; *Ancor Limited v Construction, Forestry, Mining and Energy Union* [2005] HCA 10; (2005) 214 ALR 56.
- <sup>21</sup> *City of Wanneroo* [53] - [57] (French J).
- <sup>22</sup> *City of Wanneroo* [53] - [57] (French J); *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Excelior Pty Ltd* [2013] FCA 638, [28] - [30] (Katzmann J).
- <sup>23</sup> The respondent's amended response lodged on 20 September 2024 at [15] and *Application Decision* at [2] (at 6).
- <sup>24</sup> *Bis Industries Limited v Constructions, Forestry, Maritime, Mining and Energy Union* [2021] FCA 1374 at [302] referring to *TWU v Coles Supermarkets* at [31] - [35].
- <sup>25</sup> *Fair Work Ombudsman v Complete Windscreens (SA) Pty Ltd* [2016] FCA 621 at [32]; *Fair Work Ombudsman v Da Adamo Nominees Pty Ltd No 4* [2015] FCCA 1178 at [256].
- <sup>26</sup> Exhibit 1 at [11.1].
- <sup>27</sup> Exhibit 1 at [11.1].
- <sup>28</sup> Exhibit 1 at AT5.
- <sup>29</sup> Exhibit 18 – Witness Statement of Lauren Walter dated 31 January 2025 at LW1.
- <sup>30</sup> Exhibit 17 at JR1.
- <sup>31</sup> Exhibit 18 at [10] - [11].
- <sup>32</sup> Exhibit 1 at AT5.
- <sup>33</sup> Exhibit 1 at AT5 (page 2 of 4).
- <sup>34</sup> Exhibit 1 at AT5 (page 2 of 4).
- <sup>35</sup> Exhibit 18 at LW1.
- <sup>36</sup> Exhibit 18 at LW1, 'Duties and Responsibilities'.
- <sup>37</sup> Exhibit 17 at JR1 (page 29 of 49).
- <sup>38</sup> Exhibit 4 – various performance reviews for Mr Thomas.
- <sup>39</sup> Exhibit 6 – example BYP care plan.
- <sup>40</sup> Exhibit 14 – Department for Child Protection Example Care Plan for a meeting on 28 January 2016.
- <sup>41</sup> Exhibit 17 at [15].
- <sup>42</sup> Exhibit 18 at [10].
- <sup>43</sup> Exhibit 17 at JR1 (page 18 of 49)
- <sup>44</sup> Exhibit 17 at JR1 (page 40 of 49)
- <sup>45</sup> Exhibit 1 at [11.4].
- <sup>46</sup> Exhibit 17 at JR1 (page 27 of 49).
- <sup>47</sup> Exhibit 16 – two care team meeting notes
- <sup>48</sup> Exhibit 1 at AT5 (page 3 of 4).
- <sup>49</sup> Exhibit 18 at LW1.
- <sup>50</sup> Exhibit 17 at [13] - [14].
- <sup>51</sup> Level B4 at B.4.1(a) - (f) of SCHADS.
- <sup>52</sup> Level B4 at B.4.2(a) - (o) of SCHADS.
- <sup>53</sup> Level B4 at B.4.3(a) - (f) of SCHADS
- <sup>54</sup> Level B2 at B.2.1(a) - (d) of SCHADS.
- <sup>55</sup> Level B2 at B.2.2(a) - (n) of SCHADS.
- <sup>56</sup> Level B2 at B.2.3(a) - (d) of SCHADS.
- <sup>57</sup> *Application Decision* at [6].
- <sup>58</sup> The respondent's amended response lodged on 20 September 2024 at [15].
- <sup>59</sup> Exhibit 11 - Email from the respondent to Mr Thomas dated 30 January 2023.
- <sup>60</sup> Exhibit 12 – Email from the respondent's CEO to the respondent's workforce, including former employees such as Mr Thomas, dated 21 December 2023.
- <sup>61</sup> Exhibit 13 – Email from the respondent's CEO to the respondent's workforce, including former employees such as Mr Thomas, dated 25 March 2024.

- <sup>62</sup> Exhibit 13 – Email from respondent to the claimant, dated 25 March 2024.
- <sup>63</sup> Exhibit 13 – Email from respondent to the claimant, dated 25 March 2024.
- <sup>64</sup> See *Application Decision* at [4], [8] and [9].
- <sup>65</sup> Level B.2.2(l) and (m) of the SCHADS.
- <sup>66</sup> Exhibit 1 at AT5 (page 2 of 4).
- <sup>67</sup> Exhibit 1 at AT5 at 2.6.
- <sup>68</sup> Exhibit 1 at AT5 (page 4 of 4).
- <sup>69</sup> Further and Better Particulars lodged by Mr Thomas on 4 November 2024.
- <sup>70</sup> Further and Better Particulars lodged by Mr Thomas on 4 November 2024.
- <sup>71</sup> Document handed up in Court on 10 April 2025 – Statement of Shiya Tee at ST1.
- <sup>72</sup> See cl 15.2 of the SCHADS.
- <sup>73</sup> Exhibit 2.
- <sup>74</sup> Exhibit 3.
- <sup>75</sup> Exhibit 17 at [40] and JR3.
- <sup>76</sup> Further Better and Further Particulars lodged by Mr Thomas on 4 November 2024 at AT1.
- <sup>77</sup> Exhibit 17 at JR3.
- <sup>78</sup> The respondent used source documents such as the rosters in exhibit 3 to derive its own calculation of total time worked.
- <sup>79</sup> Exhibit 17 at JR3 being the total hours worked from exhibit 3 minus 1 January 2016 to 29 June 2016 and 13 July 2020 to 3 August 2020.
- <sup>80</sup> From 1 January 2016 to 29 June 2016 and 13 July 2020 to 3 August 2020 using the combined total hours suggested by Mr Thomas in his Further Better and Further Particulars lodged on 4 November 2024 at AT1 and the roster in Exhibit 3.
- <sup>81</sup> Exhibit 17 at JR4.
- <sup>82</sup> Exhibit 17 at [41] - [43].
- <sup>83</sup> Exhibit 17 at [44].
- <sup>84</sup> Clause 25(1)(a) of the SCHADS.
- <sup>85</sup> Clause 25.1(a)(ii) of the SCHADS.
- <sup>86</sup> Mr Thomas appears to rely only on hours in excess of 10 hours whereas the respondent relies upon hours in excess of eight hours.
- <sup>87</sup> *Sethi v Bhavsar* [2020] WASCA 52 at [27].
- <sup>88</sup> *Nobarani v Mariconte* [2018] HCA 36; (2018) 265 CLR 236 at [47].

2025 WAIRC 00323

## INDUSTRIAL MAGISTRATES COURT OF WESTERN AUSTRALIA

**CITATION** : 2025 WAIRC 00323

**CORAM** : INDUSTRIAL MAGISTRATE R. COSENTINO

**HEARD** : WEDNESDAY, 7 MAY 2025

**DELIVERED** : WEDNESDAY, 7 MAY 2025

**FILE NO.** : M 13 OF 2025

**BETWEEN** : ANDREA QUATTRONE

CLAIMANT

AND  
STEVEN RONALD SWEETMAN

RESPONDENT

**CatchWords** : INDUSTRIAL LAW – default judgment entered for contraventions of the *Fair Work Act 2009* (Cth) – determination of amounts to be paid by non-employer respondent – whether non-employer respondent can be ordered to pay an underpayment amount under s 545 – determination of penalties – deliberateness of conduct of person involved in contraventions by a company – penalties determined

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

		<i>Industrial Magistrate's Court (General Jurisdiction) Regulations 2005 (WA)</i>
<b>Instrument</b>	:	<i>Commercial Sales Award 2010</i>
<b>Case(s) referred to in reasons:</b>	:	<i>Fair Work Ombudsman v NSH North Pty Ltd trading as New Shanghai Charlestown</i> [2017] FCA 1301; 275 IR 148 <i>Mason v Harrington Corporation Pty Ltd</i> [2007] FMCA 7 <i>Australian Ophthalmic Supplies Pty Ltd v McAlary-Smith</i> [2008] FCAFC 8; 165 FCR 560 <i>Australian Building and Construction Commissioner v Pattinson</i> [2022] HCA 13; 274 CLR 450 <i>Commonwealth v Director, Fair Work Building Industry Inspectorate</i> [2015] HCA 46; 258 CLR 482 <i>Fair Work Ombudsman v NoBrace Centre Pty Ltd (in liq) (No 2)</i> [2019] FCCA 2970 <i>Fair Work Ombudsman v Grouped Property Services Pty Ltd (No 2)</i> [2017] FCA 557 <i>Fair Work Ombudsman v Go Yo Trading Pty Ltd</i> [2012] FMCA 865
<b>Result</b>	:	Pecuniary penalty to be paid by respondent to claimant
<b>Representation:</b>		
Claimant	:	Mr W. Milward (of counsel)
Respondent	:	Mr Z. Tomich (of counsel)

#### REASONS FOR DECISION

(Given extemporaneously at the conclusion of the hearing, extracted from the transcript of proceedings and edited by her Honour for clarity of expression, to insert headings and to include complete citations)

#### Relevant procedural history and reasons for today's hearing

- 1 In these proceedings, the claimant, Andrea **Quattrone**, claims the respondent, Steven **Sweetman**, was in breach of the *Fair Work Act 2009 (Cth)* (**FWA**) by virtue of his involvement under section 550 of the FWA in breaches that a company called **RM Technology** Pty Ltd was found to have committed in other proceedings before the Industrial Magistrates Court: M 145 of 2024 *Quattrone v RM Technology Pty Ltd (First Proceeding)*.
- 2 Mr Quattrone's Originating Claim seeks orders requiring Mr Sweetman to pay to him the amounts RM Technology was ordered to pay in the First Proceedings. It recites the fact that orders were made against RM Technology in the First Proceeding. The Originating Claim then particularises the claims in these proceedings, by reference to the breaches and quantum found in the First Proceeding. The Originating Claim also sets out why it is alleged Mr Sweetman was accessorially liable for RM Technology's breaches in the First Proceeding.
- 3 On 10 March 2025, the Court gave default judgment in favour of Mr Quattrone as Mr Sweetman had failed to comply with regulation 14 of the *Industrial Magistrate's Court (General Jurisdiction) Regulations 2005 (WA)*, which required a response to the claim to be lodged within 14 days after service. The 10 March 2025 orders were in these terms:
  1. Pursuant to Regulation 8(2) of the *Industrial Magistrate's Court (General Jurisdiction) Regulations 2005 (WA)* there be default judgment for the claimant against the respondent in respect of the claim that the respondent breached section 45 of the *Fair Work Act 2009 (Cth)*.
    - a. On 17 occasions in respect of the failure to pay the claimant for work performed;
    - b. On 31 occasions in respect of the failure to pay the claimant overtime for work performed;
    - c. On 31 occasions in respect of the failure to pay the claimant a vehicle allowance for kilometres driven in the performance of his duties;
    - d. On 3 occasions in respect of the failure to pay the claimant superannuation due in respect of wages payable to the claimant in respect of work performed in each of 3 quarters during the financial year **2018-2019**.
  2. Pursuant to Regulation 8(2) of the *Industrial Magistrate's Court (General Jurisdiction) Regulations 2005 (WA)* there be default judgment for the claimant against the respondent in respect of the claim that the respondent breached section 44(1) of the *Fair Work Act 2009 (Cth)* on 1 occasion in respect of the failure to pay the claimant annual leave due to be paid following the cessation of his employment.
  3. The respondent pay to the claimant in respect of the identified breaches an amount to be determined at the hearing of the Application for Orders 4 and 5 of the Application lodged on 7 March 2025.
  4. The respondent pay a penalty in respect of the identified breaches in an amount to be determined at the hearing of the Application for Orders 4 and 5 of the Application lodged on 7 March 2025.
  5. If the respondent seeks to be heard at the hearing of the Application for Orders 4 and 5 of the Application lodged on 7 March 2025, the respondent must file and serve a response to the Application, together with a *Form 29 – Multipurpose Form* under the title Response to Claimant's Application, by no later than 24 March 2025.

- 4 Mr Sweetman filed what was described as a ‘Response’ to Mr Quattrone’s application for default judgment on 24 March 2025 together with an affidavit. These documents foreshadowed grounds for seeking to set aside the default judgment but did not address the orders that should be made as a consequence of default judgment being entered.
- 5 Mr Sweetman then applied to have the default judgment set aside. I dismissed that application on 14 April 2025.<sup>1</sup>
- 6 The hearing for the purposes of determining what if any payment should be made pursuant to the orders for default judgment was originally listed for 26 March 2025. It was adjourned to 14 April pending the outcome of Mr Sweetman’s application to set aside default judgment. There was insufficient time remaining after the hearing of Mr Sweetman’s application on 14 April 2025, and so the hearing was again adjourned to 23 April 2025, and then further adjourned on Mr Sweetman’s request, to today.
- 7 Mr Sweetman filed submissions for the purposes of today’s hearing. His submissions did not take issue with the Court’s power to make the orders that Mr Quattrone is seeking but addressed the quantum of compensation and penalties.

**Order 3: What must the respondent pay to the claimant following default judgment?**

- 8 The judgment in the First Proceeding refers to an amount of \$39,412.17 (plus interest) which RM Technology, as Mr Quattrone’s employer, was found to have underpaid to him. RM Technology was ordered to pay this amount to Mr Quattrone being amounts it was required to pay Mr Quattrone under the FWA but had failed to pay to him.
- 9 Mr Quattrone claims the same amount in these proceedings. However, he has not referred me to any provision of the FWA which empowers the Industrial Magistrates Court (**IMC**) to order Mr Sweetman to pay this amount, when Mr Sweetman was not his employer. The claim against Mr Sweetman is not made on the basis that he was Mr Quattrone’s employer, but rather was on the basis of section 550’s accessorial liability provisions. That section says:

A person who is involved in a contravention of a civil remedy provision is taken to have contravened that provision.

- 10 The default judgment amounts to a finding that Mr Sweetman contravened the provisions of the FWA.<sup>2</sup> As a consequence of that finding, the Industrial Magistrates Court, being an eligible State or Territory Court, can make orders in accordance with section 545(3) of the FWA:

An eligible State or Territory court may order an employer to pay an amount to, or on behalf of, an employee of the employer if the court is satisfied that:

- (a) An order granting an injunction, or interim injunction, to prevent, stop or remedy the effects of a contravention;
- (b) an order awarding compensation for loss that a person has suffered because of the contravention.

- 11 Section 545(3) refers to orders against **an employer** and contraventions by **an employer**. Mr Sweetman is not and was not Mr Quattrone’s employer.

- 12 The IMC’s powers under section 545(3) are in contrast to the powers of the Federal Court and the Federal Circuit and Family Court of Australia under section 545(1), by which those Courts can:

[M]ake any order [that] the Court considers appropriate if the Court [considers that] a person ... contravened ... a civil remedy provision.

Including:

an order awarding compensation for loss...<sup>3</sup>

to a person who has suffered loss as a result of the contravention.

- 13 The ability to award compensation against a person who has contravened a civil remedy provision is wider under section 545(1) than it is under subsection (3). Indeed, the IMC is not empowered to award compensation per se. It is empowered to order payment of an amount that an employer was required to pay to the employee.
- 14 Accordingly, while the default judgment entered against Mr Sweetman is a finding, in effect, that he has contravened the FWA, this in itself does not create a liability for Mr Sweetman to pay any amount. The accessorial liability claim under section 550 does not trigger the power to make an order under section 545(3) simply because Mr Sweetman is not an employer for the purpose of section 545(3). Section 550 does not have the effect of making him an employer.
- 15 So, for the purpose of Order 3 of the orders made on 10 March 2025, I determine the amount the respondent is required to pay to be nil. It follows that I also decline to make an order for the payment of interest.

**Order 4: Determination of Penalties**

- 16 The respondent is an individual. The maximum penalty with respect to a contravention of sections 45 and 44 of the FWA by an individual is 60 penalty units.
- 17 The rate of a penalty unit is set by section 4AA of the *Crimes Act 1914* (Cth). The relevant rate is that applicable at the date of the contravening conduct. The contraventions occurred over the period from 26 October 2018 to 28 June 2019, when a penalty unit was \$210. The maximum penalty in respect of each contravention is therefore \$12,600.
- 18 There is no real controversy in relation to how the IMC’s discretion as to penalties is to be approached. The parties have each summarised the relevant principles in their written submissions. I respectfully refer to and adopt the approach outlined by Bromwich J in *Fair Work Ombudsman v NSH North Pty Ltd trading as New Shanghai Charlestown* [2017] FCA 1301; 275 IR 148 at [36]:

- (1) Identify the separate contraventions, with each breach of each obligation being a separate contravention, and each breach of a term of the Award being a separate contravention.

- (2) Consider whether each separate contravention should be dealt with independently or with some degree of aggregation for those contraventions arising out of a course of conduct, noting that section 557 of the [FWA] provides that two or more contraventions of a given civil remedy provision are to be taken to be a single contravention if committed by the same person and arising out of a course of conduct by that person.
  - (3) Consider whether there should be further adjustment to ensure that, to the extent of any overlap between groups of separate aggregated contraventions, there is no double penalty imposed, and that the penalty is an appropriate response to what each respondent did.
  - (4) Consider the appropriate penalty in respect of each final individual group of contraventions, taken in isolation.
  - (5) Consider the overall penalties arrived at, including by reference to those which may be proposed by the [Fair Work Ombudsman] (as permitted by *Commonwealth v Director, Fair Work Building Industry Inspectorate* [2015] HCA 46; 258 CLR 482... at [64]) and what is proposed by the respondents, and apply the totality principle, to ensure that the penalties for each respondent are appropriate and proportionate to the conduct viewed as a whole, making such adjustments as are necessary: see *Kelly v Fitzpatrick* [2007] FCA 1080; 166 IR 14 at [30]; *Australian Ophthalmic Supplies Pty Ltd v McAlary-Smith* [2008] FCAFC 8; 165 FCR 560 at [23], [71] and [102].
- 19 The non-exhaustive range of considerations to which regard may be had in determining whether particular conduct calls for the imposition of a penalty, and if so, the amount of the penalty are:
- (a) the nature and extent of the conduct which led to the breaches;
  - (b) the circumstances in which the conduct took place;
  - (c) the nature and extent of any loss sustained as a result of those breaches;
  - (d) whether there has been any similar previous conduct by the respondent;
  - (e) whether the breaches were properly distinct or arose out of one course of conduct;
  - (f) the size of the business enterprise involved;
  - (g) whether or not the breaches were deliberate;
  - (h) whether senior management was involved in the breaches;
  - (i) whether the party committing the breaches exhibited contrition;
  - (j) whether the party committing the breaches have taken corrective action;
  - (k) whether the party committing the breaches cooperated with enforcement authorities;
  - (l) the need to ensure compliance with minimum standards by provision of an effective means for the investigation and enforcement of entitlements; and,
  - (m) the need for specific and general deterrence.<sup>4</sup>
- 20 This list is not ‘a rigid catalogue of matters for attention.’ At the end of the day my task is to ‘fix a penalty which pays appropriate regard to the circumstances in which the contraventions have occurred and the need to sustain public confidence in the statutory regime which imposes the obligations’.<sup>5</sup>
- 21 Although the above factors provide useful guidance, the task of assessing the appropriate penalty is not an exact science.<sup>6</sup>
- 22 The purpose of a civil penalty is primarily, if not wholly, to promote the public interest in compliance with the laws that have been contravened. The focus of a civil penalty determination will be issues of specific and general deterrence, but that focus should not lead to a penalty so high as to be oppressive.<sup>7</sup>
- 23 This matter involves 83 separate contraventions of section 45 of the FWA and one contravention of section 44(1).
- 24 Applying section 557(1) of the FWA:
- (a) 17 contraventions relating to the failure to pay the claimant the minimum wages due for work performance must be taken to be a single contravention.
  - (b) 31 contraventions in relation to failure to pay penalty rates or overtime must be taken to be a single contravention.
  - (c) 31 contraventions in relation to the failure to pay a vehicle allowance are to be taken as a single contravention.
  - (d) Three contraventions concerning the failure to pay superannuation must be taken to be a single contravention.
  - (e) One contravention concerning the failure to pay annual leave on termination is a further single contravention.
- 25 Accordingly, there are five distinct breaches for the purpose of section 557 of the FWA, with a theoretical maximum penalty payable of \$63,000.
- 26 Because Mr Sweetman applied to set aside the default judgment, he was perhaps necessarily committed to focusing on establishing a defence to the claim on its merits. Indeed, in counsel’s oral submissions today, and in counsel’s written submissions, he maintained that he did not breach the FWA in relation to unpaid overtime or vehicle allowance. Eventually, counsel conceded that the submission was not open in light of the default judgment.
- 27 Perhaps unexpectedly in these circumstances, there is no evidence of corrective action being taken or of contrition, nor evidence of matters that might ordinarily be taken into account as mitigating factors.
- 28 In the First Proceeding I made determinations as to the penalties payable by RM Technology for its contraventions, being the contraventions that Mr Sweetman has been found to have been involved in for the purposes of these proceedings. In other

words, contraventions in the First Proceeding and those now being considered have the same factual basis. Ordinarily, I might adopt the same approach to setting penalties now that I did in other proceedings for corresponding contraventions.

- 29 However, this hearing in relation to penalties was contested, whereas the First Proceeding was not. There was additional evidence placed before me that was not before me in the First Proceeding. In these circumstances, I believe there are good reasons to depart from the approach taken in the First Proceeding.
- 30 There have been many assertions of fact made in written submissions and oral submissions on behalf of Mr Sweetman which were not supported by evidence that was properly before me today. Where those asserted facts were not supported by evidence before me, I have not taken those matters into consideration in relation to the determination of penalty unless they were facts that were conceded or uncontentious.

#### **Contravention 1: Unpaid Wages and Overtime**

- 31 *Nature and extent of the conduct:* This course of conduct involved underpayment of the minimum wage rate under the *Commercial Sales Award 2010* to one employee, Mr Quattrone, over a period of approximately 31 weeks to 35 weeks, amounting in total to \$14,283.06. The loss and damage suffered as a result of the breach is commensurate with this amount. It is neither insignificant nor of the worst kind.
- 32 *The circumstances in which the conduct took place:* Mr Sweetman's liability is based on the accessorial liability provisions of the FWA as a person who was involved in contraventions committed by RM Technology as Mr Quattrone's employer. Mr Sweetman's involvement is derived from, firstly, there being default judgment against RM Technology, secondly, there being default judgment in these proceedings, and thirdly, Mr Sweetman being a director of RM Technology and the person principally responsible for the conduct of its business.
- 33 Mr Quattrone points out that he was a vulnerable worker as his visa and the ability to remain in Australia were tied to his employment with RM Technology. The evidence in this regard was limited to the contract of employment attached to his affidavit, which states that the employment commencement date was subject to the grant of a 186 visa. It was uncontroversial that a visa was attached to the employment.
- 34 What was controversial, and what Mr Sweetman takes issue with, is Mr Quattrone's characterisation of himself as a vulnerable worker. In written submissions, it was submitted that Mr Sweetman was generous to Mr Quattrone. Mr Sweetman's counsel points out that once Mr Quattrone obtained permanent residency, he continued to work as a contractor for 'the respondent', but I take it this is intended to mean RM Technology. While there was no admissible evidence before me as to these matters, I do understand it is uncontentious that Mr Quattrone did continue to work for RM Technology in a different capacity after the period that the claim relates to.
- 35 However, I accept that Mr Quattrone's visa-holding status does mean he was vulnerable in the relevant sense. In *Fair Work Ombudsman v Go Yo Trading Pty Ltd* [2012] FMCA 865, a number of authorities are cited, accepting the proposition that foreign nationals holding a visa fall into a class of vulnerable workers. The Court there said:

Foreign nationals working in Australia on visas, be they 417 visas or 457 visas or some other form of visa, in my view, represent a particular class of employee who are potentially vulnerable to improper practices by their employer. The cases demonstrate that those characteristics mean that a particular employee concerned is of a vulnerable class: see, for example, *Fair Work Ombudsman v Taj Palace Tandoori Indian Restaurant Pty Ltd* [2012] FMCA 258, *Fair Work Ombudsman v Orwill Pty Ltd* [2011] FMCA 730; *Fair Work Ombudsman v Sanada Investments Pty Ltd* [2010] FMCA 401 at [60].<sup>8</sup>

- 36 *Nature and extent of the loss:* I have already referred to the extent of the loss being in the amount of \$14,283.06.
- 37 *Whether or not the breach was deliberate:* This issue was a focus of submissions that were made before me today, and considerable attention was given to it.
- 38 By an affidavit made on 10 April 2025, Mr Quattrone deposed that he reported to Mr Sweetman. The affidavit attaches a copy of Mr Quattrone's employment contract, which is signed by Mr Sweetman as managing director. Mr Quattrone refers to discussions and correspondence with Mr Sweetman about payments due to him, including reference to an email from Mr Sweetman to him where Mr Sweetman says:
- I have tonight paid you the wages for pay week ending [19 August 2018]... Will work on the [balance] owing over the week as the funds come in from the sales.
- 39 Also attached to Mr Quattrone's affidavit at schedule E were a series of documents, including pay summaries and a spreadsheet detailing payments that had been made in one column and payments that remained owing under another column.
- 40 Mr Sweetman's counsel submitted this evidence demonstrates that he made attempts to remedy the underpayments and the breaches were not deliberate. Mr Quattrone's counsel, on the other hand, submits this is evidence that Mr Sweetman knew that RM Technology had failed to pay Mr Quattrone wages due to him.
- 41 I accept the claimant's submission in this regard. While Mr Sweetman may have given assurances that the underpayments would be remedied, they ultimately were not. To be 'deliberate', it is not necessary that there be an intention to contravene the law or an intention to act with bad faith. 'Deliberate' means that the conduct was not inadvertent or unintentional.
- 42 For the purpose of the application to set aside the judgment, Mr Sweetman made an affidavit in which he says that payments to 'contractors' were set up and processed as batch payments by RM Technology's bookkeeper based on tax invoices prepared and submitted by the contractors themselves. All he did was to authorise the overall batch payment.
- 43 Further, in submissions today, Mr Sweetman's counsel submits that the batch payments were made without access to the spreadsheet in schedule E of Mr Sweetman's affidavit so at the time of the batch payments were made, any underpayments were not brought directly to his attention or highlighted. So he suggests – implicitly if not expressly – that he did not seek to

drill down into the batch payments or to check the amounts being paid to ensure that the payments were aligned with what was due to Mr Quattrone.

- 44 In other words, Mr Sweetman did not take steps to ensure Mr Quattrone was paid when it was due.
- 45 Combined with the evidence that Mr Sweetman was involved in discussions with Mr Quattrone about monies due to him, and the evidence that Mr Sweetman was given spreadsheets detailing the amounts due, I must conclude that in authorising batch payments, Mr Sweetman was also authorising RM Technology's underpayments.
- 46 RM Technology's contraventions were deliberate and Mr Sweetman's involvement in the contraventions was therefore also deliberate in the relevant sense.
- 47 Finally, in relation to whether the breaches were deliberate, the respondent's counsel submitted that:
- [T]he only reason payment may not have been made would be due to a lack of financial performance by the company from time to time.
- 48 Again, there was no evidence before me to support this assertion. But implicit in the submission is a further assertion that RM Technology would have made good the underpayments when it was in a financial position to do so.
- 49 I note that Mr Sweetman was not liable to make payments to Mr Quattrone, rather RM Technology was. Mr Sweetman's submission is to the effect that he was willing to ensure that RM Technology paid Mr Quattrone what he was owed, at some point in time, depending on cash flow. In other words, Mr Sweetman was well-intentioned, and there was goodwill in the relationship between him and Mr Quattrone. The cause of the underpayments was cash flow difficulties.
- 50 In light of this submission, it is surprising that the contraventions were not simply admitted at the earliest opportunity. Had the contraventions been admitted, including by not attempting to set aside the default judgment, this might have been a factor which would have mitigated the penalties.
- 51 Cash flow difficulties, while a commercial explanation for the breaches by RM Technology and therefore an explanation for Mr Sweetman's involvement in RM Technology's breaches, is nevertheless no excuse for the breaches. The making of payments prescribed by minimum conditions in workplace relations legislation is an essential condition of running any business which engages employees.
- 52 If Mr Sweetman had demonstrated by evidence that despite his intentions and actions, RM Technology was unable to meet its obligations to Mr Quattrone, that might have been a relevant mitigating factor. But no such evidence is before me.
- 53 *The size of the business enterprise involved:* It is uncontentious that the RM Technology business was a small business, which employed or engaged 20 to 25 people as either employees or contractors, as well as a bookkeeper. I infer that it did not have a significant internal human resources capacity. However, as the respondent is an individual, business size is not a particularly weighty factor.
- 54 *Whether there has been similar previous conduct by the alleged contravener:* There is no evidence of any similar previous conduct by Mr Sweetman. He asserts that in 40 years of business, there had been no prior claims against either RM Technology or himself. This is uncontentious, and so I accept that the respondent is a first-time contravener.
- 55 *Contrition and corrective action:* Mr Sweetman has not shown any contrition. Corrective action was really for RM Technology to take rather than Mr Sweetman. So corrective action has limited relevance in this matter.
- 56 *Need for specific and general deterrence:* Mr Sweetman's evidence is that RM Technology was placed into liquidation on 3 February 2025. Mr Sweetman ceased to be a director of the company on that date.
- 57 I understand this to mean that RM Technology has resolved to wind up and has therefore ceased trading. I also understand that this means Mr Sweetman has ceased to be involved in the business. Accordingly, specific deterrence does not call for a penalty at the high end of the scale.
- 58 Mr Sweetman submits that the stress of his own and immediate family members' ill health and the liquidation of RM Technology are mitigating factors, and that no penalty should be applied because of those mitigating factors.
- 59 However, there is no evidence that these stressors were occurring at the relevant time, that is, the time that the contraventions occurred. Therefore, I would not take them into account as mitigating, at least in terms of mitigating the seriousness of the conduct itself. With more complete evidence, these factors might have been relevant to, for instance, capacity to pay or the need for deterrence. But the evidence was insufficiently developed to have an impact on my penalty determination.
- 60 Mr Quattrone's counsel submitted that the appropriate penalty for this breach was 80% to 90% of the maximum, commensurate with the approach in *Fair Work Ombudsman v NoBrace Centre Pty Ltd (in liq) (No 2)* [2019] FCCA 2970. He says that the breaches represent the very worst misconduct because not only were wages not paid at all for work performed, but payslips were issued misrepresenting the wages to have been paid.<sup>9</sup>
- 61 As I alluded to earlier, there are matters before me today that were not before the IMC when setting the penalty for the corresponding contravention at 45% of the maximum in the First Proceeding.
- 62 These new factors, in particular:
- (a) that Mr Quattrone is a vulnerable worker;
  - (b) Mr Sweetman's lack of contrition; and
  - (c) Evidence of payslips misrepresenting the wages that had been paid.

do warrant a higher penalty than was applied in the First Proceeding. Having regard to these factors, a penalty around the mid to higher end of the range is appropriate, and I would impose a penalty of 70% of the maximum, or \$8,820 for contravention 1.

### Contravention 2 – penalty rates and overtime

- 63 This course of conduct involved underpayment of the overtime rates on weekdays and Saturdays under the *Commercial Sales Award 2010* to one employee, Mr Quattrone, over the previously mentioned nine-month period, amounting in total to \$3,538.34.
- 64 The loss and damage suffered as a result of the breach is commensurate with this amount. It is not insignificant, but it is at the lower end of the scale of seriousness.
- 65 Unlike the position in relation to contravention 1, I do not consider the evidence demonstrates that Mr Sweetman had actual knowledge of the nature and extent of RM Technology's contravention.
- 66 The discussions Mr Quattrone had with Mr Sweetman about underpayment appear to relate to the base rate of pay or ordinary wages. To have knowledge there was an underpayment of overtime and penalty rates, Mr Sweetman needed to have knowledge that Mr Quattrone was working overtime hours. Nothing before me indicates that he had such knowledge, giving the contraventions the deliberateness that I discussed in relation to contravention 1.
- 67 The other factors discussed under contravention 1 are, however, otherwise equally applicable.
- 68 In the First Proceeding, I set this penalty at 15% of the maximum penalty, but for the same reasons I stated in relation to contravention 1, I would impose a higher penalty rate here. I would impose a penalty of 35% of the maximum, or \$4,410 for contravention 2.

### Contravention 3 – Vehicle Allowance

- 69 This course of conduct involved non-payment of the vehicle allowance for the use of the claimant's own vehicle for work performed under the *Commercial Sales Award 2010* over the same period for 16,943 kilometres, and amounting in total to \$13,215.
- 70 The loss and damaged suffered as a result of the breach is commensurate with this amount. It is neither insignificant nor of the worst kind.
- 71 The other factors discussed under contravention 2 are otherwise equally applicable. Having regard to those factors, a penalty around the middle of the range is appropriate. In the First Proceeding, I considered 40% appropriate. In these proceedings, I would impose a penalty of 60% of the maximum or \$7,560 for contravention 3.

### Contravention 4 – Unpaid Superannuation

- 72 This contravention involved failure to make superannuation contribution for wages earned but unpaid amounting to \$1,356.89 over the same period of 31 to 35 weeks. The loss and damage suffered, again, is commensurate with this amount. It's not insignificant, but it is at the lower end of the scale of seriousness.
- 73 This breach is akin to a secondary breach. It is a consequence of underpayment of wages and overtime. To that extent, it is not distinct and severable the way the other breaches are. For this reason, I consider a nominal penalty, or one at the lowest end of the range, is appropriate, as I did in the First Proceeding. I would impose a penalty of \$100 in respect of this breach.

### Contravention 5 – Annual Leave on Termination

- 74 This contravention involved the non-payment of 252.14 hours of accrued annual leave on termination, payable under section 90 of the FWA, and valued at \$6,550.86.
- 75 The loss and damage suffered as a result of the breach is commensurate with this amount. It is neither insignificant nor of the worst kind.
- 76 While other breaches involved a course of conduct, this breach was a single instance.
- 77 The other factors discussed under contravention 2 are otherwise equally applicable. Having regard to those factors, a penalty at the low to mid end of the range is appropriate. A penalty of 40% of the maximum or \$5,040 for contravention 5 is appropriate, and this is consistent with the approach I took in relation to the First Proceeding.

### Totality

- 78 The penalties determined at the previous step are:

Contravention 1	70%	\$8,820
Contravention 2	35%	\$4,410
Contravention 3	60%	\$7,560
Contravention 4		\$100
Contravention 5	40%	\$5,040
<b>Total</b>		<b>\$25,930</b>

- 79 The totality of the penalty must be reassessed in light of the totality of the offending behaviour. If the resulting penalty is disproportionately harsh, it may be necessary to reduce the penalty for individual contraventions.
- 80 A reduction of the total is required to ensure the total penalty is one that strikes a reasonable balance between oppressive severity and the need for deterrence in respect of the particular case. This is consistent with the principle that the penalty must not be excessive and must be just and appropriate in all the circumstances of the case. In this case, the discount required is relatively modest. A discount of 10% bringing the total penalty payable by Mr Sweetman to \$23,337 is appropriate.
- 81 I will order that penalty be paid to the claimant in accordance with section 546(3) of the FWA.

**Costs**

- 82 Mr Quattrone has applied for an order that Mr Sweetman pay his costs of the proceedings.
- 83 I am not inclined to make an order for costs. The basis for the application for costs is the respondent's conduct in the course of these proceedings, and while the claimant has acknowledged that applications of this type are not usually associated with costs orders, the claimant does claim costs on the basis of the respondent's delays in these proceedings having caused the claimant to incur increased costs.
- 84 The respondent has not conducted these proceedings in the most efficient manner, but on the occasions when the respondent has sought additional time to do certain things or has sought an adjournment, I have generally accepted that there were good reasons to allow that additional time, or that it was appropriate to grant the adjournment. The respondent was unsuccessful in its application to set aside the judgment, but the consequence of that lack of success is that the claimant was able to proceed to obtain orders in default without needing to prove his claims at trial.
- 85 So, while I accept the respondent's conduct has caused the proceedings to be more protracted, and this outcome to have come later than it would have had the respondent not applied to set aside the default judgment, I am not persuaded that there has been unreasonable acts or omissions that have caused the claimant to incur costs. And so accordingly, there will be no order as to costs.

**Orders and disposition**

- 86 My orders are:
1. For the purpose of Order 3 of the Orders made on 10 March 2025, the amount the respondent is required to pay is nil.
  2. For the purpose of Order 4 of the Orders made on 10 March 2025, and pursuant to section 546(1) of the *Fair Work Act 2009* (Cth), the respondent is to pay a pecuniary penalty of \$23,337.00.
  3. The penalty in Order 2 is to be paid to the claimant in accordance with section 546(3) of the *Fair Work Act 2009* (Cth).
  4. There be no order as to costs.

**R. COSENTINO****INDUSTRIAL MAGISTRATE**

<sup>1</sup> Ex tempore, *Quattrone v Sweetman*, Industrial Magistrates Court of Western Australia, 14 April 2025.

<sup>2</sup> See Order 1 and Order 2 of the 10 March 2025 Orders.

<sup>3</sup> *Fair Work Act 2009* (Cth) section 545(2)(b).

<sup>4</sup> *Mason v Harrington Corporation Pty Ltd* [2007] FMCA 7.

<sup>5</sup> *Australian Ophthalmic Supplies Pty Ltd v McAlary-Smith* [2008] FCAFC 8; 165 FCR 560 at [91]; *Australian Building and Construction Commissioner v Pattinson* [2022] HCA 13; 274 CLR 450 (*Pattinson*) at [19], [48].

<sup>6</sup> *Commonwealth v Director, Fair Work Building Industry Inspectorate* [2015] HCA 46; 258 CLR 482 at [47].

<sup>7</sup> *Fair Work Ombudsman v NoBrace Centre Pty Ltd (in liq) (No 2)* [2019] FCCA 2970 at [66]; *Fair Work Ombudsman v Grouped Property Services Pty Ltd (No 2)* [2017] FCA 557 at [388]; *Pattinson* [40].

<sup>8</sup> *Fair Work Ombudsman v Go Yo Trading Pty Ltd* [2012] FMCA 865 at [15].

<sup>9</sup> Paragraph 18 of the Mr Quattrone's Affidavit lodged 10 April 2025.

2025 WAIRC 00318

**INDUSTRIAL MAGISTRATES COURT OF WESTERN AUSTRALIA**

**CITATION** : 2025 WAIRC 00318  
**CORAM** : INDUSTRIAL MAGISTRATE D. SCADDAN  
**HEARD** : THURSDAY, 1 MAY 2025  
**DELIVERED** : THURSDAY, 1 MAY 2025  
**FILE NO.** : M 114 OF 2024  
**BETWEEN** : MICHAEL IAN DUXBURY

CLAIMANT

AND

AERISON PTY LTD - ABN 85 060 786 656

RESPONDENT

<b>CatchWords</b>	:	INDUSTRIAL LAW – Failure pay wages and leave entitlements in full under the <i>Fair Work Act 2009</i> (Cth) – Failure to pay long service leave entitlement upon termination of employment under the <i>Long Service Leave Act 1958</i> (WA)
<b>Legislation</b>	:	<i>Fair Work Act 2009</i> (Cth) <i>Long Service Leave Act 1958</i> (WA)
<b>Case(s) referred to in reasons:</b>	:	<i>Mildren v Gabbusch</i> [2014] SAIRC 15 <i>Briginshaw v Briginshaw</i> [1938] HCA 34; (1938) 60 CLR 336 <i>Sammut v AVM Holdings Pty Ltd [No 2]</i> [2012] WASC 27
<b>Result</b>	:	Claim proven
<b>Representation:</b>		
Claimant	:	Mr M. Duxbury (in person)
Respondent	:	No appearance

### REASONS FOR DECISION

(Given extemporaneously at the conclusion of the hearing, extracted from the transcript of proceedings and edited by Her Honour)

- 1 On 29 August 2024, the claimant, Michael Duxbury (Mr Duxbury), lodged a claim against his former employer, Aerison Pty Ltd (Aerison), the respondent, claiming Aerison failed to pay his entitlements under federal law and state law at the time of the cessation of his employment in contravention of the *Fair Work Act 2009* (Cth) (FWA) and *Long Service Leave Act 1958* (WA) (LSL).
- 2 Under the FWA, Mr Duxbury claims unpaid wages (including unpaid personal leave) and unpaid accrued annual leave. Under the LSL, Mr Duxbury claims unpaid long service leave. He also claims superannuation on the unpaid wages and pre-judgment interest.
- 3 Mr Duxbury elected to invoke the small claims procedure under s 548(1) and s 548(1A) of the FWA for the claim as it relates to unpaid wages (including unpaid personal leave) and unpaid accrued annual leave.
- 4 Schedule I of these reasons sets out the jurisdiction, practice and procedure of the Industrial Magistrates Court (the IMC or Court) under the FWA and the LSL.

### Background Facts

- 5 Mr Duxbury commenced employment on a full-time basis with the respondent on 12 September 2005 working 40 hours per week. He worked in the same business for 18 years and eight months holding various positions in that time.
- 6 The last employment contract between Mr Duxbury and Aerison was signed by Mr Duxbury on 14 May 2011, which set out a number of employment terms, including relevantly, his salary, superannuation, hours of work, and the requirements for the termination of the employment relationship. The employment contract also included four weeks' annual leave per annum to be taken at a mutually convenient time; and 10 days personal and carer's leave per annum. The employment contract also recognised the inclusion of the National Employment Standards (NES) at clause 13.<sup>1</sup>
- 7 Mr Duxbury's salary prior to the cessation of his employment was \$238,000 per year or \$114.42 per hour.<sup>2</sup> He was paid on a weekly basis.
- 8 On 13 May 2024, Mr Duxbury formally resigned from his position at Aerison by sending an email to Keshan Wadia (K Wadia), a director of Aerison. In the email he informed Aerison that in line with his contract of employment he was giving four weeks' notice and identified his last day of employment as 7 June 2024.<sup>3</sup>
- 9 Mr Duxbury continued to work for Aerison up to 21 May 2024. On 22 May 2024, Mr Duxbury took one day of personal leave, which was approved by K Wadia.<sup>4</sup> On 23 May 2024, Mr Duxbury returned to work to attend a pre-arranged meeting. On 24 May 2024, Mr Duxbury's access to Aerison's computer system was terminated, and he obtained a medical certificate, signed by a medical practitioner, stating he was unfit for work from 24 May 2024 to 7 June 2024.<sup>5</sup>
- 10 On 24 May 2024, Mr Duxbury booked personal leave on Aerison's internal leave system. On 27 May 2024, K Wadia approved Mr Duxbury's personal leave via the Definitiv Software Package (Definitiv) used by Aerison to maintain its leave accounts.<sup>6</sup>
- 11 On 29 May 2024, Mr Duxbury received an email from Luke Bowker, Human Resources Manager at Aerison, attaching a letter stating Mr Duxbury was summarily dismissed for alleged gross misconduct, material breach of contract and the violation of company values and policies. The letter did not in any way specify what comprised the alleged misconduct, breach of contract or violation of company values and policies.<sup>7</sup>
- 12 The last payslip Aerison provided to Mr Duxbury was dated 22 May 2024 where he was paid up to 17 May 2024. Mr Duxbury has not received any payment after 22 May 2024 for any work undertaken by him or personal leave taken after 17 May 2024.
- 13 The last payslip issued by Aerison records his leave entitlements calculated to 17 May 2024, and include long service leave of 248.44 hours; annual leave of 308.72 hours; and personal leave of 1,054 hours. Pro-rata long service leave was not recorded on the payslip.<sup>8</sup>

### Mr Duxbury's Evidence

- 14 Mr Duxbury relied upon his witness statement dated 30 January 2025 with included attachments.

- 15 When Mr Duxbury started work at Aerison it was known as HPS, and he commenced work as a tradesman in the workshop, paid on an hourly rate. In November 2005, he was transferred to a salaried role working 40 hours per week.
- 16 On 1 January 2018, Aerison transferred their payroll system to Definitiv, which is the earliest date he could access his payslips although Aerison has access to their previous payroll system.
- 17 On 6 June 2023, Aerison was placed into Administration under the control of Korda Mentha<sup>9</sup>. The administration period ended on 5 October 2023. During the administration period employee information was transferred to 'Aerison 2' in Definitiv. At the end of the administration period employee details were transferred to 'Aerison 3' in Definitiv. All annual leave and long service leave balances from Aerison and 'Aerison 2' were amalgamated to 'Aerison 3' in Definitiv.<sup>10</sup>
- 18 A weekly timesheet was submitted to K Wadia for approval and K Wadia also approved any annual leave and long service leave taken by Mr Duxbury.
- 19 Mr Duxbury clarified in his oral evidence that Aerison used a web-based application for employees to book leave and maintain leave balances. A screen shot of Mr Duxbury's application page projected his entitlements up to 29 May 2024, consistent with the entitlements recorded on Mr Duxbury's last payslip dated 22 May 2024 in that the entitlements increased over that short period. The annual leave entitlement increased to 313.65 hours and pro-rata long service leave was included. There was a marginal reduction in his personal leave entitlement to 1,016.46 hours consistent with the approval of Mr Duxbury's personal leave by K Wadia.<sup>11</sup>
- 20 Mr Duxbury confirmed in his oral evidence that at no time was he, or has he, been informed what it is that he is alleged to have done to amount to gross misconduct or a material breach of contract, or a violation of Aerison's values and policies. Mr Duxbury speculated that it may be Aerison thought he was fabricating the reason for his personal leave, but he denied this was the case.
- 21 In any event, as at the date Aerison purported to summarily terminate his employment, Mr Duxbury had resigned 16 days prior, when he informed Aerison of his final date of employment which was 7 June 2024 (consistent with the termination requirements in his employment contract). Aerison could have elected to pay out Mr Duxbury's notice period but it did not do so.
- 22 I find that at the time Mr Duxbury submitted the medical certificate on 24 May 2024 he had an entitlement to personal leave which more than covered the period of personal leave taken by him for the duration of his notice period, and that he was entitled to take personal leave under the terms of his employment contract and under the NES.

#### Federal – FWA Provisions

- 23 I am satisfied and I find that the respondent is an Australian proprietary company limited by shares, registered pursuant to the *Corporations Act 2001* (Cth) and operates an engineering business. The respondent is a constitutional corporation within the meaning of s 12 of the FWA and is a national system employer within the meaning of s 14 of the FWA. Mr Duxbury was an individual who was employed by the respondent and is a national system employee within the meaning of s 13 of the FWA.
- 24 Personal or carer's leave is an entitlement under the NES pursuant to s 61(2)(e) of the FWA.
- 25 Section 96(1) of the FWA states:
- For each year of service with an employer (other than periods of employment as a casual employee of the employer), an employee is entitled to 10 days of paid personal/carer's leave.
- 26 Relevantly, s 97 of the FWA states:
- An employee may take personal/carer's leave if the leave is taken:
- (a) because the employee is not fit for work because of a personal illness, or personal injury, affecting the employee...
- 27 Section 99 of the FWA states:
- If, in accordance with this Subdivision, an employee takes a period of paid personal/carer's leave, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.
- 28 Section 107(3) of the FWA states:
- An employee who has given his or her employer notice of the taking of leave under this Division must, if required by the employer, give the employer evidence that would satisfy a reasonable person that:
- (a) if it is paid personal/carer's leave – the leave is taken for a reason specified in section 97...
- 29 I note Mr Duxbury provided his employer with a medical certificate. On the evidence, he was not required by his employer to do so, but he did do so. It is not for the Court to now go behind the contents of the medical certificate provided by the general practitioner. The Court need only be satisfied that the objective basis for the leave taken by Mr Duxbury satisfied that it was taken for personal leave where he was unfit for work because of a personal illness.
- 30 I am satisfied that Mr Duxbury was not paid wages he was entitled to be paid both in relation to paid personal leave taken and for time he actually worked.
- 31 Section 323(1) of the FWA states:
- An employer must pay an employee amounts payable to the employee in relation to the performance of work:
- (a) in full.
- 32 I am satisfied, having regard to the evidence given by Mr Duxbury, in addition to the supporting evidence that he relies upon, that pursuant to s 61(2)(e), s 97, s 99 and s 323 of the FWA that he has not been paid an amount payable to him by the respondent, in relation to paid personal leave taken and in relation to the performance of work.

- 33 I find that between 20 May 2024 and 7 June 2024, he is owed \$13,730.40 for 40 hours of work or paid personal leave for three weeks at the rate of \$114.42 per hour<sup>12</sup>.
- 34 I am further satisfied he is also entitled to superannuation on that amount at the superannuation guarantee amount of 11% with the total amount owed being \$1,510.35.
- 35 In terms of untaken accrued annual leave, s 90(1) and s 90(2) of the FWA provides:
- If, in accordance with this Division, an employee takes a period of paid annual leave, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.
- If, when the employment of an employee ends, the employee has a period of untaken paid annual leave, the employer must pay the employee the amount that would have been payable to the employee had the employee taken that period of leave.
- 36 Pursuant to s 61(2)(d) of the FWA, annual leave entitlements under s 90 of the FWA are a minimum standard under the NES.
- 37 I am satisfied, having regard to the evidence given by Mr Duxbury, consistent with the accrual balance and final payslip, that the amount of untaken paid annual leave he was entitled to was 313.65 hours, which would be paid at the base rate of pay of \$114.42 per hour.
- 38 I observe that if there was an issue in dispute in terms of the number of accrued annual leave hours owing, this was never brought to Mr Duxbury's attention at any time. Further, Mr Duxbury relied upon the respondent's own records to obtain his entitlement. Nothing in Part 2-2, Division 6 of the FWA provides for the withholding of untaken paid annual leave owing at the cessation of employment and, thus, in the absence of any employment instrument or other written law enabling the respondent to withhold untaken annual leave payments, the circumstances surrounding Mr Duxbury's cessation of employment are irrelevant to this aspect of his claim.
- 39 That is, the outcome of Mr Duxbury's claim for the payment of untaken paid annual leave does not depend upon whether he voluntarily left his employment or whether he was summarily dismissed for any alleged misconduct.
- 40 Accordingly, I find the respondent contravened s 90(2) of the FWA by failing to pay Mr Duxbury, upon the termination of his employment, an amount that would have been payable to him had he taken paid annual leave. I find this entitlement to be 313.65 hours at the base rate of pay of \$114.42 per hour with the total amount being \$35,887.83.

#### State – LSL Provisions

- 41 For the purposes of the LSL, an *employee* means a person who is employed by an employer to do work for hire or reward, including an apprentice or a person whose status is that of an employee.<sup>13</sup> An entitlement to long service leave arises upon the completion of at least 10 years of continuous employment whereupon an employee is entitled to eight and two-thirds weeks' leave.<sup>14</sup> Where an employee has completed at least seven years continuous employment, provision is made for the payment of a proportionate amount.<sup>15</sup> On termination of the employee's employment by the employee's death, or in any other circumstances otherwise than by the employer for serious misconduct, in respect of the number of years of such continuous employment completed since the employee last became entitled under the LSL to an amount on the basis of eight and two-thirds weeks' for 10 years of such continuous employment.<sup>16</sup>
- 42 A period of continuous employment is deemed to include certain periods of absence from duty, such as annual leave; long service leave; public holidays; sick leave to a maximum of 15 days per year and periods of military service.<sup>17</sup>
- 43 Certain events that may otherwise interrupt a period of employment are deemed not do so, including transmission of the business; authorised absences from employment; stand down periods; absence due to industrial disputes; termination on the grounds of slackness of trade; re-employment within six month; termination on any ground if re-employed within two months; reasonable absence on legitimate union business; or absence by reason of any other cause unless the employer within 14 days of the termination of the absence gives written notice to the employee that continuity is broken.<sup>18</sup>
- 44 For similar reasons related to the amount of untaken paid annual leave owed to Mr Duxbury at the time of the termination of his employment, I find that the amount of long service leave entitlements, as provided in the respondent's records, is 375.35 hours. I accept Mr Duxbury's evidence that he has never been informed this number of hours is incorrect. I also accept that this amount had not been paid to Mr Duxbury and that he was an employee of the respondent.
- 45 I am satisfied and I find that Mr Duxbury's employment by the respondent was continuous employment, notwithstanding the respondent may have been owned by different companies and placed into administration for a period of time. None of these events disrupted his continuous employment, and I note Part 2, Division 3 of the LSL provides for the transfer of businesses whereby I am satisfied that Mr Duxbury meets the requirements under s 7H. He commenced employment with the same business operated by the respondent on 12 September 2005 and remained continually employed with that business owned by the respondent for 18 years and eight months.
- 46 Further, I reasonably infer from the respondent's records provided to Mr Duxbury that the respondent recognised its LSL obligations through the transmission of the business given the amount of LSL hours recorded.
- 47 I am satisfied that pursuant to s 8(1) of the LSL, Mr Duxbury is an employee in accordance with, and subject to, the provisions of the LSL, entitled to the payment of long service leave on ordinary pay by the respondent and that the requirements under s 8(2) of the LSL have been met.
- 48 Relevantly, pursuant to s 9(2) of the LSL, an employee whose employment is terminated is taken to have commenced long service leave on the day of termination if the employee is entitled to long service leave under s 8(2) or s 8(3), and the employment is terminated before the employee has taken all of the long service leave to which the employee is entitled.
- 49 Pursuant to s 9(2A) of the LSL, on the day the employee commences long service leave under s 9(2), the employer must pay the full amount to which the employee is entitled in respect of the leave to the employee.

- 50 Accordingly, I am satisfied that at the time of the termination of his employment, Mr Duxbury met the requirements of the LSL and was entitled to being paid the whole of his long service leave entitlement owed at this time, being 375.35 hours at the ordinary rate of pay of \$114.42 per hour. This amounts to \$42,947.54.
- 51 I observe that in relation to any allegation of gross misconduct, Mr Duxbury resigned from his employment on 13 May 2024. To the extent the respondent purported to raise an allegation of gross misconduct, this was done 16 days after his resignation on 29 May 2024. The allegation was never detailed in any way and at the date of the hearing, Mr Duxbury remains unaware of what this might have been. Thus, it might have been open to the Court to infer that the allegation was made without foundation, without notice to Mr Duxbury, with the purpose of escaping liability under the LSL. Simply put, the chronology of events is not in any way consistent with an allegation of gross misconduct which would vitiate the respondent's liability for the payment of long service leave to Mr Duxbury.

### Outcome

#### FWA

- 52 I am satisfied, pursuant to s 545(3) and s 548(1A) of the FWA that the respondent is required to pay an amount under the FWA, namely:
- (1) \$13,730.04 for unpaid wages and personal leave not paid in full in contravention of s 44 and s 323 (when read with s 96 and s 97 of the FWA); and
  - (2) \$35,887.83 for untaken accrued annual leave in contravention of s 44 (when read with s 90(2) of the FWA).
- 53 I am satisfied that a contravention of s 323 of the FWA is a contravention of a civil penalty provision. I am further satisfied that a contravention of a NES is a contravention of a civil penalty provision,<sup>19</sup> and that s 90(2) and s 97 of the FWA are minimum standards within the NES.<sup>20</sup>

#### LSL

- 54 I am satisfied pursuant to s 9(2), s 9(2A) and s 8(2)(c) of the LSL, at the time of the termination of his employment, Mr Duxbury was entitled to be paid the full amount of his long service leave entitlement, being an amount for 375.35 hours, at the ordinary rate of pay of \$114.42 per hour. This amount is \$42,947.54.

### Orders

1. Pursuant to s 545(3) and s 548(1A) of the FWA, and subject to any liability to the Commissioner of Taxation under the *Taxation Administration Act 1953* (Cth), the respondent is to pay to the claimant the amount of:
  - a. \$13,730.04 for unpaid wages and unpaid personal leave; and
  - b. \$35,887.83 for untaken accrued annual leave.
2. Pursuant to s 545(3) and s 548(1A) of the FWA, the respondent is to pay to a superannuation fund for the benefit of the claimant the amount of \$1,510.35.
3. Pursuant to s 547 of the FWA, the respondent is to pay pre-judgment interest on the combined amount referred to in orders 1 and 2 at 8.35% p.a from 20 May 2024 to 1 May 2025 in the amount of \$4,046.97.
4. Pursuant to s 8(2), s 9(2) and s 9(2A) of the LSL, and subject to any liability to the Commissioner of Taxation under the *Taxation Administration Act 1953* (Cth), the respondent is to pay to the claimant the amount of \$42,947.54 for an entitlement to an amount for long service leave.
5. Pursuant to regulation 12 of the *Industrial Magistrates (General Jurisdiction) Regulations 2005* (WA), the respondent is to pay pre-judgment interest on the amount referred to in order 4 at 6% p.a from 20 May 2024 to 1 May 2025 in the amount of \$2,444.25.

### D. SCADDAN

#### INDUSTRIAL MAGISTRATE

#### SCHEDULE I: Jurisdiction, Practice and Procedure of the Industrial Magistrates Court of Western Australia Under the Fair Work Act 2009 (Cth) and the Long Service Leave Act 1958 (WA) and the Industrial Relations Act 1979 (WA)

#### Jurisdiction

- [1] An employee, an employee organization or an inspector may apply to an eligible State or Territory court for orders regarding a contravention of the civil penalty provisions identified in s 539(2) of the FWA.
- [2] The IMC, being a court constituted by an industrial magistrate, is an 'eligible State or Territory court': FWA s 12 (see definitions of 'eligible State or Territory court' and 'magistrates court'); *Industrial Relations Act 1979* (WA) s 81, s 81B.
- [3] The application to the IMC must be made within six years after the day on which the contravention of the civil penalty provision occurred: FWA s 544.
- [4] The civil penalty provisions identified in s 539 of the FWA include contravening a term of the NES and failing to pay in full an amount owed under the FWA: FWA s 44(1), s 323 respectively.
- [5] In respect of an election to deal with a claim using the small claims procedure in s 548 of the FWA, the employee applies for an order which relates to an amount in s 548(1A) and indicates he or she wants the small claim procedure to apply to the proceedings [by complying with the procedure prescribed].
- [6] The amount referred to in s 548(1)(b) and s 548(1A)(a) of the FWA refers to:
 

[A]n amount that an employer was required to pay to ... an employee:

- (i) under [FWA] or a fair work instrument; or
- (ii) because of a safety net contractual entitlement; or
- (iii) because of an entitlement of the employee arising under subsection 542(1) [of the FWA].

[7] Section 12 of the FWA defines ‘*safety net contractual entitlement*’ to mean:

An entitlement under a contract between an employee and an employer that relates to any of the subject matters described in:

- (a) Subsection 61(2) (which deals with the National Employment Standards); or
- (b) Subsection 139(1) (which deals with modern awards).

[8] An obligation upon an ‘*employer*’ is an obligation upon a ‘*national system employer*’ and that term, relevantly, is defined to include ‘*a corporation to which paragraph 51(xx) of the Constitution applies*’: FWA s 12, s 14, s 42, s 47. A NES entitlement of an employee is an entitlement of an ‘*employee*’ who is a ‘*national system employee*’ and that term, relevantly, is defined to include ‘*an individual so far as he or she is employed ... by a national system employer*’: FWA s 13, s 42, s 47.

[9] The IMC has exclusive jurisdiction to hear and determine all questions and disputes in relation to rights and liabilities under the LSL Act, including whether a person is or is not an employee or employer to whom the LSL Act applies, whether an employee is or has become entitled to long service leave, and the ordinary rate of pay of an employee: s 11(1)(a), (b) and (c) of the LSL Act and s 81AA of the *Industrial Relations Act 1979* (WA) (IR Act).

### Contravention

[10] Where the IMC is satisfied that there has been a contravention of a civil penalty provision, the court may make orders for ‘an employer to pay [to an employee] an amount ... that the employer was required to pay’ under the modern award (emphasis added): FWA s 545(3)(a).

[11] The civil penalty provisions identified in s 539 of the FWA includes:

- The Core provisions set out in pt 2 - 1 of the FWA: FWA s 61(2), s 539; and
- Other terms and conditions of employment set out in Part 2-9 of the FWA: FWA s 323(1), s 539.

[12] Where the IMC is satisfied that there has been a contravention of a civil penalty provision, the court may make orders for:

- An employer to pay to an employee an amount that the employer was required to pay under the FWA: FWA s 545(3).

[13] In contrast to the powers of the Federal Court and the Federal Circuit Court, an eligible State or Territory court has no power to order payment by an entity other than the employer of amounts that the employer was required to pay under the FWA. For example, the IMC has no power to order that the director of an employer company make payments of amounts payable under the FWA: *Mildren v Gabbusch* [2014] SAIRC 15.

### Burden and standard of proof

[14] In an application under the FWA and the LSL, the party making an allegation to enforce a legal right or to relieve the party of a legal obligation carries the burden of proving the allegation. The standard of proof required to discharge the burden is proof ‘on the balance of probabilities’. In *Miller v Minister of Pensions* [1947] 2 All ER 372, 374, Lord Denning explained the standard in the following terms:

It must carry a reasonable degree of probability but not so high as is required in a criminal case. If the evidence is such that the tribunal can say ‘we think it more probable than not’ the burden is discharged, but if the probabilities are equal it is not.

[15] In the context of an allegation of the breach of a civil penalty provision of the FWA it is also relevant to recall the observation of Dixon J said in *Briginshaw v Briginshaw* [1938] HCA 34; (1938) 60 CLR 336:

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters ‘reasonable satisfaction’ should not be produced by inexact proofs, indefinite testimony, or indirect inferences [362].

[16] Where in this decision it is stated that a finding has been made, the finding is made on the balance of probabilities. Where it is stated that a finding has not been made or cannot be made, then no finding can be made on the balance of probabilities.

### Practice and Procedure of the Industrial Magistrates Court of Western Australia

[17] Subject to the provisions of the LSL, the IR Act and the FWA, the procedure of the IMC relevant to claims under the FWA and the LSL is contained in the *Industrial Magistrate’s Court (General Jurisdiction) Regulations 2005* (WA) (IMC Regulations). Notably, reg 35(4) of the IMC Regulations provides the court is not bound by the rules of evidence and may inform itself on any matter and in any manner as it thinks fit.

[18] In *Sammut v AVM Holdings Pty Ltd [No 2]* [2012] WASC 27, Commissioner Sleight examined a similarly worded provision regulating the conduct of proceedings in the State Administrative Tribunal and made the following observation:

The tribunal is not bound by the rules of evidence and may inform itself in such a manner as it thinks appropriate. This does not mean that the rules of evidence are to be ignored. The more flexible procedure provided for does not justify decisions made without a basis in evidence having probative force. The drawing of an inference without evidence is an error of law. Similarly such error is shown when the tribunal bases its conclusion on its own view of a matter which requires evidence [40]. (citations omitted)

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- <sup>1</sup> Exhibit 1 – Witness Statement of Ian Duxbury dated 30 January 2025 at Attachment 1.
- <sup>2</sup> Exhibit 1 at attachment 10.
- <sup>3</sup> Exhibit 1 at attachment 9.
- <sup>4</sup> Exhibit 1 at attachment 21.
- <sup>5</sup> Exhibit 1 at attachment 12.
- <sup>6</sup> Exhibit 1 at attachment 12.
- <sup>7</sup> Exhibit 1 at attachment 13.
- <sup>8</sup> Exhibit 1 at attachment 10.
- <sup>9</sup> Exhibit 1 at attachment 5. Notably in this letter Korda Mentha set out Mr Duxbury’s entitlements as at 19 July 2023.
- <sup>10</sup> Exhibit 1 at attachment 19 (large bundle of payslips).
- <sup>11</sup> Exhibit 1 at attachment 14.
- <sup>12</sup> Mr Duxbury’s originating claim at [35].
- <sup>13</sup> Section 4 of the LSL.
- <sup>14</sup> Section 8(2) of the LSL
- <sup>15</sup> Section 8(3) of the LSL
- <sup>16</sup> Section 8(2) and 8(3) of the LSL
- <sup>17</sup> Section 6 of the LSL.
- <sup>18</sup> Section 6 of the LSL.
- <sup>19</sup> Section 44 of the FWA.
- <sup>20</sup> Section 61(2)(d) and (e) of the FWA.

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## UNFAIR DISMISSAL/CONTRACTUAL ENTITLEMENTS—

2025 WAIRC 00301

### UNFAIR DISMISSAL APPLICATION

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

<b>CITATION</b>	:	2025 WAIRC 00301
<b>CORAM</b>	:	SENIOR COMMISSIONER R COSENTINO
<b>HEARD</b>	:	MONDAY, 10 FEBRUARY 2025, TUESDAY, 11 FEBRUARY 2025
<b>DELIVERED</b>	:	THURSDAY, 15 MAY 2025
<b>FILE NO.</b>	:	U 73 OF 2024
<b>BETWEEN</b>	:	AJAH OBANG ABUY Applicant AND TOWN OF PORT HEDLAND Respondent

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CatchWords	:	Industrial Law (WA) - Unfair dismissal - Dismissal for reasons related to performance - Whether performance concerns were justified - Whether improvement action was justified - Whether performance improved - Whether performance improvement process was unfair or unreasonable - Procedural fairness - Was the termination outcome predetermined - Whether manner of termination unfair - Finding that the termination was not harsh, oppressive or unfair - Application dismissed
Legislation	:	<i>Industrial Relations Act 1979</i> (WA)
Result	:	Application Dismissed
<b>Representation:</b>		

Counsel:

Applicant : Ms A Abuy (in person)  
 Respondent : Ms H Millar (of counsel)

Solicitors:

Applicant : Not applicable  
 Respondent : Minter Ellison

Case(s) referred to in reasons:

- BHP Coal Pty Ltd v Schmidt* [2016] FWCFB 72
- Farkas v Abacus Calculators (WA) Pty Ltd* [2005] WAIRC 02267; (2005) WAIG 3134
- Finlay v Commissioner of Police* [2022] WASC 272
- Gibson v Bosmac Pty Ltd* (1995) 60 IR 1
- Gilmore v Cecil Bros & Ors* (1996) 76 WAIG 1184
- Kerton v Bandaberry Pty Ltd t/a Mandurah Holden* [2004] WAIRC 11731; (2004) 84 WAIG 2652
- Laws v Australian Broadcasting Tribunal* [1990] HCA 31; (1990) 93 ALR 435
- Shire of Esperance v Mouritz* (1991) 71 WAIG 891
- The Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch v Public Transport Authority of Western Australia* [2013] WAIRC 00344; (2013) 93 WAIG 618
- The Undercliffe Nursing Home v The Federated Miscellaneous Workers Union of Australia, Hospital Service and Miscellaneous WA Branch* (1985) 65 WAIG 385

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#### *Reasons for Decision*

- 1 The **Town** of Port Hedland employed Ms Ajah Abuy as a Graduate Community Safety Officer in March 2023. On 2 August 2024 the Town terminated Ms Abuy's employment for performance reasons.
- 2 Ms Abuy claims the termination was harsh, oppressive or unfair and referred this matter to the Western Australian Industrial Relations **Commission** under s 29(1)(c) of the *Industrial Relations Act 1979 (WA) (IR Act)*. Ms Abuy's grounds supporting her claim are extensive but broadly follow three themes. First, she says that there was no valid reason for the termination because her performance was at all times satisfactory or better than satisfactory. Second, she says the performance management process which led to the termination of her employment was procedurally unfair. Third, she says the manner of the termination itself was harsh and unfair.
- 3 The Town denies that the termination was unfair. It maintains that its concerns about Ms Abuy's performance were genuine and legitimate, that it provided Ms Abuy with ample opportunities to improve her performance with a fair performance management process, but Ms Abuy failed to acknowledge there was any need for improvement, and did not utilise the opportunities she was given to improve.

#### **Jurisdiction**

- 4 There is no dispute that the Commission has jurisdiction to determine Ms Abuy's claim under s 29(1)(c) of the IR Act as Ms Abuy was the Town's employee, the Town dismissed her, her application was made within time, and none of the exclusions in s 29AA of the IR Act apply.

#### **Relevant principles**

- 5 The test for determining whether a dismissal is unfair is well settled. The question is whether the employer has abused its right to dismiss as outlined by the Industrial Appeal Court in *The Undercliffe Nursing Home v The Federated Miscellaneous Workers Union of Australia, Hospital Service and Miscellaneous WA Branch* (1985) 65 WAIG 385 (*Undercliffe Nursing Home*) at 386.
- 6 Ms Abuy has the onus of establishing that the dismissal was, in all the circumstances, unfair.
- 7 The Commission's core task is to decide whether the right of the employer to terminate the employment has been exercised so harshly or oppressively or unfairly against the applicant as to amount to an abuse of the right. A dismissal for a valid reason within the meaning of the IR Act may still be unfair if, for example, it is effected in a manner which is unfair. However, terminating an employment contract in a manner which is procedurally irregular may not of itself mean the dismissal is unfair: See *Shire of Esperance v Mouritz* (1991) 71 WAIG 891 at 895 where Kennedy J observed that unfair procedures adopted by an employer when dismissing an employee are only one element that needs to be considered when determining whether a dismissal was harsh or unjust.

#### **Background**

- 8 The following background facts are uncontentious and are drawn from the witnesses' unchallenged evidence and the documents before the Commission.
- 9 At the relevant times, the *Town of Port Hedland Industrial Agreement 2023* applied to the Town and Ms Abuy.
- 10 Ms Abuy's position of **Graduate** Community Safety Officer was classified as a Level 4 position for the purpose of the Industrial Agreement.
- 11 The purpose of the Graduate role was to identify, address and monitor issues of community safety and crime prevention, and assist to plan, develop and support a range of programs, projects and initiatives in the local community, in partnership with stakeholders, to proactively address local community safety needs: Exhibit (**Ex**) A43.
- 12 Ms Abuy's contract of employment specified that her ordinary hours of work were an average of 38 hours per week, determined by her manager.
- 13 Ms Abuy reported to the position of Community Safety **Advisor**. From on or about 15 January 2024, Ms Sasha Gubbins was the Advisor.
- 14 The core purpose of the Advisor role was to identify, address and monitor issues of community safety and crime prevention and to plan, develop and support a range of programs, projects and initiatives in the local community to proactively address local community safety needs.
- 15 To fulfil this purpose, the Advisor was required to, amongst other things:
  - (a) Develop, coordinate and implement the Town's Community Safety Plan and other initiatives to improve community safety and improve public perception across the wider community.
  - (b) Pursue and manage key stakeholder partnership agreements in relation to community safety.
  - (c) Provide leadership and executive support to community safety governance groups and other relevant community working groups.
- 16 The Advisor position was a level 7, reporting in turn to the Manager Youth and Community Development, who was at all relevant times, Ms Anna Savill.

- 17 The Town has a Leave Management Internal Operating Procedure (**Leave Management Procedure**) and a Discipline Internal Operating Procedure (**Discipline Procedure**).

**Timeline of events relevant to Ms Abuy's performance**

- 18 The following chronology of the key events relevant to Ms Abuy's performance are also uncontested and drawn from the witnesses' unchallenged evidence and the documents before the Commission.
- 19 Prior to, and on 12 October 2023, Ms Savill reminded Ms Abuy that her agreed hours of work were 9:00am to 5:30pm with a 1-hour lunch break or 9:00am to 5:00pm with a 30 min lunch break: Ex R5.
- 20 Subsequently, on 23 October 2023, Ms Abuy was observed arriving to work late. Ms Savill raised this issue in an email to Ms Abuy on 23 October 2023.
- 21 On 1 February 2024 Ms Abuy and Ms Savill met to discuss Ms Abuy's employment and future. On 8 February 2024 Ms Savill sent Ms Abuy an email summarising their discussion: Ex R9. The summary says, amongst other things:

**Behaviours**

We also had a discussion around behaviours that are being displayed and how these may be interpreted as disrespectful or dismissive.

Please remember that it is imperative that you participate in team activities and communicate with staff in a positive manner.

I have attached the Code of Conduct (particularly Above and Below the Line Behaviours, page 41, also attached below) for you to reflect on how your comments or behaviours need to improve to meet the expectation within the organisation.

I will put some time aside for us to discuss this further with Sasha.

- 22 Ms Abuy responded to the email:

Just to let you know, I do not wish to remain in this position and am actively seeking other roles. I intend to keep you updated on this matter.

- 23 Also on 8 February 2024 Ms Gubbins sent Ms Abuy an email following a 'brief chat' between them that morning. It referred to Ms Abuy's late attendance at work that morning, and their agreement that Ms Abuy would text Ms Gubbins if she was going to be more than 10 minutes late in arriving. It also referred to a previous discussion about the requirement to take a lunch break within 5 hours of starting work. Ms Abuy had indicated she was taking her lunch break at 3:30pm. Ms Gubbins directed Ms Abuy to make sure she takes her breaks no later than 2:00pm: Ex A45 and Ex R11.

- 24 Ms Abuy considered this email showed she was being unnecessarily scrutinised and micromanaged.

- 25 Ms Abuy's email responding to Ms Gubbins said:

...

Lastly, as previously explained on multiple instances, there is reasoning for my preference in breaktime and although I understand your concern, I completely disagree as our workflow is not disrupted nor am I negatively impacted in any way. I really do not appreciate you trying to micromanage my break times and constantly enforcing new rules; in this instance, I will continue to do what works for me to achieve maximum productivity. I am trying my best to be civil, transparent and compliant but you are only making it difficult for me with all of the unnecessary scrutiny and extreme control.

- 26 On Friday 16 February 2024 Ms Abuy commenced annual leave with no advance notice to the Town. At 11:06am on that day, Ms Abuy Microsoft **Teams** messaged Ms Gubbins to say, 'there is some stuff going on in Perth at the moment'. She had planned to visit Perth over the weekend and return on Monday, but it looked like she would need to 'stay longer'. She foreshadowed making an annual leave application for Ms Gubbins to approve. She stated that she hoped to be back in Port Hedland within the next fortnight but 'I'll keep you updated': Ex R6.

- 27 Ms Abuy returned to work on 5 March 2024.

- 28 On 10 April 2024 Ms Abuy attended a meeting with Ms Gubbins and Robyn Fox, the Town's Human Resources Business Partner. Ms Abuy's performance was discussed, and a letter outlining areas of concern and performance expectations was given to Ms Abuy (**Letter of Expectations**): Ex A7.

- 29 According to the Letter of Expectations, Ms Abuy's progress was to be evaluated over a four-week period commencing on 15 April 2024 with weekly catch-up meetings to check in.

- 30 Three check-in meetings occurred during the four-week period. The meeting of 17 April 2024 was attended by Ms Abuy and Ms Gubbins. Ms Savill also attended meetings on 6 May 2024 and 10 May 2024.

- 31 On 13 May 2024 Ms Abuy commenced a period of personal leave, indicating she would need a week off. She remained off work until Friday 24 May 2024.

- 32 On 27 May 2024, Ms Fox and the Town's Acting Director Community Services, Louise Gee, met with Ms Abuy to advise her that the Town required her to undergo a fitness for work assessment before she could return to work. She was directed to remain away from work, on full pay, in the meantime: Ex A30.

- 33 On 28 May 2024 Ms Abuy attended an appointment with a psychologist for the purpose of the Town's fitness for work assessment. A report was produced dated 29 May 2024: Ex A11.

- 34 Ms Abuy returned to work on 4 June 2024.

- 35 On 10 June 2024 Ms Gubbins advised Ms Abuy that a Performance Improvement Process (**PIP process**) was going to be implemented.
- 36 On 12 June 2024 Ms Gubbins and Ms Ciara Dillon met with Ms Abuy to discuss the PIP process. Ms Dillon had replaced Ms Fox as the Human Resources Business Partner.
- 37 The Town produced a draft Performance Improvement Plan (**PIP plan**). The draft PIP plan detailed areas of concern relating to Ms Abuy's performance, under the headings 'Following reasonable directions', 'Reliability', 'Communication and Collaboration', and 'Town of Port Hedland Core Values'.
- 38 The PIP plan laid out improvement goals in each of these four areas and established a six-week PIP process period, excluding leave periods. During this time, Ms Abuy was expected to make progress on the PIP plan, while providing an opportunity to demonstrate improvement and commitment: Ex A6.
- 39 On 1 July 2024 Ms Abuy took 4 days' personal leave.
- 40 Ms Gubbins and Ms Dillon conducted PIP review and progress update meetings with Ms Abuy on 20 June 2024, 27 June 2024, 8 July 2024, 11 July 2024, 17 July 2024 and 25 July 2024.
- 41 The Final PIP review and progress update meeting occurred on 1 August 2024. It was attended by Mark Dacombe, Director Community Services and Domenica Marvelli, Acting Principal Human Resources Operations. They advised Ms Abuy that she had not improved sufficiently in her performance against expectations and that the Town was considering terminating the employment.
- 42 Ms Abuy was escorted from the Town's premises on 1 August 2024.
- 43 On 2 August 2024 the Town confirmed the termination of Ms Abuy's employment in a letter to her.

#### **Witnesses**

##### **Ajah Abuy**

- 44 Ms Abuy described how she came to be employed by the Town of Port Hedland and her relocation from Perth to Port Hedland to commence in the Graduate role. She described the Graduate role as being part of the community safety team, a team of two people, both reporting to the Manager of Youth and Community Development. The Manager was Anna Savill, for the duration of Ms Abuy's employment.
- 45 Ms Abuy's work involved administrative support for local networks, functioning as the secretary for working groups across family and domestic violence, road safety, wellbeing and suicide. She was also responsible for the dissemination and presentation of data on crime and its prevention, developing crime prevention projects, and processing home safety and security rebates.
- 46 Ms Abuy thought that prior to January 2024 she was doing very well in her role, as she had received good feedback. She described herself as thriving in the first ten months. She gave examples of her involvement in planning a baby shower for a previous line leader, and being captain of the social netball team, which she also helped to coordinate and manage.
- 47 However, by early February 2024 Ms Abuy was struggling with the amount of oversight she was being subjected to under Ms Gubbins' supervision. She conveyed to Ms Savill that the amount of visibility Ms Gubbins was expecting was excessive.
- 48 On 16 February 2024 Ms Abuy commenced a period of unplanned annual leave with short notice. During this period, Ms Gubbins attempted to contact Ms Abuy by telephone. Ms Abuy felt this contact was 'an extra burden that was just suddenly being placed on me': Transcript (TS)18.
- 49 When Ms Abuy returned from leave, on or about 4 March 2024, the interpersonal conflict between her and Ms Gubbins increased. Ms Abuy provided examples of exchanges she had with Ms Gubbins which she perceived to be unreasonable on Ms Gubbins' part, leaving her feeling that she was being treated as 'beneath' Ms Gubbins, rather than as an equal: TS21.
- 50 On 22 March 2024 Ms Abuy met with Ms Carryl Price in the Town's Human Resources team, to find out what she could do to escalate her concerns about the way she was being treated: TS22.
- 51 When the Letter of Expectation was presented to Ms Abuy on 10 April 2024, she did not understand why expectations were being imposed on her about when she took her lunch breaks, when this had not previously been an issue with other supervisors. She challenged the reasonableness of the directions given to her about her lunch breaks. She didn't understand the criticisms of her communications as being 'overly formal', when they could also be characterised as 'professional': TS24.
- 52 Ms Abuy gave evidence about the meetings that followed the Letter of Expectations, explaining the context of matters that were discussed about her performance.
- 53 Ms Abuy stated that on her return to work after the May to June personal leave, she met with Ms Gee, who was then the Human Resources Director, to discuss why she had taken personal leave, and the stress and other impacts of the work environment on her. The outcome of the meeting was that she was expected to 'kind of jump straight back into everything without any accommodations or without addressing what led to me even needing all of that time off': TS30.
- 54 In a further meeting the following day, Ms Gee confirmed to Ms Abuy that the reason no adjustments had been made, was because none were recommended by the fitness for work assessment. This surprised Ms Abuy, although she had not at that stage seen the fitness for work assessment: TS31, TS32.
- 55 Ms Abuy formed the view that the Town did not act on recommendations made in the fitness for work assessment. However, the only recommendations the fitness for work assessment contained, were:
- (a) that Ms Abuy could safely return to her role from 29 May 2024;

- (b) that conversations about the Letter of Expectations commence on the first day Ms Abuy was to return to work, with active listening, paraphrasing, empathy and validation to Ms Abuy's interpretations.
- 56 In response to a question as to whether there was anything else the Town could do to support Ms Abuy to work safely, the psychologist suggested appointments with the psychologist and provision of a mentor.
- 57 The Town therefore did implement the report's recommendations (a) and (b).
- 58 Ms Abuy detailed how the PIP process started, that she had 24 hours' notice to arrange a support person, and her attempts to arrange a support person for the PIP meeting of 12 June 2024, which was delayed by a day because of Ms Gubbins' absence from work. She did not have a support person at the meeting because her preferred support person, Ms Price, told her that she was unable to attend.
- 59 At the 12 June 2024 meeting, Ms Gubbins and Ms Dillon wanted Ms Abuy to sign the PIP plan so that it could take effect from the following day. Ms Abuy asked for time to give feedback on it. She was, then, allowed several days to review the PIP plan: TS36.
- 60 The PIP process period commenced on 17 June 2024. Ms Abuy met with Ms Dillon and Ms Gubbins on that day to provide her feedback on the document. After some minor amendments were made, she signed and returned it, even though not all of her concerns were addressed and not all changes she wanted were adopted.
- 61 Initially it was agreed that the PIP review and progress update meetings would occur each Thursday morning. Ms Abuy received emails recapping what was discussed at each of these meetings, although she noted that the emails 'did not utilise the official document': TS39.
- 62 Ms Abuy did not dispute that she was reluctant to participate in the PIP review and progress update meetings. She explained that this was due to her feeling that 'the conversations were being manipulated or certain things were being omitted' from the recap emails and there was a lack of transparency. She said she did not feel it was safe for her to 'partake in verbal exchanges' with Ms Gubbins. She did not explain why it was unsafe to participate in the meetings or why there was a lack of transparency: TS54. Her examples of matters that were omitted from the recap emails were relatively trivial and few. At a general level, she agreed the recap emails were accurate summaries of the meetings. She agreed that the key points recorded in the summaries were discussed and key messages from Ms Gubbins were relayed. She did not agree with those messages.
- 63 When asked to describe how she was performing against the expectations during the PIP period, Ms Abuy said that she was regularly updating the 'teams board,' was ensuring her calendar was up to date and complete, and was ensuring her lunch breaks were taken at the times allocated: TS40. She said these were the things she was actively or consciously doing to achieve the expectations. Many of the other expectations were things she naturally did within the role, subconsciously and without conscious effort. However, overall, she considered she was meeting expectations and had demonstrated that she was.
- 64 Ms Abuy gave evidence about the final PIP review meeting with Mr Dacombe and Ms Marvelli on 1 August 2024. She said it was only a brief meeting that lasted around 10 minutes. She was told that the PIP process outcome was that she had not met expectations and so the Town was considering termination of her employment. She was presented with a Deed of Settlement for her to consider as an alternative. She was asked to leave the premises and go home following the meeting, although she had not yet been given notice of the termination of her employment. She was required to pack up her desk in the presence of Ms Marvelli and other employees. She was then escorted outside by Ms Marvelli. The process made her feel ashamed and embarrassed.
- 65 Ms Abuy did not agree to the Deed of Settlement and did not sign it.
- 66 At about 3:20pm on 2 August 2024, she received the letter confirming her employment was terminated with immediate effect, and that she would be paid 2 weeks' pay in lieu of notice: Ex A1.
- 67 She described the termination as resulting in her feeling both financial and housing insecurity, as she and her partner were living in Town supplied accommodation which she was required to then vacate. The termination compounded her feelings of stress and anxiety, and impacted on her sleep patterns.
- 68 In late August 2024 Ms Abuy commenced a new full-time role with the Department of Justice, having secured this employment within a couple of weeks of the termination. She had applied for that position while the PIP process was on foot. Her income in the Department of Justice role varies, but is around the same as she was earning with the Town.

#### **Sasha Gubbins**

- 69 Ms Gubbins said that when she initially started in the role of Advisor in January 2024, Ms Abuy was welcoming and friendly, but this changed quite quickly in the coming weeks, so that, by February 2024 the working relationship and their communications had become 'quite strained': TS169.
- 70 Ms Gubbins maintained a document to summarise and track her supervision of Ms Abuy: Ex R1.
- 71 Ms Gubbins noted that, as a team of two people, she and Ms Abuy needed to work closely together. Their workstations were within a metre from one another. She described the Graduate role as supporting the Advisor, where the Advisor made overall decisions on what projects to do and how to implement the community safety plan, and the Graduate executing those projects. And yet the amount of communication between them was 'relatively limited': TS169.
- 72 Ms Gubbins developed concerns about Ms Abuy's communications, frequent lateness in arriving to work, practices around taking lunch breaks, and not following her directions. She gave examples of how these concerns had arisen in practice.
- 73 The Position Description for the Graduate role requires the incumbent to possess 'solid communication and interpersonal skills with the ability to work collaboratively with a wide range of stakeholders': Ex A43. Ms Gubbins explained this was essential because collaboration is at the heart of almost all of what the community safety team does. It is rare for community safety to work on a project independently. Almost all projects are in collaboration with other internal business units, such as youth

development or parks and gardens, or external stakeholders in the community, such as family and domestic violence service providers.

- 74 Ms Gubbins formed the view that Ms Abuy was not really interested in the work that the community safety team was doing and was not being cooperative. This view was informed by Ms Abuy's comments to her, such as suggesting that she would be away for certain meetings, was intending to leave the job, or considered important projects to be 'nothing': TS175.
- 75 Ms Gubbins gave her account of meetings with Ms Abuy during the Letter of Expectation process, and the PIP process, confirming the accuracy of various documents summarising what was discussed in those meetings.
- 76 In cross-examination, Ms Gubbins agreed that there was a breakdown in the working relationship between her and Ms Abuy. She also agreed that there were times when she felt personally attacked by Ms Abuy. But she did not agree that interpersonal conflicts contributed to her perception of Ms Abuy's performance. She said that she tried hard to remain objective, and recognised that when Ms Abuy applied herself, she was highly competent. She also relied on other people within the organisation, including Human Resources personnel, to make their assessments and verify hers. Ultimately, as Ms Abuy's line leader, she felt it was her responsibility to manage Ms Abuy's performance.

#### **Ciara Dillon**

- 77 Ms Dillon has been a Human Resources business partner at the Town since March 2024. At around the time she commenced in the role, she was made aware that Ms Abuy had been stood down from work for the purpose of a fitness for work assessment and that there had been a Letter of Expectation process commenced but she was not directly involved in either of those matters.
- 78 Ms Dillon's involvement with Ms Abuy really only commenced with the PIP process, starting from early June 2024.
- 79 Ms Dillon described the PIP process as being driven by the performance counselling paragraphs of the Discipline Procedure.
- 80 Ms Dillon said that the initial draft of the PIP plan was prepared by Ms Gubbins with input from Ms Savill and Ms Fox. She took the draft to the PIP implementation meeting of 12 June 2024 with an understanding that changes could still be made, once feedback from Ms Abuy had been received.
- 81 Ms Dillon could not recall Ms Abuy providing specific feedback during the 12 June 2024 meeting itself, but she responded to it in writing over the weekend, and during a further meeting on 17 June 2024. She recalled Ms Abuy had raised concerns about how her performance would be measured. Ms Dillon said that she and Ms Gubbins worked through the PIP plan's improvement goals with Ms Abuy, point by point, and in detail.
- 82 Ms Dillon maintained notes of the PIP check-in meetings, and gave evidence as to her recollection of Ms Abuy's conduct and contributions to those meetings. She noted that there was a final informal check-in meeting on 25 July 2024 at which Ms Gubbins told Ms Abuy that her progress was not tracking well, that the outcome of the PIP process would be communicated at a final meeting of 1 August 2024, and that the outcome may include termination.
- 83 Ms Dillon also recalled meeting with Ms Abuy after the PIP check-in meeting on 25 July 2024, at Ms Abuy's request, during which Ms Abuy asked for information about the Town's grievance process. Ms Dillon asked Ms Abuy whether she had details that she wanted to provide about a grievance and if she would like to raise a grievance, but Ms Abuy declined to provide any specific details. Ms Dillon was therefore unaware of what grievance Ms Abuy had in mind or who it concerned. Ms Abuy said that if she was to make a grievance she would email it through.
- 84 On or about 31 July 2024 Ms Dillon compiled her observations about the history of Ms Abuy's performance and the PIP process into a report with a recommendation for termination.

#### **Mark Dacombe**

- 85 Mr Dacombe is currently the Town's CEO. He commenced in the role of Interim Director of Community Services for the Town on 10 June 2024. Soon after he started, he was made aware that a PIP process had been implemented for Ms Abuy. His involvement, however, was limited to receiving Ms Dillon's report and recommendation for termination at the end of the PIP process.
- 86 Mr Dacombe said he considered the recommendation carefully, and discussed it with Ms Savill, Ms Dillon, and Ms Marvelli. He was satisfied the recommendation should be followed.
- 87 To that end, he and Ms Marvelli met with Ms Abuy on 1 August 2024 to inform Ms Abuy that the PIP had not resulted in 'significant progress towards improvement': TS203. He told Ms Abuy that it was his view that they had reached a point where termination was appropriate. He explained that Ms Abuy would receive two weeks' pay in lieu of notice and any accrued leave entitlements. A Deed of Settlement was discussed as an alternative to this course.
- 88 He said there was also discussion about Ms Abuy's tenancy in the Town's residential property. He said the usual position was to allow two weeks for the property to be vacated, but that the Town was willing to extend this to four weeks if Ms Abuy entered into the Deed of Settlement.
- 89 According to Mr Dacombe, Ms Abuy did not provide any substantive response to the proposal that the employment be terminated, although she had the opportunity to do so.

#### **How should Ms Abuy's performance have been assessed?**

- 90 A fundamental platform of Ms Abuy's case is her argument that the Town's performance criteria were not proper indications of her performance. Ms Abuy asserts that her performance could only be assessed by reference to 'assignment completion' and nothing else. She says this is the effect of the Industrial Agreement's classification system for a level 4 employee. If this is right, then the Town did not have a valid performance justification for termination.
- 91 Clause 41 of the Industrial Agreement sets out classifications for the purpose of the Town's salary system. Clause 41 is prefaced:

The Classification contained within this Agreement consists of entry level skill-based 'Levels' defined according to the following skill descriptors and in [sic] read in conjunction with the Town's relevant salary system....

Positions will be classified in accordance with the level definitions provided for in this Agreement. Job descriptions shall be used as the primary source of classifying positions. The position shall be evaluated and considered against the classification definitions....

92 The Level 4 classification is described as:

Level 4 covers an Employee undertaking duties and responsibilities in excess of Level 3 and is the entry level for a technical and a trades Employee.

At this level employees work under general direction in the application of procedures, methods and guidelines which are well established. Employees will be responsible for managing and planning their own work

General features of this level involve solving problems of limited difficulty using knowledge, judgement and work organisational skills acquired through qualifications and/or previous work experience. Assistance is available from senior employees. Employees may be required to oversee and/or guide the work of a limited number of lower classified employees.

a) **Education, Training and Experience**

Upon appointment:

Qualifications or relevant experience in accordance with the requirements of work in this level which may be acquired through:

A trade certificate or diploma or certificate IV or equivalent;

Certificate III and subsequent relevant experience leading to the development of areas of specialisation through a depth of skills') completion of accredited/industry-based training courses equivalent to a Certificate IV (non-trade); and/or

an equivalent knowledge gained through any other combination of education, training and/or experience

b) **Tasks**

Perform a variety of tasks which require a sound working knowledge of relevant trade, technical or administrative practices, including limited creative or planning or design functions, and require an awareness of the relevant theoretical or policy context.

Knowledge is applied to recurring circumstances, at a level of complexity equivalent to using a range of computer software applications to assist with job assignments, to setting up, using and demonstrating a range of standard procedures, equipment use and/or experiments or to applying skills equivalent to a trade qualification.

May involve the application of specialist skills, e.g. producing documents involving complex layouts, instrument calibration or maintenance, or guidance to others in the use of a limited range of equipment. May also include the operations of tools, plant machinery and/or equipment in accordance with the requirements of the position. Performance of trades and nontrade tasks incidental to the work.

c) **Judgement and Problem Solving**

Solve standard problems within an established framework or body of knowledge by

Applying a range of procedures and work methods,

Being proficient in and interpreting a set of relatively straightforward rules, guidelines, manuals or technical procedures, and

Selecting from a range and combination of possible responses, based on some understanding of the principles or policies underlying established procedures, practices or systems.

Will use operational experience to monitor and contribute to local procedures and systems.

d) **Supervision and Independence**

General direction.

Direction is provided on the assignments to be undertaken, with the occupant determining the appropriate use of established methods and sequences, where choices are made which require some understanding of a well-defined policy framework or recourse to technical knowledge. Assistance is available from more senior staff.

May be responsible for supervising others performing a range of tasks within a single work unit, providing on the job training and assistance to others, directing staff and/or providing contributions to assignments or projects.

May undertake standalone work appropriate to this level.

e) **Organisational Relationships and Impact**

An Employee at this level requires effective communication skills to enable them to communicate with clients, other Employees and members of the public and in the resolution of routine and usual matters.

Apply a sound knowledge of the impact of the activities undertaken on other related functions or sections. Provide advice or assistance based on some depth of knowledge in own area. Assist others by providing information about procedures, rules or techniques, and by having an appropriate understanding of procedures

and selecting between work methods and sequences. Where complexities arise, suggest solutions and or seek guidance on changes to procedures, schedules or routines from senior staff.

- 93 The level 4 classification description refers to ‘general direction’ This is defined as:  
 Direction is provided on the assignments to be undertaken, with the occupant determining the appropriate use of established methods and sequences. There is some scope to determine an approach in the absence of established procedures or detailed instruction, but guidance is available. **Performance is checked by assignment completion.**  
 (emphasis added)
- 94 This is contrasted with classifications requiring ‘close supervision’ where ‘work is frequently checked’, routine supervision where ‘checking is selective rather than constant’ and ‘broad direction where ‘Performance will be measured against objectives’. It would appear that for higher classifications involving ‘broad direction’, work is not checked by a supervisor, but rather, performance is *measured*. For lower classifications, supervision involves some degree of *checking* of work.
- 95 Ms Abuy’s contention that the effect of the description of level 4 supervision is to limit the way performance for her role is measured is wrong. Clause 41 is about how to classify positions, based on the positions’ requirements. It does not deal with performance in positions. The definition of ‘general direction’ reflects the level or degree of supervision involved in a role for the purpose of correctly classifying the role. It does not dictate either the process of, nor the criteria for, performance assessment.
- 96 The reference in the definition to ‘checking’, particularly contrasted with ‘measuring’ is a description of the degree of oversight a supervisor of the level exercises, not an indication of how performance in the role is measured, let alone what the measurements of performance are.
- 97 Ms Abuy’s construction is narrow, pedantic, ignores the relevant industrial and textual context and is out of touch with industrial reality.
- 98 To suggest that an employee whose classification involves ‘general direction’ can only have their performance assessed by reference to ‘assignment completion’ is nonsensical. If that were true, an employee must be assessed as performing satisfactorily if they complete an assignment, even if the completed assignment is of poor quality, or was completed in an unsafe manner, was completed late, or was completed by deceitful means. Indeed, on Ms Abuy’s construction of the Industrial Agreement, the Town would be unable to intervene or act in the event any employee was persistently late to work or absent or dilatory in completing tasks, as punctuality and timeliness are not part of the classification descriptions.
- 99 There’s no merit to the suggestion that the Industrial Agreement should be read in this way. Accordingly, the way in which Ms Abuy went about fulfilling her role responsibilities was not immune from her supervisor’s or the Town’s scrutiny.
- 100 Ms Abuy also, incidentally, submitted that this provision of the Industrial Agreement ‘stipulates that it is up to the occupant to decide how and what sequence they will complete these assignments’: Applicant’s Written Closing Submissions [19]. That is not what the Industrial Agreement says. The occupant decides in what sequence the established methods are deployed for an assignment, not in what sequence assignments are to be commenced or completed. This is another instance of Ms Abuy selectively and narrowly construing the Industrial Agreement.
- 101 Ms Abuy was confident that her reading of the Industrial Agreement was correct. Her misconceived views about these matters might have fed into the way she went about her work, and therefore, explain her inability to redress the Town’s performance concerns.

#### **Did Ms Abuy’s performance justify improvement action?**

##### **Reliability**

- 102 Ms Abuy submitted that rigid attendance rules were only applicable to employees who work according to rosters or in special circumstances. Those working in non-rostered roles, such as herself, were not subject to such restrictions and generally worked business hours. She did not produce any evidence to establish this assertion was consistent with the custom and practice at the Town. Nor did she provide a cogent argument as to why attendance rules did not apply to her.
- 103 Ms Abuy produced copies of her time sheets for the period 27 September 2023 to 7 November 2023: Ex A15. These time sheets pre-date Ms Gubbins’ commencement in the role of Advisor. They show that while Ms Abuy was recording an average of at least 38 hours per week prior to 7 November 2023, her start and finish times were variable. The earliest start time was 8:00 a.m. but the latest start time was 12:30pm. She was finishing work from 4:10pm to 8:30pm. Breaks were generally taken at or after 2:00pm. This was at a time when Ms Abuy was required to commence work at 9:00am.
- 104 Ms Abuy suggested that until Ms Gubbins commenced as her line leader, her previous line leaders and managers did not scrutinise her start and finish times, or break times. She said ‘[p]rior to Sasha Gubbins commencing her tenure, I was never subject to such stern break-time regulations or stringent work hour conditions – instead, I was afforded the freedom to independently manage my work schedule’: Applicant’s Written Closing Submissions [139].
- 105 I reject this assertion. On 12 October 2023, that is, during the period covered by the time sheets discussed above and several months prior to Ms Gubbins commencing in the role of Ms Abuy’s line leader, Ms Savill emailed Ms Abuy stating:

As discussed, there are a few areas that I would like to reiterate the importance of developing as part of your professional practice.

1. There have been a few instances in which you have arrived late to work, at times, without communication. As discussed, your agreed hours of work will be 9am to 5:30pm (1hr lunch break) or 9am to 5pm (30min lunch break). We understand that emergencies happen, but it's important that you notify us if you're going to be late and try to minimise such instances. If there is any deviation from these hours, please ensure that you inform

your line leader at your earliest opportunity. It is our responsibilities as employees that we manage our fitness for work and this includes ensuring we get enough rest and are well prepared for work.

2. The use of Outlook is our preferred method of managing our time and also ensuring that there is visibility within our teams on where staff are. Please ensure that you are scheduling lunch breaks and meetings in outlook and ensure that your line leader has access to your calendar for these purposes.
3. Teamwork is critical to our success as a team and is one of our organisation core values. It's important that we communicate effectively, support each other, and collaborate. We're here to work together and help each other succeed and sometimes this means that we look to engage outside of a transactional task. If you have any concerns, feedback, or need assistance with tasks, please don't hesitate to reach out.

106 On 23 October 2023, Ms Savill emailed Ms Abuy in clear terms (Ex R5):

It was noticed that you were not in at work this morning until 9:15.

As discussed, and as mentioned below, if there is ANY deviation from your normal hours of work, this must be communicated to your line leader.

Please ensure that you adhere to this expectation moving forward.

107 Ms Gubbins' evidence was that Ms Abuy would often attend work noticeably late, arriving 20 or 30 minutes late. Further, Ms Gubbins would not always receive communication from Ms Abuy about her lateness, so that Ms Gubbins did not know Ms Abuy's whereabouts. She noted that Ms Abuy was skipping lunch breaks and then leaving work early or taking lunch breaks at late or odd times. Ms Gubbins was concerned that there was a risk Ms Abuy was not completing her contracted average of 38 hours per week.

108 Ms Gubbins' evidence in this regard was not challenged. Ms Abuy did not attempt to demonstrate that she was consistently or mostly punctual in her attendance at work. She did test how Ms Gubbins assessed her punctuality, by putting to Ms Gubbins that there were occasions when Ms Gubbins was not herself at her desk, and was unable to verify whether Ms Abuy had arrived on time. Ms Gubbins conceded that was the case, but said 'for the most part I was around...I was there with a sufficient amount of time to get an idea of what was going on' (TS189). This does not mean, as Ms Abuy submits, that Ms Gubbins' concerns were based on mere speculation and assumptions.

109 That Ms Gubbins had concerns, and that they were justified, is corroborated by the documents in evidence. For example:

- (a) On 8 February 2024 Ms Gubbins notes in an email to Ms Abuy (Ex R11):

When you were running late yesterday you texted me to let me know, which was very appreciated. However, I didn't hear anything this morning and you weren't at your desk until 9:20. Confirming our agreement that you will text me if you are going to be any more than 10 minutes late arriving in the morning. Even if you will be less than 10 minutes late, a courtesy text is always a good idea

- (b) On 18 March 2024 at 3:05pm there is a Teams message from Ms Gubbins asking Ms Abuy 'where are you?' to which the response is 'Just returned from my break outside...': Ex R6.
- (c) On 5 April 2024 at 3:55pm there is a Teams message from Ms Gubbins asking Ms Abuy 'Where are you? Pre-start is happening:' Ex R6.
- (d) Ms Gubbins' file note of 17 April 2024 records that the previous week, Ms Abuy had taken two days' leave without discussing it with Ms Gubbins in advance, and had arrived to work 10-15 minutes late on Monday 15 April, with no explanation provided: Ex R16.

110 The overall picture is that Ms Abuy's work attendance was inconsistent over a period of time leading to 15 April 2024. It was a matter that was repeatedly raised with her, yet she appeared to take no heed of what was expected and required of her, consistent with her unwarranted pretensions of having unfettered autonomy and flexibility.

111 The Town acted reasonably in seeking performance improvement in this area.

#### **Following reasonable directions**

112 Ms Abuy submitted that the 'following reasonable directions' target was not a fair or valid improvement area because it lacked objective standards, ignored critical contextual factors, included vague and subjective expectations, and placed a burden on her to manage and resolve barriers to compliance.

113 In cross-examination, Ms Gubbins described her concern about this aspect of Ms Abuy's performance (TS184):

I would say for the most part, Ajah, you did follow directions where you agreed with those directions. The issue arose where there were instances if you didn't agree with the directions that you were provided with. That's when I would generally find that those directions they either wouldn't be followed, or we'd spend quite some time going backwards and forwards about whether or not those directions were to be followed.

114 An example of a direction that Ms Gubbins gave Ms Abuy prior to 15 April 2024 was for her to take her lunch break no later than 2:00pm (see email dated 8 February 2024: Ex R11). But on 20 March 2024, Ms Gubbins had reason to counsel Ms Abuy at a meeting which was scheduled for 3:00pm because Ms Abuy had not yet taken her lunch break at the time the meeting took place. Ms Gubbins had to reiterate her instruction that lunch breaks should be taken between 12:00pm and 2:00pm, with any break outside that time to be entered in her calendar: Ex R14.

115 On 17 April 2024, Ms Gubbins recorded that Ms Abuy was not including her lunch breaks and time away from her desk in her calendar. Further, Ms Gubbins recorded that Ms Abuy told her in a meeting on 17 April 2024 that she would only follow reasonable directions given to her and she did not believe this was a reasonable direction.

- 116 This sentiment was repeated by Ms Abuy in her evidence. She said she viewed the direction as unreasonable and so one which she did not need to comply with. In cross-examination she said that the directions were not lawful directions, because there was nothing in her contract or in policy or anything legally binding on her to fulfil those directions. She elaborated that ‘there was never any justification or further context about why those things were suddenly being put in place’: TS90.
- 117 In her Written Closing Submissions, Ms Abuy submitted that ‘[t]he requirement to take lunch between 12:00pm and 2:00pm every day was overly rigid, inconducive to my productivity, and failed to consider operational needs, workload demands, preferences, or reasonable flexibility’. She saw the direction as an ‘unnecessary level of control’ that was inconsistent with her position classification [137]-[138].
- 118 The relevant requirements had been in place at least since Ms Savill’s email of 12 October 2023, referred to above. That email also provided clear and coherent justification for the directions.
- 119 In any event, if Ms Abuy’s position is that a direction is only reasonable and need only be complied with if a justification for it is given, she is wrong. Justice Allanson described employees’ duty to obey reasonable directions by their employer in *Finlay v Commissioner of Police* [2022] WASC 272 at [21] (citations omitted):
- It is a fundamental term implied by law into all employment contracts that employees are contractually obliged to follow the lawful and reasonable directions of their employer. At common law, an employee's obligation of obedience is to lawful commands - commands which involve no illegality, which fall within the scope of the contract of service, and are reasonable. Reasonableness is not a separate requirement, but is the standard or test by which the common law determines whether an order is lawful. Reasonableness is not determined in a vacuum, but rather by reference to 'the nature of the employment, the established usages affecting it, the common practices which exist and the general provisions of the instrument, in this case an award, governing the relationship...’.
- 120 The direction was plainly a lawful and reasonable direction in this sense. The Industrial Agreement obliged the Town to afford employees an unpaid meal break of at least thirty minutes for shifts greater than five hours: cl 11.6. A meal break could be delayed only in ‘unforeseen circumstances’ in which case the break must be taken ‘as soon as practicable.’ Although cl 11.6 does not expressly state the time that the meal break is to be taken, the Town’s obligations under cl 11.6 could only be fulfilled if a meal break is ordinarily taken within or at five hours from the shift commencement.
- 121 In circumstance where Ms Abuy had demonstrated a history of failing to take a meal break as cl 11.6 required, it was reasonable for the Town to give her express directions to do so, and for the Town to require her to diarise those breaks so that her compliance with the direction could be monitored. In this context, I reject Ms Abuy’s criticism that the expectation she follow reasonable direction lacked objective standards, included vague and subjective expectations, or placed any unreasonable burden on her. Her duty to obey the directions was fundamental, and the expectations that were set out were clear and readily achievable.
- 122 While there may be other examples of directions that Ms Gubbins was concerned were not being followed by Ms Abuy, this single example is sufficient for me to be satisfied that the Town was justified in seeking improvement in Ms Abuy’s performance in this area.

### Respectful communications

- 123 Ms Abuy audaciously submitted that the Town did not provide evidence that she was failing to meet expectations about her communications before they were imposed as performance measures. It provided ample evidence. It is telling that Ms Abuy did not consider the evidence reflected on her performance in this area.
- 124 Below are just two examples of communications between Ms Gubbins and Ms Abuy (shown in blue) the Town relied on. They speak for themselves.

Sasha Gubbins 13/03 10:26 am

SG Do we have anyone else to add to the HSN Planning Committee from your inquiries so far? Sending out an update this morning, so I'll include anyone extra in this 😊

13/03 11:02 am

Im going home. Will take leave

Sasha Gubbins 13/03 11:02 am

SG Hey, can we please chat before you head off?

13/03 11:04 am

Already left

Sasha Gubbins 13/03 11:08 am

SG Can you please call me on my mobile? I need more info than this to approve leave for you for today.

Thursday, 14 March

14/03 8:45 am

Won't be in today. And I don't need to justify my reason for needing to take leave. Thanks

15/04 11:20 am

Is there a reason why there is always a lack of disclosure regarding your frequent meetings with internal and external stakeholders? No information is shared beforehand nor outcomes/actions shared afterwards. It would be nice if you could be more transparent because visibility should be reciprocated (to a certain level of course, I understand that it's not always feasible or appropriate); this does not feel like a team because our cohesion is undermined when half of Community Safety is constantly excluded by the leader.

Sasha Gubbins 15/04 12:01 pm

SG

Hi Ajah, I'm sorry you feel that we're not a team, but I'm not really sure what you mean. Is there a particular meeting that you're talking about? When I have asked during our team meetings and 1:1s whether there is anything you would like to be involved in, you have said no, so I'm not sure what it is that you are wanting to come along to? Let's chat about this in our check in on Wednesday.

15/04 5:49 pm

A screenshot of a calendar or meeting list. The items shown are:

- Hedland Says No** (with a dashed border)
- 2 PM | Bruce meeting?** (with a dashed border)
- 1 PM | Comm Safety Check In** (with a dashed border)
- Comm Safety & Comms catch-up**  
Microsoft Teams Meeting; JD Meeting Room 2 (with a dashed border)

A screenshot of a calendar or meeting list. The items shown are:

- 2 PM | Bruce meeting?** (with a dashed border)
- 1 PM | Comm Safety Check In** (with a dashed border)
- Comm Safety & Comms catch-up**  
Microsoft Teams Meeting; JD Meeting Room 2 (with a dashed border)
- Comm Safety & Libraries catch-up**  
South Hedland Public Library (Leake Street, (with a dashed border)
- SRWA & ToPH Catch Up**  
Focus Room 2 (Kaartgijin) (with a dashed border)
- discuss road safety activities**  
Depot Spinifex Room (with a dashed border)
- Community Safety Catch Up** (with a dashed border)

I am not referring to when you have asked whether there are any tasks I would or would not like to be doing, that is completely different. Even times when I have asked what interesting/new things you have planned for the week, you still failed to mention any upcoming or recent meetings that are out of the ordinary. It seems like you purposely omit these dealings in a secretive manner for whatever reason. I have never been provided with the opportunity or option to attend such meetings, specifically pertaining to the attached screenshots. The only way I have ever found out about them is via your calendar - that is the problem I am trying to address with you! As for the WACOSS catch-up, you only mentioned it after I scheduled a separate meeting with them, which would not have been the case if you had communicated to easily disclose your meeting with them upon it being scheduled. It was clear that you obviously didn't intend to ever inform me of it happening (just like the other meetings such as the Libraries catch-up a few days prior) until conversation began about me meeting with them. I am simply asking for transparency around all relevant meetings and discussions, not for invitations to every single one although it would be a courtesy in case I do have the capacity or desire to attend. Hopefully you can understand my perspective. Thanks.

Sasha Gubbins 15/04 5:53 pm

SG

Hi Ajah, let's chat about it on Wednesday.

15/04 6:09 pm

I am specifically requesting a response in writing with your reasoning. Providing a summary of your verbal explanation will not suffice on this occasion, sorry. As it's not an urgent request, I am more than happy to give you the required time to compose your reply.

125 The Town was looking for improvement in the way that Ms Abuy interacted with other people, and in particular, her line leader. It wanted Ms Abuy to become less adversarial in her communications and more collaborative. The way Ms Abuy interacted with stakeholders reflected on the Town's reputation. The way she interacted with colleagues had the potential to impact on the effectiveness and productivity of her team, as well as the morale and wellbeing of team members. The Town was justified in seeking improvement in Ms Abuy's performance in this area.

**Did Ms Abuy's performance improve sufficiently?**

126 The PIP process commenced on 17 June 2024 and ended on 1 August 2024.

127 Ms Abuy submits that she met the expectations of the PIP plan, and therefore termination was not an appropriate proceeding action. Her evidence was that throughout the PIP process, she documented her progress in a spreadsheet, which she tendered as Exhibit A14. She conceded however, that this spreadsheet was not shared with the Town during PIP meetings, or at any other time.

128 Ms Abuy quantified the precise number of instances where her spreadsheet showed she had followed reasonable directions, and met expectations around communications and collaboration, met the Town's Core Values, and met deadlines for community safety deliverables.

129 The Town does not take issue with the fact that Ms Abuy sometimes met its performance expectations before and during the PIP process. What the PIP process was designed to achieve was improvement in performance, resulting in such expectations being consistently achieved.

130 The real question, therefore, is whether there were times when Ms Abuy failed to meet the Town's reasonable performance expectations. Ms Abuy's selective tally does not assist her in this regard.

131 Ms Gubbins's evidence was that Ms Abuy's punctuality and attendance in the office did improve after 17 June 2024. She provided Ms Abuy with feedback on other areas where she felt Ms Abuy was doing well. For example, her feedback at the 20 June 2024 check-in mostly reported that things were going well in relation to following reasonable directions, reliability, and communication and collaboration, although Ms Gubbins had identified a couple of instances of miscommunication or potential for improved communications: Ex A24.

132 However, from 11 July 2024, Ms Gubbins' view was that still more needed to be done by Ms Abuy to demonstrate a commitment to follow all reasonable directions, that improvement was still needed in relation to communications about work hour variations and private appointments, and significant improvement was needed in relation to communication and collaboration.

133 It is not necessary for me to consider every instance where Ms Abuy is alleged to have underperformed. There are at least three clear examples of failures which, on their own, justified the Town's decision. These three examples are not necessarily the only ones that demonstrate Ms Abuy's performance remained unsatisfactory.

134 The first relates to the way Ms Abuy dealt with a dispute with Ms Gubbins in relation to a leave request. The Town's Leave Management Procedure relevantly provides:

1. Employees shall be entitled to leave consistent with the provisions of the Minimum Conditions of Employment Act 1993 (WA), National Employment Standards (for Parental Leave only), Town's Industrial Agreement, their contract of employment and the Local Government (Long Service Leave) Regulations (WA).

...

2.3.5 Employees are entitled to use personal leave when they are absent:

2.3.5.a due to personal illness or injury affecting the employee; or

2.3.5.b to provide care or support to a member of the employees family or household because of illness or injury affecting the member; or

2.3.5.c due to an unexpected emergency affecting the employee or a member of the employees' family or household.

2.3.6 Employees shall be required to provide a medical certificate from a registered medical practitioner; or other supporting documentation that would satisfy a reasonable person in the following situations:

...

2.3.4.c Where an employee claims a day off as personal leave on an ordinary working day either immediately before or after a weekend, public holiday, annual leave, or rostered day off;

2.3.7 Acceptable forms of evidence include:

- 2.3.7.a A medical certificate from a registered medical practitioner; or
- 2.3.7.b Childcare or school exclusion letter; or
- 2.3.7.c Statutory declaration

135 Ms Abuy made a request to take one day of personal leave for Friday 21 June 2024. She specified in the leave request that the reason for the application was ‘appointment.’

136 The application was supported by a statutory declaration (Ex R23) that just said:

‘I required one day (7.6 hours) of personal leave absence on Friday 21 June 2024 due to attending an appointment’

137 The statutory declaration provided no details of where the appointment was, the nature of the appointment or the purpose of the appointment, such that it qualified for the grant of 7.6 hours of personal leave. It could have been an appointment for a manicure, which of course would not meet the conditions for personal leave. It could have been a GP appointment of 15 or 30 minutes, which would not meet the conditions for 7.6 hours’ personal leave.

138 Ms Gubbins, reasonably, advised Ms Abuy that the statutory declaration did not provide sufficient support for personal leave. Her email to Ms Abuy said:

‘We’re looking for something that confirms that the reason you were taking leave meets the criteria for personal leave.’

139 Ms Gubbins asked Ms Abuy to provide evidence to substantiate the reasons for applying for the personal leave that matched the criteria, namely personal illness or injury, to provide care or support to a family member because of illness or injury affecting the family member, or an unexpected emergency affecting the employee or a family member.

140 Ms Abuy did not accept Ms Gubbins’ decision. She insisted ‘statutory declarations are an admissible form of evidence for personal leave’, quoting clause 2.3.7 of the Leave Management Procedure and completely missing or ignoring Ms Gubbins’ point that the statutory declaration did not link the leave request to a reason that meets the criteria for personal leave.

141 Ms Abuy did state in her email ‘I have utilised my Personal Leave entitlement due to personal illness’ but the Leave Management Procedure does not list an email as an acceptable form of evidence for the purpose of taking personal leave.

142 Despite Ms Gubbins explaining clearly and logically why the statutory declaration did not provide appropriate information to confirm the leave was classified as personal leave, Ms Abuy remained staunch, brazenly alleging that it was Ms Gubbins who had misinterpreted the requirements. This is her email to Ms Gubbins of 26 June 2024 (Ex R24):

Hi,

Thank you for the elaboration, however, there is no confusion on my part.

To clarify to you, I did not state whether it was or was not specifically a medical appointment that I was required to attend, nor am I obligated to provide ‘*sufficient details on the reason for leave being taken*’ if it is requested in addition to the supplied evidence.

Furthermore, HR have already reiterated that a valid Statutory Declaration can be submitted as a permissible support document that serves as alternative to a medical certificate; therefore, it is sufficient evidence to satisfy Clause 24.3 which you have evidently misinterpreted.

The following resource contains valuable information that may help increase your understanding of this:

<https://www.healthdirect.gov.au/talking-to-your-employer-aboutillness#:~:text=Your%20employer%20has%20the%20right%20to%20ask%20you,of%20your%20illness%20or%20injury>.

If you need any further explanation or confirmation, please don’t hesitate to contact HR!

(original emphasis)

143 On 26 June 2024 Ms Abuy was notified by an automated message generated by the Town’s payroll software that Ms Gubbins had approved her leave request. I do not know why the leave request was approved. Ms Abuy had still not provided evidence that would satisfy a reasonable person of her entitlement to take personal leave. And yet, Ms Abuy sent the following passive-aggressive and accusatory communication by email to Ms Gubbins (Ex R23):

Thanks for approving my request. Glad to see your adherence to this organisational policy that is in fact legislation as well.

I believe an apology would be appropriate and greatly appreciated in this situation to acknowledge your error, and to ensure we can move forward positively.

144 Ms Abuy maintained throughout the PIP process that her communications to Ms Gubbins were appropriate, and that Ms Gubbins should apologise or admit she made an error.

145 Ms Abuy may have thought she was right, but she was clearly in the wrong here. Her communications made no allowance for the fact that she might have been wrong, or that there might be some grey area. Her communications were adversarial and made no room for working through a solution. They were disrespectful and hurtful. This was precisely the type of interaction which the Town was endeavouring, by the PIP process, to avoid. It was an opportunity for Ms Abuy to demonstrate that she had improved in her approach to communicating and relating. She missed it by a mile.

146 While this instance occurred relatively early in the PIP process, Ms Abuy maintained her position that her communications were satisfactory until the end of the PIP process. When the matter was raised with her during the PIP process, her written response was ‘[c]ould you please clearly identify and articulate your concerns regarding the tone of my communication in this matter, providing applicable references to support your claims?’: Ex R25.

147 The second example of a failure to demonstrate sufficient improvement was in the area of following reasonable directions. At a PIP check-in meeting on 27 June 2024, Ms Abyu was directed to remove training from her calendar if she was not intending to attend it. This direction was confirmed in an email dated 1 July 2024 summarising the meeting outcomes.

148 Ms Abyu responded to this direction by email on 6 July 2024 (Ex R25):

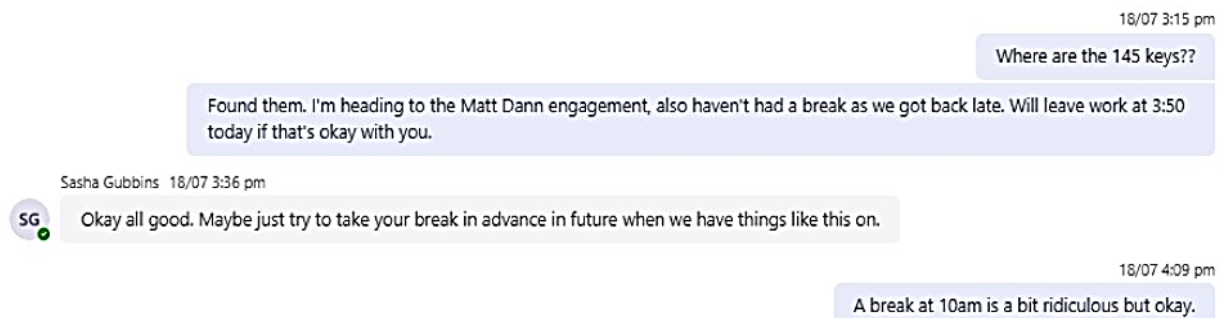
As mentioned in the meeting, I am the primary user of my calendar, and it is customised to suit my personal workflow and productivity requirements. Therefore, I am unable to prioritise your individual preferences in this matter, although I appreciate your proposed suggestion. To reiterate again, the management of my calendar is based on my own consumption needs which are essential for achieving and maximising my efficiency.

149 Ms Abyu maintained at the hearing of these proceedings that the direction was unreasonable. In cross-examination (TS107) she said this was because:

[I]t's overstepping to ask someone to operate their calendar in a different way, just because you're confused by it. I think that just impedes on boundaries. I guess, my response is well articulated enough, that I think my point is conveyed

150 The direction was given to Ms Abyu in circumstances where Ms Gubbins' had ongoing concerns about Ms Abyu's reliability and availability. Ms Gubbins had, for several months, been trying to find ways to ensure she had adequate oversight of Ms Abyu's whereabouts and activities, and had better communication from Ms Abyu about these matters. Her direction, which sought to ensure the calendar accurately recorded Ms Abyu's activities and whereabouts, was not unreasonable in this context. The Town was justified in concluding that this was an instance of Ms Abyu failing to meet the expectation that she follow reasonable directions.

151 Ms Abyu again pushed back against a direction Ms Gubbins gave her in communications exchanged with Ms Gubbins on 18 July 2024 via Teams:



152 While technically Ms Abyu agreed to comply with the direction, her response made it clear that she considered the direction unreasonable. In doing so, she mistook the direction, which was not to take a break at 10:00am but rather, to try to take a break in advance when other commitments might interfere with the usual break time. Further, rather than explain why she was unable to take a break in advance on the particular occasion, or seek to clarify what Ms Gubbins intended, she turned the exchange into a personal criticism of Ms Gubbins.

153 The third example of Ms Abyu's lack of progress in meeting expectations was Ms Abyu's conduct in the PIP meetings themselves. Ms Gubbins alerted Ms Abyu to the fact that the PIP check-in meetings were an 'opportunity for you to demonstrate your collaboration and communication skills': Ex A34.

154 Ms Dillon made notes of the 8 July 2024 PIP check-in meeting: Ex R26. They record that Ms Abyu's responses were limited and she displayed a lack of willingness to engage. Ms Dillon's evidence was that she observed, over a number of the PIP check-in meetings, that Ms Abyu would bring in her computer and would type away 'quite intensely' but when questions were asked she either would not respond or her responses would be in one word. If she responded it would often be something like 'I would prefer to respond in writing' or 'please just send me the question in writing and I'll respond in writing': TS137.

155 Ms Abyu was ten minutes late in arriving at the 17 July 2024 check-in meeting at 8:40am, without providing an apology: Ex R32.

156 Ms Dillon's notes of Ms Abyu's conduct in the 25 July 2024 PIP check-in meeting (Ex R34) records:

Ajah was typing notes and looking down for the entirety of the meeting. She very rarely looked up to make eye contact and there was little to no response for most questions asked. Ajah had no contribution to add in how she was achieving the targets.

157 Ms Gubbins' summary of the same meeting (Ex R35) was consistent with Ms Dillon's evidence.

158 Ms Abyu did not challenge this evidence. She argued that her silence in the PIP check-in meetings should not be taken to be evidence of not engaging in the process. However, Ms Abyu was on notice that the manner in which she communicated and interacted was being gauged in these meetings. At the 8 July 2024 PIP check-in Ms Abyu said she considered the meeting was not a productive use of time. She was right, in the sense that to demonstrate she was meeting performance expectations she had to communicate her understanding of what was required of her, of where she was failing to meet those expectations, and what she would do to improve. She did not do any of those things.

159 At the conclusion of the 25 July 2024 PIP check-in (Ex R36), Ms Gubbins concluded that:

There remains development needed in communication when discussing directions or suggestions

...

Overall, I feel there has been a decrease in communication this week, and progress in communication and collaboration is not where it needs to be.

160 It is not for me to assume the role of Ms Abuy's manager in considering whether the dismissal is or is not unfair: *The Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch v Public Transport Authority of Western Australia* [2013] WAIRC 00344: (2013) 93 WAIG 618 at 20. Ms Abuy must demonstrate that the Town's dismissal was unfair, for present purposes, by showing that her performance had improved so as to meet the Town's reasonable expectations, such that there was no valid reason for her dismissal. She has not done so.

**Was the performance improvement process unfair?**

161 Ms Abuy has failed to demonstrate that there was not a valid reason for her dismissal. I must therefore now consider her grounds that relate to the process of the dismissal.

162 A denial of procedural fairness is but one factor in determining whether a dismissal is harsh, oppressive or unfair: *Shire of Esperance v Mouritz*. A denial of procedural fairness on its own will not necessarily mean that dismissal is unfair. The test in the unfair dismissal application is ultimately whether the Town has abused its right to dismiss as outlined by the Industrial Appeal Court in *Undercliffe Nursing Home* at 386.

163 I made attempts prior to the hearing of this matter to pin down exactly what Ms Abuy's case was in relation to her allegations of procedural deficiencies. At the commencement of the hearing, I listed ten grounds which I had gleaned from Ms Abuy's written submissions filed prior to the hearing. Ms Abuy agreed my list was an accurate statement of her grounds, and she added one further ground.

164 Ms Abuy's written closing submissions occasionally deviated from the 11 grounds articulated at the commencement of the hearing. To ensure fairness to the Town, I have only considered the 11 grounds that were raised at the commencement of the hearing. Any which Ms Abuy tacked on after the conclusion of the hearing should not be able to be pursued, because the Town had no opportunity to answer them by evidence at the hearing.

**Was the PIP process unfair because it was not preceded by performance coaching and performance counselling?**

165 Ms Abuy says she was denied the benefit of performance coaching and performance counselling as set out in the Discipline Procedure, before the PIP commenced.

166 She asserts that the Letter of Expectation process was neither performance coaching nor performance counselling for the purpose of the Discipline Procedure. It was not performance coaching because:

- (a) The Discipline Procedure requires that the manager provide the relevant feedback and coaching.
- (b) The relevant manager was Ms Savill.
- (c) Ms Gubbins, and not Ms Savill, conducted the initial discussions about the Letter of Expectation and authored the Letter of Expectation.
- (d) The Letter of Expectation did not expressly refer to performance feedback and coaching
- (e) The PIP plan however described the 10 April 2024 meeting about the Letter of Expectation as our 'performance counselling meeting'.

167 Ms Abuy says the Letter of Expectation could not be performance counselling either. The reason is unclear but it is inconsequential as the Town does not rely on the Letter of Expectation process as constituting performance counselling for the purpose of the Discipline Procedure.

168 I do not agree that the word 'Manager' under the Discipline Procedure can only mean Ms Savill. The Discipline Procedure does not define who is a 'Manager.' But there are 2 reasons why I reject Ms Abuy's narrow reading of the Discipline Procedure. First, paragraph 4.0(a) of the Discipline Procedure says:

Where termination of employment is being considered, the following steps must be actioned:

- a) The Manager with their People & Culture Representative will review information collected from the investigation, including the employee's response concerning the allegations (e.g. performance history). The Manager and People & Culture will then provide a recommendation to the appropriate Manager/ Director. A decision to terminate an employee must be endorsed by the CEO.

169 This clearly contemplates at least two levels of management, and two managers involved in different stages of the Discipline Procedure: The 'Manager' who conducts the performance counselling, and the 'appropriate Manager' to whom that first manager reports. The word 'appropriate' allows for flexibility in how the Discipline Procedure applies, so that those who are most appropriate to be involved in the various stages, can be.

170 Second, the Discipline Procedure should be interpreted in a way that best fits its purpose, which is to ensure employees are informed of performance expectations and standards of behaviour, and for the Town to assist employees to improve their performance. This purpose is achieved through the requirement to provide employees with 'feedback' about their performance. The individuals best placed to give feedback, discuss performance and provide assistance to improve performance, is the employee's immediate supervisor or line leader, whether or not their title is 'Manager'.

171 Ms Abuy made no argument as to why the narrow meaning of 'Manager' should be preferred.

172 Even if I am wrong, it does not assist Ms Abuy. Because if Ms Savill is the relevant Manager under the Discipline Procedure, then there has still been compliant feedback and coaching in the form of the discussions Ms Savill had with Ms Abuy in October 2023. Additionally, Ms Savill was involved in the Letter of Expectation process meetings of 6 and 10 May 2024: TS25, TS27.

- 173 The fact that the PIP plan referred to the 10 April 2024 meeting as performance counselling is of no consequence either. Performance counselling is one of any of a number of descriptions that could have been given to the 10 April 2024 meeting. It could have been described as a 'performance discussion', or simply a 'meeting.' The use of the phrase 'performance counselling' in the PIP plan does not operate as a legal conclusion either that the 10 April 2024 meeting was performance counselling for the purpose of the Discipline Procedure (which Ms Abuy denied, in any event), or that the PIP process was not performance counselling for the purpose of the Discipline Procedure. The Discipline Procedure does not preclude performance being managed in ways that are in addition to the steps the Discipline Procedure requires.
- 174 There can be no question that Ms Abuy was given ample feedback about her performance, and areas of concern about her performance, before the PIP process was instigated. Much of this is recorded at paragraphs [19]-[23], [28]-[30] and [105]-[106] above commencing with the meetings Ms Savill had with Ms Abuy in October 2023, summarised in her email of 12 October 2023: Ex R5. See also exhibits R7, R11, R14 and R15.
- 175 Ms Abuy's arguments are matters of form not substance. Even if there were departures from the strict letter of the Discipline Procedure, and I do not accept that there was, it is difficult to see how such departures would render the PIP process unfair to Ms Abuy, or render the dismissal itself unfair.

**Was the PIP process unfair because Ms Savill was not present for performance counselling?**

- 176 This part of Ms Abuy's claim falls away because of my previous finding that Ms Savill was not the only 'Manager' for the purpose of the Discipline Procedure. It also falls away because, as I understand her position, Ms Abuy only considered Ms Savill's involvement was necessary for the Letter of Expectation process: TS93. Ms Savill was involved in the process because she attended two of the meetings at which the Letter of Expectation outcomes were discussed.

**Was Ms Abuy denied the opportunity to bring her preferred support person to the 12 June 2024 PIP implementation meeting? If so, did this render the dismissal unfair?**

- 177 As I understand her argument, Ms Abuy does not say that the Town expressly refused to allow her to have a support person attend the PIP implementation meeting on 12 June 2024. Rather, her concern is that she wanted Ms Price to attend as her support person, and Ms Price was prevented from being her support person.
- 178 Ms Abuy points out that because of her isolation in Port Hedland, her options for having a support person were limited so that, when she could not bring Ms Price, this effectively meant that she was left without a support person. She also says the short notice of the meeting limited her ability to find a support person.
- 179 Even if the Town had refused to allow Ms Price to attend as a support person, Ms Abuy did not lead any evidence which would allow me to conclude that this practically meant she could not have any support person. She led no evidence that she approached any other work or non-work colleague. While Port Hedland may be isolated, it is not unpopulated. It is an obvious fact that the Town had employees other than those in the Human Resources team.
- 180 Ms Dillon's uncontested evidence is that when the meeting commenced, she asked Ms Abuy if she wanted to postpone the meeting so that she had time to find a support person. Ms Abuy refused this offer and said she was 'happy to proceed': TS98.
- 181 The facts do not establish any unfairness to Ms Abuy.

**Was Ms Abuy denied the opportunity to give feedback on the PIP plan? If so, did this render the dismissal unfair?**

- 182 Ms Abuy complains that when the PIP plan was first introduced to her on 12 June 2024, she was not consulted on its terms.
- 183 It is uncontroversial that the draft PIP plan was prepared without Ms Abuy's input. There's nothing unusual or unexpected about that.
- 184 Ms Dillon's notes of the 12 June 2024 meeting were in evidence. They record that Ms Gubbins sought feedback from Ms Abuy several times during the meeting itself: Ex R20. Ms Abuy did not dispute the accuracy of the notes in this regard: TS97. Ms Abuy's evidence was that at the 12 June 2024 meeting to discuss the draft PIP plan she gave some limited feedback, asked for more time to give further feedback, and that request was agreed to: TS36.
- 185 Ms Dillon received written feedback from Ms Abuy over the weekend following the 12 June 2024 meeting. That feedback resulted in minor modifications in the PIP plan's format (measurements were numbered), an added requirement that Ms Abuy lead team meetings fortnightly (item 3), and a change of the required arrival time from 9:00am to 8:30am (item 2.1).
- 186 Further, on Ms Abuy's own evidence she raised all of her concerns at the meeting of 17 June 2024: TS50.
- 187 Ms Abuy submitted that '[b]y disregarding my feedback and refusing to make adjustments, the PIP became a one-sided tool that did not allow for meaningful dialogue or constructive input': Applicant's Written Closing Submissions [58].
- 188 The Town did not require Ms Abuy's agreement to the PIP plan. Its refusal to make the adjustments Ms Abuy requested does not mean her feedback was disregarded. It means the Town did not agree to make the requested adjustments. This is not unfair. The purpose of the PIP plan is stated on the form itself:

The purpose of this Performance Improvement Plan is to define areas of concern and gaps in work performance. It will reiterate the **Town of Port Hedland's and the Line Leaders expectation's** of an employee and provide an opportunity to demonstrate improvement and commitment.

(emphasis added)

- 189 I do not agree that the finalised PIP plan 'did not allow for meaningful dialogue or constructive input'. The plan envisaged regular check-in meetings throughout the PIP process, during which dialogue and input was given by Ms Gubbins and sought from Ms Abuy.

190 Ms Abuy's real beef is not that she was not consulted in relation to the PIP plan's content. Rather, her grievance is that her suggested changes were not *all* agreed to. Ms Abuy would say any plan short of one that acceded to all of her demands was unfair to her.

**Were the PIP plan expectations unreasonable?**

191 Ms Abuy argued that the Town's performance expectations were unreasonable because:

- (a) Her employment contract designated a 38 hour work week and the Industrial Agreement permits flexible start times within the 7:00am to 9:00am operational period.
- (b) Rigid attendance rules were only applicable to employees who work according to rosters or in special circumstances.
- (c) The requirement to take lunch between 12:00pm to 2:00pm was overly rigid, inconducive to her productivity and failed to consider operational needs, workload demands and her own preferences. It did not provide reasonable flexibility and involved an unnecessary level of control.
- (d) She had not previously been subjected to these expectations
- (e) These expectations contradict 'workplace norms' that allow employees to use their own discretion.
- (f) The PIP plan made no allowance for the fact that Ms Abuy considered Ms Gubbins' directions to sometimes be unreasonable.
- (g) The expectation that Ms Abuy communicate with Ms Gubbins 'proactively and respectfully' was unrealistic in light of the history of interpersonal conflict and considerations of Ms Abuy's psychological safety.
- (h) The expectations were about work style, attitude and personality rather than actual performance in the role.

192 I have already dealt with some of these themes under the heading 'Did Ms Abuy's performance justify improvement action'. I will try not to repeat what I have already said.

193 Ms Abuy's employment contract specified that her ordinary hours of work were an average of 38 hours per week, with start and finish times for the purpose of working ordinary hours 'determined by your manager to fulfil the operational requirements of the organisation'. The contract refers to 'rostered hours' which 'may vary, at the discretion of your manager, to meet the Town's operational requirements': Ex A2.

194 It is so obvious that it hardly needs be said that to perform satisfactorily, Ms Abuy had to meet her contractual obligations. Accordingly, it was reasonable for the Town to require her to meet performance criteria around reliability and work attendance.

195 Ms Abuy did not establish by evidence that the Town's attendance requirements were only applicable to employees working on rosters or in special circumstances, or contrary to 'work norms'. Nor did she establish that the requirement to take lunch breaks within a specified two hour window adversely impacted on productivity or operational needs.

196 To the extent that Ms Abuy suggests that the Industrial Agreement permits flexible start times within 7:00am to 9:00am, her understanding of the Industrial Agreement is misconceived. The Industrial Agreement specifies a span of hours during which ordinary hours can be worked. This does not give an individual employee flexibility to determine their own start and finish times within the span of ordinary hours.

197 The position description for the Graduate Community Safety Officer role indicates the role reports to the Advisor and sets out 13 accountabilities of the role, including '[o]ngoing compliance with the relevant... policies, procedures and work instructions'. Several of the accountabilities are described in terms of 'assisting' and it is implicit that the role was to assist the Advisor, and be subject to the direction and supervision of the Advisor. The Graduate reports to the Advisor because the Advisor has authority. Unless the Advisor has authority to give the Graduate directions, and specify what is required of the Graduate, there can be no substantive reporting by the Graduate to the Advisor.

198 Accordingly, it was reasonable for the Town to require Ms Abuy to meet performance criteria around following reasonable directions given to her by the Advisor. The Town did not require Ms Abuy to comply with unreasonable directions. That Ms Abuy would therefore be required to discern for herself whether a direction was reasonable or not is neither unusual nor unfair. It is the day to day reality for all employees. If Ms Abuy refuses to follow a direction because she considers it to be unreasonable, she bears some risk. But Ms Abuy has not established that any of the directions given to her were unreasonable.

199 In accepting the offer of employment, Ms Abuy agreed to abide by the Town's policies and internal operating procedures. Clause 34 of the Industrial Agreement also requires employees to abide by the Town's policies. It was reasonable for the Town to require Ms Abuy to meet performance criteria about communicating respectfully and complying with the Town's Code of Conduct.

200 In any event, Ms Abuy did not demonstrate why the interpersonal conflict between her and Ms Gubbins precluded her from being able to communicate proactively and respectfully.

**Were the Town's performance expectations as expressed in the PIP plan unclear?**

201 Ms Abuy submits that:

- (a) The PIP plan did not define what constituted 'reasonable directions'.
- (b) The PIP plan did not clearly define what was meant by 'regular updates'.
- (c) The PIP plan's required hours of work conflicted with Ms Abuy's contracted hours of work.
- (d) The PIP plan did not provide objective criteria for assessing communications as being 'appropriate' and 'collaborative'.
- (e) Performance measures were not based on objective measurable behaviours.

- (f) Goals were not measurable and measurements were not tangible or quantifiable.
- 202 It is unnecessary to consider all of Ms Abuy's points, because the Town accepts that Ms Abuy met some of the performance expectations set out in the PIP plan. The question is whether the way the PIP plan was worded could be said to have contributed to Ms Abuy's failure to meet the Town's reasonable expectations.
- 203 The PIP plan itself should not be viewed in isolation. It should be viewed in the context of the many discussions and communications with Ms Abuy about her performance prior to the PIP process, as well as the discussions that were occurring at the time of its implementation.
- 204 In relation to the 'reasonable directions' expectations, the PIP plan explained that:
- All employees have an obligation under our Code of Conduct and as part of the employment relationship, to follow any reasonable direction given to them by someone with authority to give such direction. It is also important that, if there are barriers that may prevent a direction from being followed, team members communicate this and make their best efforts to find a solution, to make it possible to follow the direction.
- Respectful feedback is welcome, discussed through the right channels. Final direction on task allocation and priorities is set by the line leader, as they have the overview of expected deliverables & timeframes.
- 205 The PIP plan also provided three examples of past instances where Ms Abuy had failed to follow the reasonable directions given to her.
- 206 I cannot see anything more the Town could have done to make the expectation clear. This was not a case of Ms Abuy being unable to understand the expectation. Rather, Ms Abuy formed her own view that particular directions were not reasonable.
- 207 The PIP plan provided a 'recap' of previous observations that had been made about Ms Abuy's performance, including the statement:
- Regular, respectful and positive communication is crucial to foster a collaborative team environment which facilitates producing the best quality work possible.
- 208 This led to the inclusion of a goal of 'improved communication and collaboration with your Line Leader to achieve Community Safety outcomes'. One of six measurements of this goal was:
- 3.4 You are initiating discussion outside of team meetings to keep your line leader informed and regularly updated on team projects and daily work and consult on next steps.
- 209 This expectation was discussed at a number of PIP meetings, where Ms Gubbins informed Ms Abuy when she had provided timely updates, and occasions when she could have done more by reference to recent actual events. In this context, nothing about the way this goal was to be measured resulted in any unfairness to Ms Abuy.
- 210 The PIP plan contained a measure of improved communication by reference to:
- You are choosing a communication method and tone that is collaborative and an appropriate level of formality in the circumstances, with consideration to the way in which communication may be interpreted
- 211 Again, this expectation was discussed at a number of PIP meetings where Ms Gubbins provided Ms Abuy examples of where communications could be improved: Ex R22, Ex R25. The way the PIP articulated the goal was not unfair when Ms Abuy was given significant guidance about where her communications were falling short and how they could be improved.
- 212 Some of the PIP plan's measurements were not quantifiable. However, the nature of some performance issues was such that it was entirely appropriate that they be measured in a qualitative way rather than a quantitative way. Qualitative assessments are a valid basis to assess performance.
- 213 I accept that some of the PIP plan's measurements involved subjective assessments and value judgments of Ms Abuy's performance. This is neither unreasonable nor unfair.

**Was Ms Abuy denied the opportunity to be heard during the PIP process?**

- 214 Ms Abuy did not present any evidence that would lead me to a conclusion that she was denied a fair opportunity to be heard during the PIP process. To the contrary, her evidence was that she did share examples of her progress during PIP check-in meetings, by reference to her progress monitor.
- 215 Ms Gubbins' and Ms Dillon's evidence was to the effect that they went to great efforts to draw out Ms Abuy and have her engage with the process, but that she did not engage, preferring all communications to be in writing. The written PIP check-in meeting summaries paint the same picture, and were themselves further opportunities for Ms Abuy to provide her comments and feedback.
- 216 Part of Ms Abuy's complaint was that the Town did not consistently utilise a pro-forma PIP review and progress update template document during the PIP process. She did not make out a case that the Town was obliged to use such a document, or that the failure to use the document contravened the Discipline Procedure. The Discipline Procedure makes no reference to such a document.

**Was the process unfair because mediation was not offered or implemented**

- 217 At the start of the hearing of this case, Ms Abuy's argument was that the process was unfair because she was not offered mediation.
- 218 The evidence easily established that mediation was suggested to Ms Abuy repeatedly. Ms Abuy conceded that mediation was 'continuously being offered'. Ms Abuy said she never 'outrightly declined the entire process and said I would never, ever do it': TS98. But each time when it was offered, she did not want to take it up. She said that if she changed her mind about it she would be 'well within my rights': TS99.

219 In light of this evidence, Ms Abuy adapted her case, so that in closing submissions she only relied on the Town's failure to *implement mediation or follow up 'when the offer was accepted.'*: Applicant's Written Closing Submissions [9] (emphasis added).

220 The first vague and equivocal suggestion that mediation had been accepted was when Ms Abuy said in cross-examination (TS99):

There's a meeting, ah – ah – there's an email, where I had articulated several questions about mediation. And I said I would love to proceed, um – or um not exactly worded in that way, but I said or indicated that I was wanting to proceed, um, with the mediation. So we were in discussions.

221 Later in her evidence she clarified that she met with Ms Dillon on 25 July 2024. The Town's counsel asked:

*And did you, in that meeting with Ciara, agree to mediation?*

Ah, in that meeting with Ciara, she wasn't able to answer my questions about mediation

*Did you agree to doing mediation in that meeting with Ciara on 25 July?*

No

*Did you ever indicate, during the course of your employment, that you positively wanted to – were saying "Yes" to mediation? Did you ever do that?*

Yes. I recall sending an email to Ciara [Dillon] around the 31st, um – I believe it was around 31 July, with a list of questions around mediation, and saying I was wanting to proceed.

222 Ms Abuy later agreed there might have been an email sent to someone other than Ms Dillon. She did not, in any event, produce any such email.

223 In cross-examination, Ms Dillon said she did not recall mediation being raised during the 25 July 2024 conversation with Ms Abuy: TS158. I accept her evidence in this regard as preferable to Ms Abuy's shifting story. Ms Abuy consistently declined mediation at all times until 25 July 2024. No plausible reason was advanced by her as to why she would suddenly backflip on this issue.

224 This ground must fail simply because the evidence does not show that the offer of mediation was ever accepted by Ms Abuy.

#### **Was the process unfair because check-in meetings were inconsistent?**

225 Ms Abuy noted that at the commencement of the PIP process, weekly check-in meetings were scheduled to occur at 9:00am every Thursday throughout the duration of the PIP process.

226 As it transpired there was seven check-in meetings, on 20 June 2024, 27 June 2024, 8 July 2024, 11 July 2024, 17 July 2024, 25 July 2024, and 1 August 2024.

227 Ms Abuy was on personal leave for some days during the PIP process. One meeting date was changed to accommodate Ms Dillon's availability. As a result, the working days between meetings varied from 3 to 5 days.

228 Ms Abuy has not established why this meeting schedule was unfair to her, or what the Town ought to have done differently, or how doing it differently would have changed the outcome of the PIP process. This complaint is pedantry. If anything, the fact that Ms Abuy presses it reveals her obstinance.

#### **Was the process unfair because the review period was not long enough?**

229 When it was first formalised, the PIP plan was expressed as having a commencement date of 17 June 2024 and an end date of 26 July 2024.

230 The PIP plan also stated under the heading 'Timeline for Improvement, Consequences & Expectations':

Effective immediately, you are placed on a six-week PIP (excluding leave periods). During this time, you will be expected to make regular progress on the plan outlined above. Failure to meet these expectations, or any display of serious misconduct may result in further disciplinary action, up to and including termination of employment. Furthermore, failure to maintain performance expectations after the completion of the PIP may result in additional disciplinary action up to and including termination.

231 The end date of the PIP process was later extended to 2 August 2024, as a consequence of Ms Abuy taking leave.

232 The first part of Ms Abuy's complaint is that the first day of the PIP period, 17 June 2024, could not be counted, because she had not signed the PIP plan until the end of that day. She was, however, provided the PIP plan on 12 June 2024 so there is no reason why she ought not to have understood her performance from 17 June 2024 was going to be assessed.

233 Another part of Ms Abuy's complaint was that she had 7 days off work on leave after the PIP process commenced, so that there was two days less than a full six weeks from 17 June to 2 August.

234 Ms Abuy also submitted that the PIP process was scheduled to conclude on 2 August 2024, but the outcome was communicated on 1 August 2024. Further, the evidence was that Ms Dillon had recommended termination on 31 July 2024, before the end of the PIP process, and the CEO had approved that recommendation on 31 July 2024: Ex R37.

235 I accept that the duration of the PIP could impact on Ms Abuy's ability to achieve expectations when it came to deadlines for project deliverables. However, the Town's reasons for finding Ms Abuy's performance had not improved were not to do with the project deliverables. As Ms Abuy herself concedes, there were no deadlines for the Community Safety deliverables area in the final week of the PIP process: Applicant's Written Closing Submissions [185].

236 Ms Abuy did not establish that a difference of two or three days in the context of the lengthy history of performance feedback and counselling, would have meant that her performance would have been assessed any differently. She did not demonstrate

that a full 30 working days was necessary for her to demonstrate improvement in her performance. It was sufficiently clear by 25 July 2024 that Ms Abuy's performance had not met expectations, and Ms Abuy was not going to be able to demonstrate sufficient improvement to hold on to her job. That is primarily because she had not ever recognised that her performance was deficient.

**Did the Town fail to have sufficient regard to Ms Abuy's grievances about interpersonal conflicts as a mitigating circumstance?**

237 Ms Abuy submitted that the PIP plan and its execution failed to acknowledge, consider, and address significant interpersonal conflict issues that had a direct impact on her ability to perform her role and participate in the process. She said this was a mitigating factor in the sense of it creating 'barriers in me being able to meet the expectation[s]': TS13.

238 The first question is, what did the Town know about the 'significant interpersonal conflict issues'? The Town could only acknowledge or take into account matters of which it was actually aware.

239 In her evidence, Ms Abuy referred vaguely to having raised with Human Resources concerns and disclosures about interpersonal conflict (TS52) and having disclosed that she did not feel safe in Ms Gubbins' presence: TS109. Her evidence about this was curtailed by me because Ms Abuy's outline of witness evidence had not given notice that evidence of this type would be led by her, other than meetings with Human Resources on 5 July 2024 and 25 July 2024 concerning unfair treatment and micromanagement. But even in relation to those dates, Ms Abuy gave no evidence of having made specific complaints or disclosures about interpersonal conflict or its impacts on her.

240 Ms Abuy did not suggest to Ms Dillon that there was any instance where Ms Abuy disclosed such matters directly to Ms Dillon: TS157, TS158. However, Ms Dillon's evidence was that at the time she took over as the Human Resources business partner involved in Ms Abuy's PIP process, she was made aware at a basic level of some concerns regarding the breakdown in relationship between Ms Abuy and Ms Gubbins but she had no specific details or examples: TS164.

241 Ms Dillon's report to the Town's CEO recommending Ms Abuy's termination contains a summary of the history of Human Resources' interactions with Ms Abuy. It notes that during Ms Abuy's period of unplanned leave in May 2024, Ms Abuy 'raised concerns about psychological safety and distress'. The report indicates that the concerns were raised by Ms Abuy to Ms Fox in the course of a 50-minute phone call, referring to 'bullying and feelings of being unsafe, trauma and distress'.

242 This led to the Town standing Ms Abuy down on full pay pending a fitness for work assessment.

243 The fitness for work assessment was conducted by Hedland Psychologists, and resulted in a report dated 29 May 2024. It stated:

In your opinion, can you confirm whether Ms Abuy is safe to return to her role as Graduate Community Safety Officer from 29 May 2024? Yes/ No

*Response: Yes*

If yes, in your opinion, are there any reasonable adjustments that the Town can make, to support Ms Abuy's to work safely in her role?

*Response: Ms Abuy reports feeling unsupported, vulnerable and targeted by the immediate Manager of the Business Unit, Anna. Reflecting the expectations by Anna are somewhat "excessive". Subsequently Ms Abuy appears open to discussions of alternatives i.e. (a) temporary secondment to another area (b) more flexible work locations (c) consistency in instructions and expectations when interacting with Anna.*

...

*Ms Abuy reports and presents ready for returning to work.*

*Ms Abuy indicated the recent receipt of a letter of expectation in relation to her work performance which was interpreted by Ms Abuy as "excessive". The "expectations" reflected more micromanaging i.e. a request was made for Ms Abuy to a closer social bond with Sasha, which Ms Abuy regards as inappropriate as she is at work. Additional comments noted was Anna was often dismissive of Ms Abuy.*

*I would recommend the conversations to commence on the first day Ms Abuy returns to work - to minimise psychosocial impacts.*

...

*Upon the initial appointments there was no psychological diagnosis, no family history of mental illness. The assessment completed at the time reflected minimal stress, anxiety and depression. However tensions/frustrations were noted when discussions were held around interpersonal relationships/communication/behaviours with other team work colleagues.*

In your opinion, does Ms Abuy need further medical advice or assessment for a return to work?

*Response: No*

244 While the report demonstrates that Ms Abuy had disclosed concerns about Ms Savill's treatment of her, it does not support her allegation that she disclosed interpersonal conflict with Ms Gubbins as a source of her feelings of being bullied or unsafe.

245 However, on 14 July 2024 Ms Abuy did copy Ms Dillon into an email (Ex R28) in which she indicated that she wanted to report Ms Gubbins':

*[P]oor behaviour that violates the organisational Code of Conduct and contravenes the guidelines of 'above and below the line behaviours'...I would greatly appreciate your guidance on whom I should approach to address these concerns, including other related issues involving this individual that I need to escalate further.*

- 246 Ms Abuy's evidence was that on 25 July 2024, she spoke to Ms Dillon further with a view to lodging a grievance. Ms Dillon denied that there was any specific detail provided to her as to the substance of Ms Abuy's grievance. She said what was discussed during the meeting was the grievance process itself, including the fact that it would be independent of the PIP process. Ms Dillon also alerted Ms Abuy to the fact that a grievance had been lodged against Ms Abuy.
- 247 On the basis of this evidence, I find that the Town was aware that Ms Abuy was aggrieved by Ms Gubbins' treatment of her, and that her relationship with Ms Gubbins had broken down. The evidence does not substantiate that the Town was aware or ought to have known that the relationship issues were such that the workplace was unsafe for Ms Abuy. In fact, the fitness for work assessment indicated that Ms Abuy could work safely.
- 248 What does this mean for the PIP process?
- 249 Ms Abuy maintains that she was performing satisfactorily in her role. She consistently maintained that she was justified in not following particular directions because they were unreasonable, and that her communications were appropriate. It is difficult to see where this factor fits in the face of these assertions. She was not really saying that the conflict mitigated her conduct in the sense of being a barrier to being able to meet expectations.
- 250 It is certainly possible that the interpersonal conflict clouded Ms Abuy's judgment, when she was deciding whether Ms Gubbins' directions were reasonable and when she was communicating with Ms Gubbins. But this was not Ms Abuy's case. She does not accept her conduct was deficient.
- 251 In light of this, there was no room for the Town to treat the interpersonal conflict as a mitigating factor. In order for the Town to treat this as a mitigating factor, Ms Abuy needed to first accept that her performance was substandard.
- 252 Ms Abuy's other concern was that this context meant that Ms Gubbins was in a position of conflict of interest, and was unable to be impartial in her role in the PIP process and in assessing Ms Abuy's performance. The PIP process was, in this sense, tainted and could never amount to a fair and supportive process while there were unresolved interpersonal conflicts.
- 253 What Ms Abuy is raising in this respect is an allegation of bias, which was not how the case was put at the commencement.
- 254 Ms Abuy's concern in this regard is understandable. But at the end of the day, she has not shown that the Town's conclusions about her performance were objectively unreasonable. Ms Gubbins may well have been deep in conflict with Ms Abuy, but her conclusions about Ms Abuy's performance were nevertheless justified.
- 255 The Town, and Ms Gubbins, were not oblivious to the fact that Ms Gubbins was managing Ms Abuy's performance when that very thing was fuelling Ms Abuy's grievances. It was for this reason that Ms Gubbins involved Ms Dillon in the PIP process, and supplied her observations to others within the organisation (TS192). Ms Dillon's involvement tempered Ms Gubbins' lack of neutrality, by ensuring that if Ms Dillon considered any part of the process to be unreasonable, unfair or not objectively justified, Ms Dillon could advise Ms Gubbins accordingly.

#### **Was the manner of termination unfair?**

- 256 The manner of the dismissal may render it unfair even without constituting a denial of procedural fairness: *Gilmore v Cecil Bros & Ors* (1996) 76 WAIG 1184.
- 257 Ms Abuy argues that the termination of her employment was unfair because:
- (a) The outcome was predetermined; and
  - (b) The manner of the termination was excessive and harsh in its execution and consequences.

#### **Was the outcome predetermined?**

- 258 The concept of a decision being predetermined usually invokes the concept of bias. However, when Ms Abuy says that the termination decision was 'predetermined' she is just pointing out that the decision was made before the final PIP check-in meeting of 1 August 2024.
- 259 I accept that the decision to terminate was made on 31 July 2024 when the CEO signed Ms Dillon's recommendation for termination.
- 260 It is not enough to merely point to the timing of the decision to terminate as evidence that the decision is unfair. A termination will be unfair as being 'predetermined' if it is firmly established that the Town's mind was so prejudiced in favour of a conclusion already formed that it would not alter that conclusion, regardless of information presented to it: *Laws v Australian Broadcasting Tribunal* [1990] HCA 31; (1990) 93 ALR 435 at 458. A termination might be unfair as being 'predetermined' if the employer has gone through the motions, without maintaining an open mind. This does not require an employer to not have leanings or inclinations as to the likely sanction: *BHP Coal Pty Ltd v Schmidt* [2016] FWCFB 72 at [35].
- 261 In the present context, this means that Ms Abuy must show the Town decided to terminate her employment either without giving her an opportunity to respond to the proposed reasons for termination, in this case, performance concerns, or without genuinely considering her response.
- 262 It is clear that Ms Abuy was on notice that the Town would consider terminating her employment if performance concerns were not satisfactorily addressed during the PIP process. As I have already observed, the PIP plan itself, which was provided to Ms Abuy on 12 June 2024, indicated that failure to meet expectations could result in the termination of her employment. The PIP process was the opportunity for Ms Abuy to respond to those performance concerns.
- 263 At the commencement of the PIP check-in meeting of 25 July 2024, Ms Abuy was told that it was the final meeting 'before the last meeting next week'. Ms Abuy was told that she was not tracking well, and that the outcome of the process would be communicated at the final meeting the following Thursday. She was also told that if there was to be a considerable change across the next week, this would be taken into consideration in the final decision: Ex R35; Ex R36.

- 264 Ms Abuy is recorded as making ‘minimal contributions’ to the discussion of 25 July 2024. Her response was considered as part of the recommendation for termination.
- 265 Ms Abuy’s submissions focused on the 1 August 2024 meeting at which she was advised that the Town was ‘considering’ terminating her employment: TS41. Her evidence was to the effect that although Mr Dacombe and Ms Marvelli indicated that termination was being considered, it was presented as a *fait accompli*, with no opportunity for her to respond or demonstrate why termination was inappropriate. Given the discussion of 25 July 2024, that would have needed to involve Ms Abuy demonstrating considerable change in her performance since 25 July 2024.
- 266 Mr Dacombe’s evidence was that when he met with Ms Abuy on 1 August 2024, an opportunity was given to her to respond to the proposal to terminate her employment part way through the meeting, but she provided no substantive response. He was not cross-examined about this, nor was it put to Ms Abuy that she was given such opportunity to respond.
- 267 I prefer Ms Abuy’s version over Mr Dacombe’s. Ms Abuy’s version, that is, that she had no opportunity to respond to the proposed termination at the 1 August 2024 meeting is consistent with:
- (a) the recommendation which said that ‘the expected outcome’ of the 1 August 2024 meeting was that the requirements of the PIP plan have not been met, and that the Town will be progressing with termination.
  - (b) The recommendation to approve the termination was not expressed as being subject to or conditional on the outcome of the 1 August 2024 meeting.
  - (c) The recommendation for termination was signed by the CEO before the 1 August 2024 meeting occurred.
  - (d) The letter of termination does not refer to Ms Abuy’s response or lack of response to the proposed termination of her employment, but did refer to Ms Abuy’s lack of response in the 25 July 2024 meeting.
  - (e) The letter of termination says, ‘during yesterday’s meeting we advised you that due to you not meeting the agreed improvement goals, the decision has been made in accordance with the Town’s Discipline Procedure, to terminate your employment immediately’.
  - (f) There was no evidence that the Town assessed Ms Abuy’s performance in the final week, or made any finding as to whether it had or had not improved.
- 268 The decision to terminate was made one day before the formal conclusion of the PIP process. It was made without Ms Abuy having an opportunity to demonstrate ‘considerable improvement’ in her performance in the final week of her employment.
- 269 In matters of this kind, the practical realities of the workplace need to be considered and a commonsense approach to the application of the statutory provisions should be adopted: *Gibson v Bosmac Pty Ltd* (1995) 60 IR 1 cited in *Farkas v Abacus Calculators (WA) Pty Ltd* [2005] WAIRC 02267; (2005) WAIG 3134 at [19]. The IR Act’s requirement that the Commission must act in accordance with the substantial merits of the case, means that an employer is not to be held to standards of perfection in its processes. What is required is that their process be reasonable in the circumstances, providing the employee with fair notice of the performance concerns, and a fair opportunity to address those concerns. As Commissioner Kenner (as he then was) stated in *Kerton v Bandaberry Pty Ltd t/a Mandurah Holden* [2004] WAIRC 11731; (2004) 84 WAIG 2652 at [17]-[18]:
- It is also the case, that a dismissal may be held to be harsh, oppressive or unfair, on the basis that it is either substantively or procedurally unfair: *Bostik (Australia) Pty Ltd v. Gorgevski* [1992] FCA 209; (1992) 41 IR 452. However, it is important to recognise that all of the circumstances must be taken into account, and in the case of misconduct, the gravity of the conduct must be balanced against any suggested failure to afford procedural fairness: *Byrne and Frew v. Australian Airlines Ltd* (1992) 45 IR 178: Shire of Esperance per Nicholson J at 899; *Bostik* per Gray J at 466.
- For example, if it can be established that given the gravity of the conduct complained of, affording procedural fairness would not have altered the outcome in any event, then such a failure will not of itself, render a dismissal harsh, oppressive or unfair. Moreover, to conclude that procedural fairness alone may render a dismissal unfair, without considering the substantive performance or conduct issues surrounding the dismissal of an employee, and their gravity, would be to ignore the requirements of s 26(1)(a) of the Act, requiring the Commission in the exercise of its jurisdiction, to have regard to the substantial merits of the case. In each case, it is a matter of judgement in the exercise of a discretion as to the weight to be apportioned to substantive and procedural factors.
- 270 The Town’s slightly premature decision to terminate the employment does not mean that the decision was unfair to Ms Abuy. The practical reality is that Ms Abuy was not engaging in the PIP process. The practical reality is that even if the final week of the PIP process had been assessed, no significant change would have been demonstrated.
- 271 It is clear on all the evidence that Ms Abuy was simply not trying to demonstrate improvement in meeting the Town’s expectations. Had the Town deferred its decision and conducted further assessment of Ms Abuy’s performance on 1 or 2 August 2024, it would not have altered the outcome.

### Unfair termination process

- 272 Ms Abuy found the events of 1 and 2 August 2024 distressing because:
- (a) The termination of her employment meant that she would need to vacate the home she leased from the Town, which was dependent on her continued employment. In this regard, Mr Dacombe confirmed in his evidence that while the Town was willing to give Ms Abuy a 4 week notice period, that was conditional on her signing a Deed of Settlement and Release.
  - (b) The meeting with Mr Dacombe and Ms Marvelli of 1 August 2024 was brief and cursory, lasting only around 10 minutes.

- (c) Following the meeting, Ms Abuy’s work equipment was taken from her, she had to pack up her desk and she was escorted from the premises in view of other staff.
- (d) She was removed from the premises on 1 August 2024 before being notified of the termination (which happened on 2 August 2024).
- (e) These actions were consistent with being dismissed for misconduct and were not aligned with termination for performance reasons. This caused her to feel humiliated, ashamed and embarrassed.
- (f) On 2 August 2024 at about 2:15pm she received an email from Ms Marvelli erroneously referring to ‘misconduct’ as well as ‘performance.’ This created confusion as she had not yet been provided with the official termination letter but had been put on notice that a grievance had been lodged against her.
- (g) The manner of termination was likely to cause reputational harm in a small town such as Port Hedland.

273 It is no doubt the case that the matters set out above have had some adverse impacts on Ms Abuy. However, they do not render the termination of her employment unfair in light of the facts that:

- (a) The Town had given Ms Abuy ample warning that her ongoing employment was at risk.
- (b) The Town had a valid reason related to her performance to terminate her employment.
- (c) The Town had engaged in lengthy processes to enable Ms Abuy to avoid that consequence.

274 I also note that Ms Abuy secured alternative employment commencing a couple of weeks after the termination took effect. The alternative employment came about as a result of an application she made during the PIP process. Ms Abuy was paid two weeks’ pay in lieu of notice. This suggests that Ms Abuy was prepared for her employment with the Town to end, if not by the Town terminating her employment, then by her resignation. It also shows that any reputational damage has not been such as to prevent Ms Abuy from securing alternative work very quickly.

**Conclusion and disposition**

275 Ms Abuy has not established that the termination of her employment was harsh, oppressive or unfair. Her application will be dismissed.



**2025 WAIRC 00309**

**UNFAIR DISMISSAL APPLICATION**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

AJAH OBANG ABUY

**APPLICANT**

-v-

TOWN OF PORT HEDLAND

**RESPONDENT**

**CORAM** SENIOR COMMISSIONER R COSENTINO  
**DATE** MONDAY, 19 MAY 2025  
**FILE NO/S** U 73 OF 2024  
**CITATION NO.** 2025 WAIRC 00309

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**Result** Application Dismissed  
**Representation**  
**Applicant** Ms A Abuy in person  
**Respondent** Ms H Millar of counsel

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*Order*

HAVING heard from Ms A Abuy on her own behalf and Ms H Millar of counsel on behalf of the respondent, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), hereby directs –

That the application be and is hereby dismissed.

(Sgd.) R COSENTINO,  
 Senior Commissioner.

[L.S.]



2025 WAIRC 00303

## UNFAIR DISMISSAL APPLICATION

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

## PARTIES

BROOKE MCCULLOCH

APPLICANT

-v-

DAVID FERRIS AND SIOBHAN FERRIS AS TRUSTEES FOR THE FERRIS FAMILY TRUST

RESPONDENT

**CORAM** COMMISSIONER T EMMANUEL  
**DATE** FRIDAY, 16 MAY 2025  
**FILE NO/S** U 20 OF 2025  
**CITATION NO.** 2025 WAIRC 00303

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**Result** Matter discontinued  
**Representation**  
**Applicant** On her own behalf  
**Respondent** Mr J Smith (as agent)

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*Order*

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

AND WHEREAS on 14 March 2025, the Commission asked parties to provide their unavailable dates for listing application U 20 of 2025 for a conciliation conference;

AND WHEREAS on 14 March 2025, Miss McCulloch emailed the Commission to ask if the conference may fall on a weekend or weekday after 5pm;

AND WHEREAS on 18 March 2025, the Commission told Miss McCulloch that a conference will be listed on a weekday, likely between the hours of 9am – 4:30pm;

AND WHEREAS a conciliation conference was listed on 26 March 2025;

AND WHEREAS on 19 March 2025, Miss McCulloch emailed the Commission to ask for ‘some options’;

AND WHEREAS on 20 March 2025, the Commission asked Miss McCulloch to email proposed alternative dates and times if she would like the conference to be rescheduled;

AND WHEREAS on 20 March 2025, Miss McCulloch emailed the Commission to say she was available any weekday after 4:30pm or on a Saturday or Sunday;

AND WHEREAS neither party attended the conciliation conference listed on 26 March 2025;

AND WHEREAS on 26 March 2025, the Commission directed Miss McCulloch to tell the Commission whether she wished to pursue application U 20 of 2025 or discontinue it;

AND WHEREAS on 28 March 2025, Miss McCulloch told the Commission she would like to proceed with her application;

AND WHEREAS on 31 March 2025, the Commission asked parties to provide their unavailable dates for listing application U 20 of 2025 for a conciliation conference;

AND WHEREAS the Commission listed application U 20 of 2025 for a conciliation conference on 13 May 2025;

AND WHEREAS on 30 April 2025, Miss McCulloch emailed Information Services to request to attend the conference via video;

AND WHEREAS on 7 May 2025, the Commission emailed Miss McCulloch to tell her to file a *Form 1A – Multipurpose Form*, with reasons for the request to attend by video;

AND WHEREAS on 7 May 2025, Miss McCulloch called the Commission and left a voice message stating she was ‘extremely unimpressed with the service [she is] being provided here’ and emailed the Commission to ‘send [her] that form you need completed’;

AND WHEREAS on 8 May 2025, the Commission emailed Miss McCulloch to address her communication with the Commission and explained how to file a *Form 1A – Multipurpose Form*;

AND WHEREAS on 11 May 2025 the applicant emailed the Commission stating ‘At this stage, I will not be continuing with this application’;

AND WHEREAS on 12 May 2025, the Commission vacated the conference listed on 13 May 2025, told Miss McCulloch that from her email the Commission understands that Miss McCulloch wants to discontinue application U 20 of 2025, and if she does not want to discontinue application U 20 of 2025, she must tell the Commission so by Wednesday, 14 May 2025;

AND WHEREAS Miss McCulloch did not respond to the Commission by Wednesday, 14 May 2025 or at all;

AND WHEREAS Mr Smith confirmed on 15 May 2025 that the respondent consents to application U 20 of 2025 being discontinued;

WHEREAS in the circumstances, the Commission is satisfied that Miss McCulloch wishes to discontinue application U 20 of 2025 and it should be 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 U 20 of 2025 be, and by this order is, discontinued.

(Sgd.) T EMMANUEL,  
Commissioner.

[L.S.]

**CONFERENCES—Matters arising out of—**

**2025 WAIRC 00313**

**DISPUTE RE REVIEWS OF THE WESTERN AUSTRALIAN FIRE SERVICE ENTERPRISE BARGAINING AGREEMENT 2023**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

UNITED PROFESSIONAL FIREFIGHTERS UNION OF WESTERN AUSTRALIA

**APPLICANT**

-v-

DEPARTMENT OF FIRE AND EMERGENCY SERVICES

**RESPONDENT**

**CORAM** COMMISSIONER T B WALKINGTON

**DATE** WEDNESDAY, 21 MAY 2025

**FILE NO.** C 17 OF 2024

**CITATION NO.** 2025 WAIRC 00313

**Result** Recommendation issued

**Representation**

**Applicant** Mr J Marsh

**Respondent** Ms N Pyne

*Recommendation*

HAVING heard Mr Marsh on behalf of the applicant and Ms Pyne on behalf of the respondent, the Commission pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), and by consent, hereby recommends:

1. THAT the respondent provides a meaningful response to the applicant’s letter dated 29 November 2024, specifically detailing the methodology and criteria used to define “stable” entitlements, by close of business on Friday 30 May 2025;
2. THAT the parties meet before Friday, 30 May 2025, to commence discussions and collaboratively review a revised list of entitlements for inclusion in the modernised Award;
3. THAT the parties reconvene the Rank Review Working Group, commencing Monday, 12 May 2025, to create a defined scope and timeframe to clarifying the meaning of the term “(or Equivalent) as agreed between the parties” and commence the review of career pathways and the professional development, up to, and including the position of Area Officer;
4. THAT the respondent provides a response to the applicants Rank Review document, and that subsequently the parties meet to discuss the respective positions, including the potential progression of the Station Officer 3 rank by close of business Friday, 23 May 2025;

5. THAT the respondent provides its position in writing to the applicant on the proposed reduction of maximum hours of work and the introduction of mandated rest breaks, including a response to the position provided by the applicant on 30 June 2024, by close of business Friday, 23 May 2025;
6. THAT the respondent seek clarification from Government Sector Labour Relations, party to the previous round of bargaining when the commitment was made, as to whether the intent of Clause 70 and Clause 9 enable the introduction of a deployment allowance;
7. THAT following the discussion in Recommendation 6 occurring; the respondent meets with the applicant before Friday, 23 May 2025, to have an informed discussion regarding the intent of Clause 70 and Clause 9 and whether a deployment allowance is pursued via this commitment or as a new bargaining item;
8. THAT the applicant provides the respondent with clear justification as to what factors have been included within the deployment allowance being sought and how the allowance has been calculated before the meeting identified in Recommendation 7;
9. THAT the respondent nominate an operational representative to lead discussions regarding the creation of a formal plan outlining how the “District Officer Transfer and Rotation Program Policy” will progress including timelines, key actions, and points for consultation, including the issuing of a survey to support an evidence-based review and ensure genuine consultation with impacted employees. Parties to meet by close of business Friday, 23 May 2025; and
10. THAT the parties schedule a conference upon the expiry of the agreement, reporting back on each of the commitments.

(Sgd.) T B WALKINGTON,  
Commissioner.

[L.S.]

## UNIONS—Matters dealt with under Section 66

2025 WAIRC 00306

### ORDER PURSUANT TO S.66

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

<b>CITATION</b>	:	2025 WAIRC 00306
<b>CORAM</b>	:	CHIEF COMMISSIONER S J KENNER
<b>HEARD</b>	:	THURSDAY, 14 NOVEMBER 2024
		WRITTEN SUBMISSIONS 24 APRIL 2025 AND 9 MAY 2025
<b>DELIVERED</b>	:	FRIDAY, 16 MAY 2025
<b>FILE NO.</b>	:	PRES 11 OF 2024
<b>BETWEEN</b>	:	REGISTRAR, WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
		Applicant
		AND
		THE CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION OF WORKERS
		Respondent

Catchwords	:	Industrial Law (WA) – Application for order under s 66 of the Act – Establishment of an Interim Committee of Management for respondent – Whether s 71 certificate remains in effect – Change to the Rules for offices of the respondent’s counterpart federal body and appointment of an Administrator – Effect of the <i>Fair Work (Registered Organisations) (CFMEU Construction and General Division Administration) Determination 2024</i> – No basis to make orders under s 66
Legislation	:	<i>Industrial Relations Act 1979</i> (WA) <i>Fair Work (Registered Organisations) Act 2009</i> (Cth) <i>Fair Work (Registered Organisation) CFMEU Construction and General Division Administration) Determination 2024</i> <i>Fair Work Act 2009</i> (Cth) <i>Industrial Relations Legislation Amendment Act 2021</i> (WA)
Result	:	Application dismissed
<b>Representation:</b>		
Counsel:		

Applicant	:	Mr S Pack of counsel
Respondent	:	Mr E Heenan SC of counsel and with him Mr D Rafferty of counsel
Solicitors:		
Applicant	:	Francis Burt Chambers
Respondent	:	Eureka Lawyers

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

Barnes v Barnes (2003) 214 CLR 169

Bergesio v United Workers Union (WA) [2023] WAIRC 00095; (2023) 103 WAIG 230

CFMM & EU [2023] FWCG 5

CSR Ltd v Eddy (2005) 226 CLR 1

Cumerlong Holdings Pty Ltd v Dalcross Properties Pty Ltd (2011) 243 CLR 492

Dekuyer v The Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch [2022] WAIRC 00697; (2022) 102 WAIG 1313

D.J. Stanton, L.G. Searle, G.K. Palmer and G.T. Kennedy v O.S. Middleton, President, The Civil Service Association of Western Australia Incorporated (1991) 71 WAIG 46

Foots v Southern Cross Mine Management Pty Ltd (2007) 234 CLR 52

Harry Arnott v Western Australian Police Union of Workers [2022] WAIRC 00208; (2022) 102 WAIG 369

Jarrett v The Western Australian Locomotive Engine Drivers', Firemens' and Cleaners' Union of Workers (1997) 77 WAIG 1386

Jones v Civil Service Association [2003] WASCA 321; (2003) 83 WAIG 4

Jones v Civil Service Association of Western Australia Incorporated [2003] WAIRC 08115; (2003) 83 WAIG 1146

McCartney v The Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union of Workers - Western Australian Branch [2022] WAIRC 00877; (2023) 103 WAIG 1

Michael Frederick Williams v The Shop, Distributive and Allied Employee's Association of Western Australia [2005] WAIRC 00854; (2005) 85 WAIG 1961

Plumbers and Gasfitters Employees Union of Australia, Western Australian Branch, Industrial Union of Workers [2014] WAIRC 00439

Programmed Industrial Maintenance Pty Ltd v Construction Industry Long Service Leave Payments Board [2020] WAIRC 00758; (2020) 100 WAIG 1300

Re Her Honour Judge Schoombec; ex parte Attorney General for Western Australia [2011] WASCA 129

Re Western Australian Prison Officers Union of Workers [2014] WAIRC 00006; (2014) 94 WAIG 62

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

The Australian Rail, Tram and Bus Industry Union of Employees, Western Australia Branch [2023] WAIRC 00226; (2024) 104 WAIG 685

The Construction Forestry Mining and Energy Union of Workers [2011] WAIRC 00422; (2011) 91 WAIG 1034

Tilbury v Western Australian Police Union of Workers [2015] WAIRC 00392; (2015) 95 WAIG 705

United Voice WA [2012] WAIRC 00880; (2012) 92 WAIG 1722

Victoria v Sutton (1998) 156 CLR 587

*Reasons for Decision*

**Application and background**

- 1 This application made by the Registrar under s 66 of the *Industrial Relations Act 1979* (WA), seeks orders for the establishment of an interim committee of management for the respondent. The Registrar has standing to make this application under s 66(1)(c). The issue raised by the application is whether I should exercise my discretion to make an order under s 66 of the *Act* on the basis that a certificate issued under s 71 of the *Act* in 2011, relating to the respondent, may no longer be effective. If the s 71 certificate is no longer effective, this means that the filling of offices in the respondent, by persons occupying corresponding offices in the counterpart federal body, is also not effective. The usual course in such circumstances, or even where there is a substantial doubt as to these matters, is the making by the Chief Commissioner of an order under s 66 of the *Act*, that an interim committee be established, to exercise all of the powers of an organisation's executive, to enable the organisation to conduct its affairs and to bring about any necessary alterations to its Rules.
- 2 The relevant events leading to the present proceedings are twofold. The first is a change to the Rules of the respondent's counterpart federal body, the Construction, Forestry, Mining and Energy Union, Construction and General Division, Western Australian Divisional Branch. I will refer to this organisation as the Federal branch. On 6 February 2023, the Fair Work Commission, under the *Fair Work (Registered Organisations) Act 2009* (Cth), approved an alteration to the Federal branch Rules in relation to officeholders, by abolishing one of two Assistant Secretary offices: *CFMM & EU* [2023] FWCG 5. As

the respondent still retains two Assistant Secretary offices under its Rules, the effect of the alteration to the Federal branch Rules, is that there is no longer an office in the Federal branch, for each office in the respondent.

- 3 Well after the February 2023 alteration to the Federal branch Rules, in August 2024, the respondent made an application to the Registrar, to register an alteration to its Rules, to also abolish one Assistant Secretary office. That application remains on foot, pending the determination of the present matter.
- 4 The second event relied on by the Registrar in bringing this application, is the appointment of an Administrator to the Construction and General Division of the CFMEU on 23 August 2024. The administration of the organisation is given effect by the *Fair Work (Registered Organisation) CFMEU Construction and General Division Administration) Determination 2024*. Under the terms of the *Determination*, whilst the officeholders of the Federal branch in Western Australia are not removed from office, the powers of each officeholder are ‘temporarily divested’ to the Administrator and the Administrator may exercise all of the powers and functions of the officeholder of each office in the Federal branch.
- 5 In the circumstances, the applicant contends that there is considerable uncertainty as to any actions taken by the officeholders of the respondent, and it may be appropriate that this uncertainty be resolved by the making of the orders sought. The respondent opposes the application and maintains there is no uncertainty as to the validity and effectiveness of the s 71 certificate and that it has effect ‘according to its tenor’.

#### Agreed facts

- 6 The parties have agreed facts and documents as follows:

##### Documents

1. The documents listed in the attached index may be tendered by consent.

##### The Registrar

2. The Applicant is the Registrar of the Western Australian Industrial Relations Commission (**WAIRC**) and has standing to make this application pursuant to s 66(1)(c) of the Industrial Relations Act 1979 (WA) (**IR Act**).

##### The CFMEUW

3. The Respondent is an organisation of employees registered under s 53 of the IR Act.
4. The current registered rules of the Respondent are **Document 1**.
5. The Construction, Forestry and Maritime Employees Union, Construction and General Division Western Australian Divisional Branch (**Federal WA Branch**) is a Western Australian branch of an organisation of employees registered under the Fair Work Act Registered Organisations Act 2009 (Cth) (**FWRO Act**).
6. The current certified rules of the Federal WA Branch are **Document 2**.

##### Issue of s 71 certificate

7. On 21 December 2011, the Full Bench of the WAIRC in FBM 7 of 2011 accepted that the Federal WA Branch (then named the Construction, Forestry, Mining and Energy Union, Construction and General Division Western Australian Divisional Branch) was the counterpart federal body of the Respondent, and made declarations
  - (a) the rules of the Respondent and the Federal WA Branch relating to the qualification of persons for membership are deemed to be the same, in accordance with s 71(2) of the IR Act; and
  - (b) the rules of the Federal WA Branch prescribing the offices which exist in the Federal WA Branch are deemed to be the same as the rules of the Respondent, prescribing the offices which exist in the Respondent, in accordance with s 71(4) of the IR Act.

##### (Document 3)

8. On 22 December 2011, the Applicant issued the Respondent with a certificate pursuant to s 71 of the IR Act which provided that, from 9 January 2012:
  - (a) the provisions of the IR Act relating to elections for offices within an organisation do not apply in relation to offices in the Respondent; and
  - (b) the persons holding office in the Federal WA Branch shall for all purposes be the offices of the Respondent.

##### (Document 4)

9. At the time the declarations were made in FBM 7 of 2011, and when the certificate was issued by the Applicant pursuant to s 71 of the IR Act, the rules of the Respondent and the Federal WA Branch provided for the following offices:

Respondent's offices	Federal WA Branch offices
Secretary	Divisional Branch Secretary
President	Divisional Branch President
Senior Vice President	Divisional Branch Senior Vice President

Vice President	Divisional Branch Vice President
Assistant Secretary x 2	Divisional Branch Assistant Secretary x 2
Treasurer	Divisional Branch Treasurer
Trustee x 2	Divisional Branch Trustee x 3
Ordinary Member x 2	Divisional Branch Management Committee Member x 5

### 2013 amendments

10. On 7 June 2013, on the application of the Respondent, the Applicant, following consultation with the President, and upon being satisfied that the requirements for registration had been complied with, registered alterations to the registered rules of the Respondent (**Document 5**).
11. From 7 June 2013 to 6 February 2023, the rules of the Respondent and the Federal WA Branch provided for the following offices:

<b>Respondent's offices</b>	<b>Federal WA Branch offices</b>
Secretary	Divisional Branch Secretary
President	Divisional Branch President
Senior Vice President	Divisional Branch Senior Vice President
Vice President	Divisional Branch Vice President
Assistant Secretary x 2	Divisional Branch Assistant Secretary x 2
Treasurer	Divisional Branch Treasurer
Trustee x 3	Divisional Branch Trustee x 3
Ordinary Member x 5	Divisional Branch Management Committee Member x 5

### Abolition of Federal WA Branch assistant secretary office

12. On 6 February 2023, the Fair Work Commission in R2022/120 certified an alteration to the rules of the Federal WA Branch which had the effect of abolishing one of the two Divisional Branch Assistant Secretary offices in the Federal WA Branch (**Document 6**).
13. As from 6 February 2023, the rules of the Respondent and the Federal WA Branch have provided for the following offices:

<b>Respondent's offices</b>	<b>Federal WA Branch offices</b>
Secretary	Divisional Branch Secretary
President	Divisional Branch President
Senior Vice President	Divisional Branch Senior Vice President
Vice President	Divisional Branch Vice President
Assistant Secretary x 2	Divisional Branch Assistant Secretary
Treasurer	Divisional Branch Treasurer

Trustee x 3	Divisional Branch Trustee x 3
Ordinary Member x 5	Divisional Branch Management Committee Member x 5

14. On 29 August 2024, the Respondent filed an application with the WAIRC seeking approval to alter its rules to abolish the second Assistant Secretary office (**Document 7**). That application has not yet been determined by the Applicant.

#### Administration

15. With effect from 23 August 2024, the Construction and General Division of the Federal Construction, Forestry, Mining and Energy Union, including the Federal WA Branch, was placed into administration pursuant to the *Fair Work (Registered Organisations) (CFMEU Construction and General Division Administration) Determination 2024 (Determination) (Document 8)*.
16. The administration under the Determination is continuing in respect of the Federal WA Branch.
17. The Administrator has not “otherwise agreed” that any holder of any office of the Federal WA Branch temporarily divested of each of their powers pursuant to the Determination not be divested of those powers for the purposes of cl 3(1)(f) of the Determination.
18. The Administrator has not ceased to act under the Determination.
19. On 12 September 2024, a letter dated 9 September 2024 from the Administrator addressed to Roger Cook, the Premier of Western Australia was tabled by the Premier in the Legislative Assembly of the Parliament of Western Australia (**Document 9 & Document 10**).

#### Relevant provisions of the Act

- 7 A number of provisions of the *Act* are relevant to the issues to be determined in these proceedings, and it is convenient to set them out now. Part II Division 4 of the *Act* deals generally with registered organisations and associations. As a result of the *Industrial Relations Amendment Act 2021*, a new s 52A, dealing with counterpart federal bodies, was inserted into the *Act* as follows:

#### 52A. Counterpart federal body

- (1) In this section —
- rules**, of a branch of a federal organisation, means —
- (a) rules relating to the qualifications of persons for membership; and
- (b) rules prescribing the offices that exist within the branch.
- (2) A Western Australian branch of a federal organisation is a **counterpart federal body** in relation to a State organisation if the rules of the branch are, or in accordance with section 71(2) or (4) are taken to be, the same as the rules of the State organisation relating to the corresponding subject matter.
- (3) A federal organisation is a **counterpart federal body** of a State organisation even though the body does not have or comprise a Western Australian branch of the federal organisation if the Commission in Court Session is of the opinion that the federal organisation is a counterpart federal body in relation to a State organisation.
- (4) The Commission in Court Session may form the opinion referred to in subsection (3) only if —
- (a) a substantial number of members of the State organisation are —
- (i) members or eligible to be members of the federal organisation; or
- (ii) engaged in the same work, in aspects of the same work or in similar work as members of the federal organisation; or
- (iii) employed in the same or similar work by employers engaged in the same industry as members of the federal organisation; or
- (iv) engaged in work or in industries for which there is a community of interest between the federal organisation and the State organisation;
- or
- (b) there is an agreement in force under the FW (Registered Organisations) Act section 151 between the federal organisation and the State organisation.
- (5) The Commission in Court Session may form the opinion referred to in subsection (3) despite the fact that a person who is eligible to be a member of the State organisation is, by reason of being a member of a particular class of persons, ineligible to be a member of that State organisation’s counterpart federal body.
- (6) The Commission in Court Session may form the opinion referred to in subsection (3) despite the fact that a person who is eligible to be a member of the counterpart federal body is, by reason of being a member of a particular class of persons, ineligible to be a member of the State organisation.

- (7) A State organisation may apply to the Commission in Court Session for a declaration that, for the purposes of subsection (2) or (3), a Western Australian branch of a federal organisation, or a federal organisation, is a counterpart federal body in relation to the State organisation.

8 The most important provision for present purposes, is s 71 of the *Act*. It relevantly provides as follows:

**71. Rules of State and federal organisations as to membership and offices**

*[(1) deleted]*

- (2) The rules of a State organisation and a counterpart federal body described in section 52A(2) are taken to be the same if the rules of the organisation and the body —

- (a) relate to the qualifications of persons for membership; and  
 (b) are, in the opinion of the Commission in Court Session, substantially the same.

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

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

- (4) The rules of a State organisation and a counterpart federal body described in section 52A(2) are taken to be the same if —

- (a) the rules prescribe the offices existing in the body; and  
 (b) for every office in the organisation there is a corresponding office in the body.

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

- (a) the rules of a State organisation are altered pursuant to section 62 to provide that each office in the State organisation may, from such time as the committee of management of the State organisation may determine, be held by the person who, in accordance with the rules of the State organisation's counterpart federal body, holds an office described in subsection (5A) in that body; and  
 (b) the committee of management of the State organisation decides and, in the prescribed manner notifies the Registrar accordingly, that from a date specified in the notification all offices in the State organisation will be filled in accordance with the rule referred to in paragraph (a),

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

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

and the certificate has effect according to its tenor.

- (5A) The office referred to in subsection (5)(a) is —

- (a) in the case of a counterpart federal body referred to in section 52A(2) — the corresponding office in the body;  
 (b) in the case of a counterpart federal body referred to in section 52A(3) — an office that is specified in the rules of the State organisation for the purposes of this subsection and in relation to which the members of the State organisation are, under the rules of the counterpart federal body, entitled to —  
 (i) nominate a person to be the office holder; and  
 (ii) vote for a person to be the office holder.

...

- (9) After the issue to a State organisation of a certificate or an amended certificate under this section —

- (a) the rule referred to in subsection (5)(a) and a memorandum registered under subsection (8)(a) must not be altered unless the alteration is approved by the Commission in Court Session; and  
 (b) an alteration to any rule of the State organisation other than the rule referred to in paragraph (a) may be registered by the Registrar if the Registrar is satisfied that the rule as so altered is the same as a rule of the State organisation's counterpart federal body; and  
 (c) every member of the State organisation's counterpart federal body who is eligible to be a member of the State organisation is, for all the purposes of this Act and of any award, industrial agreement or order, taken to be a member of the State organisation.

- (10) Before granting approval to an alteration of the rule or memorandum referred to in subsection (9)(a), the Commission in Court Session may require compliance by the State organisation with such conditions as the Commission in Court Session considers appropriate.

***Relevant provisions of the Determination***

- 9 As to the *Determination*, as noted earlier in these reasons, the Federal branch offices have not been vacated, but the functions and powers of the offices have been affected. In this respect, cl 3(1)(f) of the *Determination* provides as follows:

- (f) during the period of administration as it relates to the Administered Division and each Administered Divisional Branch, the holder(s) of any office within the Administered Division and Administered Divisional Branches not declared vacant under subclause (3)(1)(a) shall be temporarily divested of each of their powers under the National Rules and the Divisional Rules while the administration is continuing in respect of that part of the CFMEU or until otherwise agreed by the Administrator.

- 10 Clause 6 - Powers, functions and duties of the Administrator provides as follows:

**6 Powers, functions and duties of the Administrator**

- (1) The Administrator:

- (a) has and may exercise all of the powers and duties of the Divisional Conference and the Divisional Executive as are conferred on those bodies under the National Rules and the Divisional Rules, and the *FWRO Act*;
- (b) has and may exercise all of the powers and duties of the Divisional Branch Council and Divisional Branch Management Committee of each of the Administered Divisional Branches as are conferred on those bodies under the National Rules and the Divisional Rules, and the *FWRO Act*;
- (c) has all of the powers and duties of all offices in the Administered Division and the Administered Divisional Branches under the National Rules and the Divisional Rules, and the *FWRO Act*, including the power to exercise voting rights attaching to such offices in decision-making bodies of the CFMEU and the Administered Division;
- (d) has the power, without limiting anything in this Scheme, to appoint one or more persons as Divisional Trustee of the Administered Division, and/or as Divisional Branch Trustee of an Administered Divisional Branch, and at or after the time of such appointment to transfer into the name of that person any property held by the Administrator on trust for or on behalf of the CFMEU, the Administered Division or an Administered Divisional Branch;
- (e) has the power, without limiting anything in this Scheme, to terminate the appointment of an auditor of the Administered Division or an Administered Divisional Branch, and appoint another person as auditor of the Administered Division or an Administered Divisional Branch;
- (f) has the power, without limiting anything else in this Scheme, to suspend or offices or delegates, including persons whose offices were not vacated as a result of subclause 3(1)(a), of the Administered Division and any Administered Divisional Branch from office or positions respectively, in accordance with clause 12;
- (g) has the power, without limiting anything else in this Scheme, to terminate the employment of employees of the CFMEU who work in the Administered Division and any Administered Divisional Branch, in accordance with clause 12;
- (h) has the power to refer the conduct of current or former offices, officials, shop-stewards, delegates or employees (howsoever described) of the Administered Division or any of the Administered Divisional Branches, to any body established, or officeholder appointed, by or under any law of the Commonwealth or of a State or Territory. Nothing in this Scheme limits the Administrator from also referring allegations or other information about unlawful conduct, or conduct requiring further investigation, of any other person, business, entity, organisation, to appropriate law enforcement agencies, regulators or decision-makers;
- (i) has the power to commence and discontinue (including by way of settlement) proceedings in the name of the CFMEU, including for the recovery of any funds and/or property of the CFMEU, the Administered Division or any of the Administered Divisional Branches, to make rule changes, and for the imposition of penalties and the awarding of compensation or any other remedy as may be available under the *FWRO Act* or any other law; and
- (j) may request the Minister exercise their power to vary or revoke this Scheme.

- (3) The Administrator may, in writing, delegate to a person nominated by the Administrator, any of the powers, functions or duties of the Administrator under this Scheme or any powers or functions the Administrator may exercise under the *FWRO Act*.

- 11 Specific provision is made in the *Determination* in relation to offices not vacated by the administration. This is at cl 7 - Offices that are not vacated by this Scheme, which states:

**7 Offices that are not vacated by this Scheme**

- (1) Where a person continues to hold office or employment in the Administered Division or an Administered Divisional Branch, the Administrator may exercise all the powers and functions afforded to the person by the rules of the CFMEU, the *FWRO Act*, and this Scheme, in respect of that person, including (but not limited to) directing that person —
- (a) to take any leave to which that person is entitled, subject to that direction being made in accordance with the *FW Act* or any instrument made under the *FW Act*; and / or

- (b) to perform no, or different, work; and / or
- (c) not to attend the premises, or to access any property, information or system, of the Administered Division or some or all of its Administered Divisional Branches; and / or
- (d) to return any property or information of the Administered Division or some or all of its Administered Divisional Branches; and / or
- (e) not to hold themselves out as acting or speaking for or on behalf of the Administered Division or some or all of its Administered Divisional Branches

— for such time as the Administrator considers appropriate (but no later than the date upon which the Administrator ceases to act under this Scheme in respect of the Administered Division or, in the case of an office or employment in an Administered Divisional Branch, that Administered Divisional Branch).

- (2) The term of any unvacated office that ends during the period of Administration may be extended, for a period of time set by the Administrator.
- (3) An election may not be held in respect of any office that is not vacated by virtue of subclause 3(1)(a) without the written authorisation of the Administrator.
- (4) For the avoidance of doubt, any exercise of power or function by the Administrator, as provided for under the *FWRO Act* or this Scheme, will prevail to the extent of any inconsistency with the National Rules, the Divisional Rules or actions taken by a person who continues to hold office or employment in the Administered Division or an Administered Divisional Branch.
- (5) For the avoidance of doubt, and whilst the Administration continues in respect of the Administered Division or any Administered Divisional Branch, and notwithstanding any provisions of the National Rules or the Divisional Rules, the Administrator may appoint any person deemed suitable to them as a proxy to represent them at any meeting of the National Conference, National Executive, National Executive Committee or National Collegiate of the CFMEU, any State Conference constituted under rule 46 of the National Rules, any State Executive constituted under rule 47 of the National Rules, and any other decision-making body of the CFMEU or one of its Divisions or Branches under the National Rules or the Divisional Rules, and exercise the deliberative vote of such of the Administered Division or the Administered Divisional Branches that remain in administration (and their respective offices) provided that a separate written appointment is made for each such meeting. Each such instrument may provide instructions to the proxy as to how the proxy should vote and must do so in the event of a vote being required on any matter that, in the opinion of the Administrator, may adversely affect the interests of the members of the Administered Division or an Administered Divisional Branch. To avoid doubt, any such instructions may include a direction to abstain from voting.

#### Contentions of the parties

12 I have been assisted in this matter by thorough and well-argued cases by counsel for both parties.

#### The Registrar

13 The Registrar's principal contention was that as a consequence of the two events referred to above, the s 71 certificate has ceased to operate.

14 In summary, in support of her position, the Registrar referred to the objects of the *Act*, and in particular, ss 6(e) and (f). Emphasis was placed on the need for the democratic control of an organisation and the full participation by its members in the affairs of the organisation. In this context, the Registrar noted the regime for the registration of organisations under the *Act*, and in particular, the detailed requirements in relation to the election of officeholders. The submission was made that the effect of a s 71 certificate, once granted, is to excise an organisation from this regime, and enable it to operate with its counterpart federal body as, in practical terms, one organisation. In this connection, the Registrar referred to the decision of the Full Bench of the Commission in *Re Western Australian Prison Officers Union of Workers* [2014] WAIRC 00006; (2014) 94 WAIG 62. In this case, the Full Bench (Smith AP, Beech CC and Kenner C) at [21] observed as follows:

It is apparent from the scheme of the provisions of s 71 when read with the definition of 'office' in s 7(1) of the *Act* together with the provisions in the *Act* that deal with the subject matter of elections of office holders of an organisation (s 56, s 56A, s 57) and the provisions of s 71A which authorises a State organisation to adopt the rules of its counterpart Federal body, that it is intended that once a declaration is made by a Full Bench and a certificate is issued by the Registrar of the Commission under s 71(5) of the *Act*, a State organisation and its counterpart Federal body can effectively operate as one organisation. If they wish to do so they can jointly manage the property and funds of both organisations by entering into a memorandum of agreement with the counterpart Federal body under s 71(6) and s 71(7) of the *Act* relating to the management and control of the funds or property, or both, of the State organisation. It is also clear that by authorising persons holding office in a counterpart Federal body to hold office in a State organisation is that effectively the two organisations can be operated for many purposes as if the organisations were as one.

15 In particular, having regard to the terms of ss 52A and 71 of the *Act*, both the qualifications of persons for membership and the offices that exist in a counterpart federal body must be the same, or taken to be the same as the State organisation, in order for the former to be a counterpart federal body. The Registrar emphasised the requirements of s 71(4). It was contended that this provision requires that for every office in a State organisation, there must be a corresponding office in the counterpart federal body. In reliance on a decision of the Industrial Appeal Court in *Jones v Civil Service Association* [2003] WASCA 321; (2003) 83 WAIG 4, the Registrar submitted that there may be some flexibility in the test of 'correspondence', of offices, in terms of the functions and powers exercised by each in the respective organisations. However, in terms of the requirement that

for every office in the State organisation there must be a corresponding office in the counterpart federal body, this requirement is absolute.

- 16 I agree. Section 71(4) is clear in this respect. It is not a question of the degree to which there is correspondence in offices. In my view, if there is not an office in the counterpart federal body for every office in the State organisation, then on an application under s 52A(7) of the *Act*, the view could not be reached that for the purposes of ss 52A(2) and 71(4) of the *Act*, a Federal registered organisation is the counterpart federal body of a State organisation. Therefore, in these circumstances, a precondition for the issuance of a s 71 certificate by the Registrar would not be met.
- 17 It was also contended by the Registrar that any s 71 certificate issued in accordance with the statutory regime set out above, only operates in respect of the respective offices in the State organisation and the counterpart federal body that have been held to be corresponding for the purposes of s 71(4). I consider this must also be correct. There are no other offices with which ss 52A and 71 of the *Act* deal, that form the basis of the statutory preconditions for the issuance of a certificate.
- 18 On the above footing, the Registrar submitted that in the context of first, decided cases of the Full Bench and the Commission in Court Session, and second, the approach to statutory construction, that the conclusion should be reached that the s 71 certificate issued in December 2011 in relation to the respondent, is no longer effective.
- 19 As to the cases, the Registrar referred to the following. In *Jones v Civil Service Association of Western Australia Incorporated* [2003] WAIRC 08115; (2003) 83 WAIG 1146, it was held by Sharkey P that in circumstances where a State organisation's counterpart federal body had ceased to exist, the relevant s 71 certificate had either expired or was a nullity and an election for offices in the State organisation was required: at [71]-[73]. Sometime later, in *United Voice WA* [2012] WAIRC 00880; (2012) 92 WAIG 1722, there had been no change to the eligibility for membership rules of the respective organisations, or the rules of the organisations in relation to offices. The only change was to the name of the State organisation. In that case, the Full Bench (Smith AP, Beech CC and Scott A/SC) observed at [8]-[9] as follows:
  - [8] When this application was heard, the Full Bench was informed by counsel for the applicant that he was instructed that:
    - (a) Since the Full Bench made its declaration under s 71(2) and s 71(4) of the Act on 6 February 2001, there has been no change to the eligibility rules of the applicant or the eligibility rules of its counterpart federal body
    - (b) There has been no change in the rules prescribing the offices that exist in the applicant and the counterpart federal body or to the duties that attach to each of those offices.
  - [9] The Full Bench informed the applicant's counsel and secretary at the hearing that, if in its opinion the instructions were correct, the s 71 certificate issued by the Registrar of the Commission on 6 February 2001 would still have operative effect as a change in the name of the applicant would not result in *an invalidity of the currency of the s 71 certificate* as a new organisation had not been created by a mere name change. (My emphasis).
- 20 In the *Plumbers and Gasfitters Employees Union of Australia, Western Australian Branch, Industrial Union of Workers* [2014] WAIRC 00439, the Full Bench (Smith AP, Beech CC and Harrison C) expressed the view at [6]-[7], that given the State organisation in that matter had not altered its Rules as provided for in s 71(5)(a) of the *Act*, it could not rely on the 'validity' of the s 71 certificate in those circumstances.
- 21 Several other cases were referred to by the Registrar to a similar effect, where the Commission has held that a s 71 certificate may be 'invalid', 'cease to apply', 'no longer had operative effect', and 'had been rendered nugatory' as a result of a lack of correspondence between the offices of a State organisation and its counterpart federal body: *Tilbury v Western Australian Police Union of Workers* [2015] WAIRC 00392; (2015) 95 WAIG 705 at [2]-[3]; *Dekuyer v The Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch* [2022] WAIRC 00697; (2022) 102 WAIG 1313; and *McCartney v The Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union of Workers - Western Australian Branch* [2022] WAIRC 00877; (2023) 103 WAIG 18 at [6]-[8].
- 22 In *Bergesio v United Workers Union (WA)* [2023] WAIRC 00095; (2023) 103 WAIG 230, in which case the counterpart federal body had abolished its State based structure, I held at [2] that in these circumstances, the s 71 certificate had been 'rendered nugatory' as there were simply no corresponding offices upon which the certificate could operate.
- 23 Finally in *The Australian Rail, Tram and Bus Industry Union of Employees, Western Australia Branch* [2023] WAIRC 00226; (2024) 104 WAIG 685, the Commission in Court Session, as a result of the previous rules of the State organisation and its counterpart federal body 'not being the same in the necessary respect', considered that the s 71 certificate ceased to have effect: at [6]-[7].
- 24 The Registrar referred to and relied on these cases to contend that there is 'a consistent line of authority holding that a s 71 certificate may cease to be valid, or cease to have operative effect, if the preconditions upon which it was issued have fallen away' (see written submissions at [43]).
- 25 Further submissions were made by the Registrar in relation to her contentions as to the proper construction of s 71 of the *Act*, on the basis that these proceedings are the first occasion, given the respondent's opposition to the orders sought, where the issue has arisen for determination. I have set out the relevant statutory provisions above and they are not repeated. The Registrar argued that the essence of the scheme in s 71 is dependent on the continued existence of the circumstances prescribed in ss 71(5)(a) and (b).
- 26 That is, underlying s 71(5)(a) is the requirement that the alteration of the State organisation's Rules, to provide for offices to be filled by persons elected to offices in the counterpart federal body, requires for its operation and effect, the continued correspondence of offices between the organisations, as required by s 71(4). The Registrar contended that this is the

foundation for the operation of ss 71(5)(c) and (d), and hence, the grant of a s 71 certificate. Accordingly, for what may be a variety of reasons, such as the abolition of the counterpart federal body, the repeal of the rule referred to in s 71(5)(a), or the counterpart federal body ceasing to meet the criteria in ss 52A and 71 to continue to be regarded as a counterpart federal body, then s 71(5)(d) can no longer apply, given that the essential facts on which it operates would have ceased to exist.

- 27 On the above basis, the Registrar argued that once the s 71 certificate ceases to operate, and the offices of the State organisation are not filled by those in the counterpart federal body, then the exemption from the requirement for State elections, which only exists because of the s 71 certificate, also ceases.
- 28 As to the meaning of the phrase immediately after s 71(5)(d) that a 'certificate has effect according to its tenor', the Registrar submitted that this means no more than the certificate gives effect to the requirements of ss 71(c) and (d). That is, its tenor. If ss 71(a) and (b) are no longer satisfied, then the Registrar submitted that ss 71(c) and (d) cannot operate in the manner intended.
- 29 As to the *Determination*, the Registrar contended that it must be taken into account in the assessment of whether the respondent and the Federal branch offices continue to correspond. The Registrar submitted that the effect of the *Determination* is not to simply require that an implication be drawn as to the operation of ss 71(2) and (4) of the *Act*, which approach was rejected by the Full Bench in *The Construction Forestry Mining and Energy Union of Workers* [2011] WAIRC 00422; (2011) 91 WAIG 1034. The Registrar contended that the effect of the *Determination* does not give rise to a question of implication in the Rules of an organisation, but has legislative effect and it overrides and alters the Rules of the Federal branch. It was submitted that the same broad approach should be adopted, as if a rule of a counterpart federal body had been declared void by the Federal Court, under s 163 of the *FW (RO) Act*, in which case the Commission would be obliged to disregard the rule for the purposes of ss 52A and 71 of the *Act*.
- 30 On this foundation, the Registrar submitted that it was clear, by the combined effect of s 323F of the *FW (RO) Act*, and the terms of the *Determination* in cl's 4(1) and 7(4), that the Rules of the Federal branch, in relation to the functions and powers of its officeholders, are overridden. The powers of each of the offices in the Federal branch are divested to the Administrator, and the Administrator may exercise those powers himself.
- 31 The Registrar contended these are matters that must be taken into account by the Commission as matters of law, in its assessment of whether the offices of the respondent and the Federal branch correspond, on the same basis as if a rule had been declared void under the *FW (RO) Act*. Accordingly, the Registrar contended that the orders sought should be made.

#### ***The respondent***

- 32 On the other hand, the respondent submitted that there was no basis to conclude that the s 71 certificate is invalid or not effective, in the present circumstances. In summary, it was submitted that the appropriate course is an alteration of the respondent's Rules, to reflect the changes to the Rules of the Federal branch. It was contended that this was contemplated by s 71(9)(b) of the *Act*.
- 33 The respondent does not take issue with the Registrar's submissions in relation to the preconditions for the issuance of a certificate under s 71(5) of the *Act*. The point of departure was the significance of the issuance of the certificate itself and the effect of the terms of s 71(5). It provides that first, having been satisfied of the matters set out in ss 71(5)(a) and (b), the Registrar *must* issue a certificate. Second, that having issued such a certificate, the making of the declaration set out in ss 71(5)(c) and (d), means that 'the certificate has effect according to its tenor'.
- 34 The thrust of the respondent's submissions in relation to the validity question, turned on four key points. The first was that it is the certificate itself, and the certificate operating according to its tenor, which is the focus of s 71(5), and not the respective Rules of the respondent or the Federal branch, or any other matters giving rise to the Registrar's duty to issue a certificate.
- 35 Continuing the theme in relation to the importance of the Rules themselves, the respondent's second key point was that the required declaration contained in a certificate issued by the Registrar under s 71(5), is only made effective by the Rules of the respondent making provision for its offices to be held by persons who hold the corresponding office in the Federal branch. In this sense, it is the Rules themselves, rather than the Registrar's certificate, that result in the filling of the offices in the respondent by those holding counterpart offices in the Federal branch.
- 36 As to the words 'the certificate has effect according to its tenor', in s 71(5), the respondent referred to and relied upon the decision of the High Court in *Cumerlong Holdings Pty Ltd v Dalcross Properties Pty Ltd* (2011) 243 CLR 492. In that case, which was an appeal from the Court of Appeal of New South Wales, in relation to a town planning matter, the Court referred to the words 'shall have effect according to its tenor', as used in s 28(3) of the *Environmental Planning and Assessment Act 1979* (NSW). It was held that in relation to the phrase at [21]:
- ...It may be accepted that 'tenor' may identify no more than the meaning of words actually used in an instrument. But it may also identify the effect or drift of a provision, and the phrase in which 'tenor' appears in s 28(3) makes it plain that this is how it is to be read in s 28(3).
- 37 The fourth point developed by the respondent was that from its terms, neither the text nor context of s 71(5) means, contrary to the Registrar's arguments, that once issued by the Registrar, a certificate under s 71(5) ceases to have any effect in the event that preconditions for its issuance can no longer be satisfied. It was the respondent's submissions, that to the contrary, the scheme of the *Act* points in the reverse direction.
- 38 As to the latter contention, the respondent placed significant weight, for the purposes of its arguments, on s 71(9) of the *Act*. Section 71(9)(a), on the respondent's argument, is to the effect that following the issuance of a certificate by the Registrar, there can only be a change to the Rules of a State organisation, providing that offices within it can be held by persons who hold the corresponding office in the counterpart federal body, with the permission of the Commission in Court Session. The Commission may impose conditions in relation to such an approval, under s 71(10). Thus, there cannot be a divergence

between the Rules of a State organisation and its counterpart federal body in relation to offices, unless permitted by the Commission in Court Session.

- 39 It was submitted that as a practical matter, the only means of divergence between a State organisation's Rules and the Rules of its counterpart federal body in relation to offices, is if the latter changes them. It was submitted that this is dealt with in s 71(9)(b), that expressly recognises that the Rules of a counterpart federal body and the relevant State organisation, may have fallen out of alignment after the Registrar has issued a certificate, and the Registrar may register an alteration to the State organisation's Rules, to realign them. It was submitted that the effect of these provisions, carries with it the premise that the certificate issued by the Registrar will continue to have effect, despite any lack of alignment, which, by the operation of s 71(9)(b), can be remedied. According to the respondent, these contextual matters were fatal to the Registrar's contention that a certificate ceases to operate in the event that an alteration occurs to the Rules of a counterpart federal body in relation to its offices.
- 40 There were also submissions made by the respondent in relation to the cases referred to by the Registrar, in support of her arguments. The overarching contention was that none of the authorities to which reference was made in the Registrar's submissions, involved a consideration of the effect of s 71 of the *Act* in particular, and the matters now argued did not arise for consideration. The respondent referred to and relied upon the decision of the High Court in *CSR Ltd v Eddy* (2005) 226 CLR 1.
- 41 In that case, which was an appeal from the Court of Appeal of New South Wales, the issue arising was whether an earlier decision of the Court of Appeal dealing with the particular point in issue before the High Court, which adopted without argument earlier authority, should stand. In reaching the conclusion that it should not, and in upholding the appeal, the Court (Gleeson CJ, Gummow and Heydon JJ) at [13] observed:
- [13] These events placed the Court of Appeal in a difficult position. It is of course commonplace for the courts to apply received principles without argument: the doctrine of stare decisis in one of its essential functions avoids constant re-litigation of legal questions (104). But where a proposition of law is incorporated into the reasoning of a particular court, that proposition, even if it forms part of the ratio decidendi, is not binding on later courts if the particular court merely assumed its correctness without argument (105). "[T]he presidents, ... sub silentio without argument, are of no moment." (106)
- 42 Notwithstanding this general submission, the respondent sought to distinguish the cases referred to by the Registrar. In relation to *Jones*, it was submitted that in that matter, the circumstances were very different from the present case, in that the relevant counterpart federal body had ceased to exist. In that case, there could be no filling of offices in the relevant State organisation by occupants of offices in a counterpart federal body. In relation to the *PGEU* case, that matter is distinguishable because the finding was that the Rules of the relevant State organisation had never been altered as required by s 71(5)(a), as a necessary precondition for the issuance of a certificate by the Registrar. That is not the situation in this matter.
- 43 In the cases of *Dekuyer* and *Bergesio* there had been in the former, the cessation of the existence of the counterpart federal body, and in the latter, such a major alteration to the counterpart federal body's structure and Rules that there could not be any correspondence between them and the relevant State organisation. There were no persons holding office in the counterpart federal body which corresponded with the relevant State organisation.
- 44 It was on this basis, that the respondent submitted that there is no consistent line of authority supporting the Registrar's contentions.
- 45 Finally as to the line of argument regarding relevant case law, the respondent contended that the argument of the Registrar, that it must be presumed that Parliament has been content with the line of cases referred to, in maintaining the statutory scheme largely as is, in subsequent amendments to the *Act*, should not be adopted. It was submitted that at its highest, this approach is a guide and should not be used if the Commission accepts the respondent's approach to statutory construction is to be preferred.
- 46 In any event, the submission was made that a court should not in effect, perpetuate the approach to the interpretation of a statute which is considered to be erroneous: *Barnes v Barnes* (2003) 214 CLR 169 at [112]; *Foots v Southern Cross Mine Management Pty Ltd* (2007) 234 CLR 52 at [63]; *Re Her Honour Judge Schoombee; ex parte Attorney General for Western Australia* [2011] WASCA 129 at [54]. I accept that this principle is a guide, and is subject to the interpretation of the relevant provisions of the *Act*.
- 47 Despite the Registrar's submissions to the contrary, the respondent contended that based on its construction of the *Act*, there is no absurdity or lacuna arising from its approach. It was submitted that if the circumstances are such as in the cases of *Jones*, *Dekuyer* and *Bergesio*, where there is a radical change to the counterpart federal body's Rules or the body ceases to exist altogether, then it is not possible for the offices of the relevant State organisation to be filled by the corresponding officeholders in the counterpart federal body, because they do not exist.
- 48 In these circumstances, the respondent contended that there is no need for a certificate issued by the Registrar to be revoked, and nor would it expire or be invalid, because the preconditions for its issuance no longer exist. On the respondent's contention, the certificate simply ceases to apply, as there are no offices in a counterpart federal body upon which it can operate.
- 49 Alternatively, on the respondent's argument, if there has been a change in the Rules of the counterpart federal body, but the body itself continues to exist or largely exist, then the appropriate step is an alteration of the Rules of the relevant State organisation, as contemplated by s 71(9)(b). In relation to those offices continuing to exist in the counterpart federal body, the respondent contended there is nothing preventing the certificate continuing to have effect according to its terms with the relevant corresponding officeholders in the State organisation continuing to hold office.

- 50 It was submitted that it is only in the extreme circumstances such as in the *Bergesio* and *Dekuyer* cases, that consideration would need to be given to an order under s 66 of the *Act*, to appoint an interim management committee to run the State organisation. It was submitted however, that these circumstances do not arise in this case, as there is only a small divergence between the Rules of the respondent and the Federal branch, which should be remedied in the manner set out in s 71(9)(b) and meanwhile, nothing prevents the certificate from continuing to operate.
- 51 The respondent also made responsive submissions on the *Determination*. The overarching submission was that it has no effect on the operation of the certificate issued by the Registrar to the respondent. The concern of the *Act*, according to the respondent, for the purposes of ss 52A(2) and 71(4), is the rules of the Federal branch, and the *Determination* does not have the effect of altering them.
- 52 In reliance upon the decision of Pullin J in *Jones*, the respondent submitted that the focus of the exercise in comparing functions and powers in respect of offices of a State organisation and its counterpart federal body, lies in the content of the Rules of those organisations.
- 53 It was submitted that nothing in the *Determination* affects the Rules of the Federal branch and nor does it affect the status of those who hold offices in the Federal branch. In particular, emphasis was placed on the fact that the *Determination* does not vacate the offices in the Federal branch. Furthermore, despite cl 4 of the *Determination*, dealing with inconsistency, the respondent submitted that there is no relevant inconsistency for present purposes. The respondent submitted that nothing in the *Determination* purports to rescind or otherwise make void, any of the Rules of the Federal branch.
- 54 It was accepted by the respondent that by cl 3(1)(f) of the *Determination*, the office holders in the Federal branch are temporarily divested of their powers. The fact is however, that the current incumbents continue to hold corresponding offices in the Federal branch, which means that they continue to also hold the corresponding offices in the respondent, in accordance with the terms of the certificate. There is also no modification of the Federal branch Rules by the *Determination*.
- 55 In the absence of any inconsistency, and the respondent submitted there is none, the Federal branch Rules continue to operate in accordance with their terms. Additionally, the respondent contended that the effect of the Registrar's interpretation of s 71 of the *Act*, would be to work the reverse of the effect of the *Determination*. The latter expressly maintains the offices of the Federal branch and does not vacate them. Despite this, it was contended that the Registrar's submission has the opposite effect, that the *Determination* disturbs the occupancy of the respondent's offices.
- 56 On the basis that the certificate continues to operate, the respondent contended that given that it has now altered its Rules to abolish the second Assistant Secretary office, in line with the Federal branch, the application presently before the Registrar under s 62 of the *Act*, should take its course. There is no cause for an order to be made under s 66 of the *Act* and the application should be dismissed.

## Consideration

### *Correspondence of offices*

- 57 For the following reasons, having regard to s 71(5) of the *Act*, I consider the respondent's contentions as to the operation of the Registrar's certificate are to be preferred. I do not consider that the abolition of one Assistant Secretary position in the Federal branch, which I accept means that the Federal branch no longer meets the description of a counterpart federal body under s 52A of the *Act*, has the consequence that the s 71 certificate issued by the Registrar on 22 December 2011 becomes invalid, defunct or no longer has any operation.
- 58 In the circumstances of this case, the s 71 certificate should be regarded as continuing to remain operative, in accordance with its tenor, to enable the Rules of the respondent to be brought back into alignment under the *Act*. Given the relatively minor change to the Rules of the Federal branch, all of the other offices in the respondent continue to be filled in the manner declared by the certificate.
- 59 The starting point is the terms of the ss 71(2) and (4), which enable the Commission in Court Session to declare that the rules of a State organisation are, or are taken to be the same, as those of its Federal branch. Once such a declaration is made, and the requirements of s 71(5) are met, then the Registrar must issue a certificate. The Registrar has no discretion in this regard. The content of the certificate, in terms of the declarations made by the Registrar, reflect the terms of ss 71(5)(a) and (b). From that time, a State organisation is freed from the obligation to hold elections under the *Act*. Secondly, persons elected to office in a Federal branch, 'shall for all purposes', be holders of office of the State organisation.
- 60 I consider a certificate issued by the Registrar must be accorded great weight, as its declaration reflects the terms of ss 71(5)(a) and (b) of the *Act*, and not the Rules of either a State organisation or of its counterpart federal body. In using the words 'and the certificate has effect according to its tenor', Parliament appears to have been concerned to accord certainty to the effect of a certificate, once issued, for the benefit of the organisations to which it applies. Viewed in this way, 'according to its tenor' means the certificate is given the meaning according to the words used in it: *Cumerlong Holdings* at [21].
- 61 One can see why this is so. For example, if, some years after a certificate has issued, a change to the functions of an office in a counterpart federal body, such as the transfer of a function from one office to another, with the effect that the offices of the State organisation and the corresponding office in the federal body no longer align for the purposes of s 71(4) of the *Act*, may have dramatic consequences if the s 71 certificate was considered to no longer be effective and all holders of office in the State organisation ceased to hold office from that time. It would mean that purported decisions taken and actions implemented by the State organisation, including major decisions regarding assets and financial affairs, would potentially be invalid and of no effect.
- 62 So too, purported decisions and actions taken by authorised officeholders in relation to the commencement and continuation of proceedings before the Commission, the Industrial Magistrates Court and the Industrial Appeal Court, instructions to solicitors and counsel, would arguably also be invalid. The same would apply to the participation by a State organisation in bargaining for an industrial agreement and its making by an order of the Commission, and officers purporting to hold right of entry

- permits and to exercise right of entry under the *Act*. One could readily foresee the need for applications under s 66 of the *Act* by organisations, in an attempt to retrospectively validate decisions and actions taken, potentially over some years, to avoid adverse consequences, some of which could be irretrievable.
- 63 Whilst of course, recognising that reasonable minds may differ as to how these provisions of the *Act* should be construed, as a matter of constructional choice, I consider that the statutory scheme under the *Act* should be interpreted in such a manner to avoid the above adverse consequences (see generally D C Pearce *Statutory Interpretation in Australia* 10<sup>th</sup> Edition at [2.61]-[2.65]).
- 64 I consider that the better view is that where the Rules of a State organisation and its counterpart federal body have fallen out of alignment, s 71(9) of the *Act* contemplates how this may be remedied. There are three limbs to s 71(9) which apply after a certificate has issued by the Registrar. Only the first two are relevant for present purposes. The first, in s 71(9)(a), deals with alterations to rules of the kind specified in s 71(5)(a). If there is to be any change to a rule of this kind, which enables offices of a State organisation to be filled by those elected to corresponding offices in the counterpart federal body, the approval of the Commission in Court Session is required. The Commission in Court Session may impose conditions as it sees fit, in relation to any modification of this type of rule. This provision reflects the importance of maintaining the scheme reflected in ss 71(5)(a) and (b).
- 65 Accordingly as the respondent submitted, the only way there can be a departure from the alignment of rules of a State organisation and its counterpart federal body, is if the latter alters its Rules. This is dealt with in the second relevant provision in s 71(9)(b). This section enables the Registrar to alter a State organisation's Rules, other than one of a kind referred to in s 71(9)(a), as long as the altered rule is the same as a rule of its counterpart federal body. This section appears to contemplate that the two sets of Rules having fallen out of alignment, are brought back into alignment.
- 66 Subject to what I have said above about the factual circumstances, there appears to be nothing in s 71(9), when read with s 71 as a whole, to compel the conclusion that in the meantime, the certificate stops having any operation, such that the offices of the State organisation cease to be filled in the manner contemplated by s 71(5) of the *Act*, and as reflected in the certificate. On the contrary, it would seem that it is intended that the certificate continues in effect, and the Registrar register any such rule alteration, as long as she is satisfied that the altered rule is the same as the rule in the counterpart federal body.
- 67 Such a construction is consistent with the certainty which I consider was intended by the Parliament, to avoid the need to lift the veil of the certificate and for detailed scrutiny each and every time there is a change to a counterpart federal body's rules in relation to offices, however minor. There is something to be said for the respondent's view that if a certificate simply ceased to operate in all circumstances where a federal organisation no longer meets the test of a counterpart federal body under the *Act*, then s 71(9) would appear to be superfluous. A party would simply have to start again and seek a new s 71 certificate.
- 68 The above approach to the construction of the *Act* also avoids the need for an application under s 66 for interim orders, even if changes are minor and have no effect on a State organisation's capacity to continue to function as an organisation and to discharge its obligations under the *Act*. On the same basis, it also avoids the need for the State organisation to have to bring an application for a new s 71 certificate, before the Commission in Court Session, each time a relatively inconsequential change is made to its Rules regarding offices.
- 69 In the current circumstances, there is no suggestion that by the abolition of the one Assistant Secretary position, as a practical matter, the respondent is unable to function as an organisation under the *Act*. The intention is to abolish the position. To illustrate the point further, another example, from the agreed facts, is the existence of ordinary committee members in each of the respondent and the Federal branch under their respective current Rules. For the purposes of the *Act*, the office of a member of the committee of management of a State organisation is an 'office' as defined in s 7. It would attract consideration under s 71(4) of the *Act*, in relation to whether a federal organisation is a counterpart federal body: *Re CFMEUW* [2011] WAIRC 00422 at [48].
- 70 Presently, r 16 of the respondent's Rules and r 42 of the Federal branch Rules provide that there are to be five ordinary members of the Executive and the Divisional Branch Management Committee, respectively. If circumstances change and the Federal branch reduced the number of Management Committee members by one office to four and the office was abolished, there would no longer be alignment between the offices of respondent and the Federal branch for the purposes of s 71(4)(b) of the *Act* and the Federal branch would cease to be a counterpart federal body for the purposes of the statutory scheme under the *Act*. In these circumstances, it would seem difficult to conclude that such a modest change would affect the capacity of the respondent to function as an organisation, with one ordinary member vacancy on the Executive. The appropriate step would be for the respondent to apply under s 62 of the *Act* to alter its Rules, to bring the offices back into alignment with the Federal branch, using the mechanism in s 71(9)(b).
- 71 Following this example to its logical conclusion, assume that the respondent had not been able to secure a simultaneous alteration to its Rules by the Registrar at the same time as the alteration to the Federal branch Rules, to reduce the number of ordinary Executive Members by one. Assume also that the certificate then ceases to operate, and the offices in the respondent cease to be filled, because the offices of the respondent and the Federal branch no longer remain in alignment and the Federal branch ceases to be a counterpart federal body under ss 52A and 71 of the *Act*. In these circumstances, any subsequent application by the respondent to the Registrar to alter its Rules would arguably be incompetent, as there would be no authorised officer, being the Secretary, holding office under the respondent's Rules, with the authority to make such an application.
- 72 The only course open in this situation would seem to be an application under s 66 of the *Act*, for an order for an interim executive to be appointed to authorise and bring an application to alter the Rules. The other consequences, mentioned above, would of course, also follow in such a situation. It seems to me that in such a circumstance, the better view is the certificate continues to operate and fill all of the other offices of the respondent, until the alignment is restored.

- 73 The better view appears to be that assuming the continued operation of a certificate according to its tenor under s 71(5) of the *Act*, the question for the Chief Commissioner under s 66 of the *Act* is whether, in the particular factual circumstances, as an exercise of discretion, an order is necessary as a practical matter, to keep the organisation 'on track': *Stacey v Civil Service Association of Western Australia (Incorporated)* [2007] WAIRC 00568; (2007) 87 WAIG 1229. That conveniently leads me to the decided cases that both parties referred to in the course of argument. I should add that the respondent submitted that these cases turned on their facts and none of them were wrongly decided.
- 74 I accept the proposition put by the respondent, that the cases referred to by the parties did not involve a consideration and determination of the arguments and issues now raised in relation to s 71 certificates. In these circumstances, it is at least arguable that the decision of the High Court in *CSR Ltd* applies. Whilst detailed arguments were put before Sharkey P in *Jones*, (as set out below) those matters related to the effect of the amalgamation of the federal organisation and agreements under the then federal legislation, between the federal organisation and the State organisation. I note in passing however, that Sharkey P, at [29], expressed doubts as to whether the CSA had in fact altered its Rules and had satisfied ss 71(5)(a) and (b) of the *Act*, but despite this, was prepared to accept that the s 71 certificate 'has effect according to its tenor, as s 71(5) prescribes'.
- 75 In the cases of *Dekuyer and Bergesio*, on the facts of each, the counterpart federal bodies of the State organisations either largely or totally ceased to exist, there being no 'corresponding offices' in existence for the purposes of s 71(4) of the *Act*. They had ceased to function as organisations. In those circumstances, as a practical matter, there were no longer any persons occupying offices in the counterpart federal bodies upon which the certificate could operate.
- 76 Likewise, in *Jones*, whilst the terms of the *Act* were not identical to those presently applying, the essential requirements as to whether a federally registered organisation was to be regarded as a counterpart federal body, was the same as it is now. That is, the dual requirement for eligibility for membership and offices being the same or deemed to be the same. In that case, a challenge was brought under s 66 of the *Act*, to the appointment of the General Secretary and Assistant General Secretary of the Civil Service Association.
- 77 The counterpart federal body to the CSA, the State Public Services Federation, an organisation registered under the then Commonwealth legislation, was declared to be such in November 1993 by the Full Bench, and a s 71 certificate issued shortly after. In 1994, the SPSF was amalgamated with another organisation, the Public Sector, Professional, Scientific Research, Technical, Communications, Aviation and Broadcasting Union to form the Community and Public Sector Union. At the same time, the SPSF was deregistered. On that event, the SPSF no longer was a registered organisation under the Commonwealth legislation.
- 78 The applicant in that case contended that the consequence of the deregistration of the SPSF was that it no longer was a counterpart federal body under the *Act*. As to this matter, Sharkey P observed at [37] that:
- [37] It is quite clear that unless the Counterpart Federal Body continues to exist, or that its successor is bound by its unequivocal obligations and rights as a Counterpart Federal Body, then the rules of the CPSU do not apply and/or cannot be used to enable its officers to become officers of the CSA without appointment or election in accordance with the CSA rules.
- 79 Having considered that the CSA no longer had a counterpart federal body in existence, in fact and law, at the time of the challenge to the appointments of the two officers of the union, his Honour then went on to conclude at [67]-[72] as follows:
- [67] The s.71 certificate issued in respect of the SPSF, a Counterpart Federal Body whose rules the Full Bench has considered. There may now be in existence a branch of a new amalgamated organisation. What its rules are I do not know. What offices are prescribed to exist by those rules I do not know either, since the rules were not before me. What the qualifications for membership are also not clear because the rules are not before me. Whether they are the same as the SPSF is not known. What, of course, that establishes, is the necessity for the CSA to make an application afresh under s.71 of the *Act* and to establish to the Full Bench what s.71 requires. The necessity for such a view is borne out by the fact that an amalgamation under the *WR Act* which takes place under Part IX Division 7 of the *WR Act* may involve an amalgamation which in itself involves the extension of eligibility rules (see s.253A of the *WR Act*).
- [68] Of course, by contrast, there may be a different eligibility rule for the CPSU than that which was a rule of the SPSF when the Full Bench determination as to a Counterpart Federal Body was made. The same may apply to the offices in the CPSU. Under s.72 of the *Act*, no amalgamation can take place where there is such an extension of eligibility (see s.72(1)).
- [69] In this case it has not been made known to me whether the amalgamation which occurred extended the eligibility rules of the bodies which were replaced by the amalgamated body. If, of course, the rules were extended the situation would be quite different from that which obtained when the Full Bench decided the matter.
- [70] I now repeat what I said in preceding paragraphs.
- [71] The SPSF was cancelled by de-registration and has not been an "organisation" under the *WR Act* since 1 July 1994. Thus, since the SPSF is not and has not been an organisation since then, and is cancelled, there is no Western Australian branch and no Counterpart Federal Body and there has not been one since 1 July 1994.
- [72] The Registrar's certificate (exhibit 5) under s.71(5) of the *Act* has expired because there is no Counterpart Federal Body in existence to which it applies. On the other hand, if it has not expired it is a nullity since there is no Counterpart Federal Body to which it might apply.
- 80 One can readily understand Sharkey P's conclusion in that case that there was no longer an organisation in existence to which the s 71 certificate could have any application. There were no longer any offices in the federal body upon which the certificate could operate, to fill offices in the State organisation.

- 81 In the *PGEU* case, the Full Bench observed at [6]-[8] that given the union in that matter had not altered its Rules to give effect to a certificate issued by the Registrar some years earlier, it ‘could not rely on the validity of the s 71 certificate...’. One can appreciate the circumstances of that matter, where there was no rule in the State organisation’s Rules, enlivening the power to issue a certificate in the first place.
- 82 In *McCartney*, the evidence before me in that matter revealed that there had been wide ranging changes to the Rules of the counterpart federal body, not just in relation to offices, but also to eligibility for membership. Very importantly in that case, the State organisation had not conducted elections for officeholders for some years and there were no persons in office able to conduct the affairs of the State organisation, to bring about the necessary changes to its Rules in order to then seek a new s 71 certificate. I formed the view that in those circumstances, an order under s 66 of the *Act* was necessary.
- 83 In *ARTBIU*, the Commission in Court Session dealt with an application for declarations under ss 71(2) and (4), following the merger of the State organisation’s former counterpart federal body. The application followed the earlier proceedings before me in *Dekuyer*, in which case I made a s 66 order, for the reasons mentioned above. It was in that context, that the Commission in Court Session made the observation it did at [6] of its reasons.
- 84 Ultimately, I consider that it will be a matter for the Chief Commissioner, depending on the circumstances of each case, as to whether the discretion to make a s 66 order should be exercised. I am not persuaded that the change in the respondent’s offices in the present circumstances, warrants an order being made.
- 85 I now turn to deal with the second limb of the Registrar’s case, that being the effect of the *Determination*.

#### ***The Determination***

- 86 The relevant provisions of the *Determination* have been set out above. It is accepted that for the purposes of considering this issue, it is the Rules of the respondent in relation to its offices, as set out in s 71(4), that are to be considered. The focus of my inquiry, for the purposes of determining the questions posed is the terms of the *Act*. In this regard, I must keep in mind that s 66(2) of the *Act*, whilst conferring broad powers on the Chief Commissioner, is concerned with a State organisation in terms of ‘the rules of the organisation, their observance or non-observance or the manner of their observance, either generally or in the particular case, as the Chief Commissioner considers to be appropriate...’.
- 87 It was common ground that the officeholders of the Federal branch continue to hold office in WA and that the effect of the *Determination* is that the officeholders have under cl 3(f), been divested of their powers and functions, which have been vested in the Administrator. By cl 7(1), the Administrator may, but not must, exercise the powers and functions of officeholders not vacated by the Scheme. The relationship between these two provisions is not entirely clear. There is nothing before me in these proceedings to indicate in practical terms, what these provisions mean for the day to day operation of the Federal branch, if that were to be a relevant consideration.
- 88 For the purposes of the s 71 certificate, consideration of the Rules of the State organisation and its counterpart federal body in relation to their offices, under s 71(4) of the *Act*, as to whether they correspond, was dealt with by the Industrial Appeal Court in *Jones*. In this case, Pullin J, in relation to the task to be undertaken for the purposes of s 71(4) of the *Act* said at [35]:
- In my opinion, it is quite correct to say, as the appellant does, that the task is not one merely of seeing whether the names of the offices held in one organisation are the same or substantially the same as the offices in the other organisation. It is necessary for the Full Bench to consider at least the functions and powers of the office based upon a consideration of the similarity or otherwise of the content of the rules.
- 89 His Honour did not elaborate on what this consideration may entail. However, it is clear that the task is to examine the Rules of both the State organisation and the counterpart federal body, to determine the degree of correspondence. This is what ss 71(4)(a) and (b) require. As the Registrar correctly points out, there is no latitude in relation to the need for an office in the counterpart federal body for every office in the State organisation. Some latitude exists in relation to functions and powers, but that inquiry must be based on the content of the Rules of each organisation, as they exist at the time of the inquiry.
- 90 It is not in contest that the Rules of the Federal branch have not been altered in the manner of alterations of Rules as required by the *FW (RO) Act*. The contention of the Registrar is that the effect of the *Determination* has profoundly affected the operation of the offices of the Federal branch in such a way that for the purposes of s 71(4), the Federal branch can no longer be considered to be a counterpart federal body. I accept, as submitted by the Registrar, and which seems to have been conceded by the respondent, that the *Determination* has had a profound effect on the Federal branch. However, consistent with my conclusions in relation to the continued operation of the certificate, notwithstanding the abolition of the one Assistant Secretary position, the question is whether the *Determination* has the effect of preventing the certificate remaining in operation.
- 91 Whilst the Registrar drew an analogy between the effect of the Federal Court declaring a rule of an organisation under s 163(6) of the *FW (RO) Act* as being ‘void’, with the effect of the *Determination* on the Federal branch Rules, I do not think its effect can be taken that far. As to the meaning of ‘void’, in *Victoria v Sutton* (1998) 156 CLR 587, Windeyer J said that ‘it has never been an easy word’ and it may not mean something has no legal effect at all. However, regardless of this, I do not consider that there is anything in the *Determination* to render the Rules of the Federal branch void or voidable, or that they have been, in their terms, expressly altered. The Rules continue in effect, and the officeholders in the Federal branch continue in office.
- 92 What is said is that in the event of any inconsistency between the *Determination* and the Federal branch Rules, the former will prevail. I do not think that can be construed as altering or revoking a rule of the Federal branch. On that point, I do not think that because the *Determination* temporarily divests powers from the officeholders of the Federal branch, that sets up an inconsistency with its Rules. This is because it is the intention of the *Determination* to have this effect, whilst in other respects, the officeholders continue in office, as is expressly stated in cl 3(2).
- 93 Previously the Full Bench, now the Commission in Court Session, when considering whether there are corresponding offices in both a State organisation and its counterpart federal body for the purposes of s 71(4) of the *Act*, in light of Pullin J’s

observations as above, applies a practical approach to a comparison of the functions and powers of respective offices. This approach is adopted because the effect of a s 71 certificate, as I have already observed above, enables a State organisation and its counterpart federal body to effectively operate as one. For example, the Full Bench in *Re WAPOU* considered the practical effect of joint meetings of Executive of the State organisation and the Branch Executive of the Federal branch, in circumstances where the respective officeholders as President and Branch President, had different voting powers. A circumstance may have arisen in that case where there is a conflict in an outcome. The Full Bench could not reach the view that there was correspondence in these two offices (at [30] and [34]).

- 94 In *Re CFMEU*, the Full Bench found that the absence of any powers for the offices of Divisional Branch Treasurer and Divisional Branch Senior Vice President, as opposed to the presence of powers in the offices of Treasurer and Senior Vice President of the State organisation, prevented the Full Bench forming the opinion that the Rules of the counterpart federal body and the State organisation prescribing offices, were the same or could be deemed to be the same (at [49]-[51]).
- 95 Importantly, in both of the above cases, the focus of the inquiry by the Full Bench, was the content of the respective Rules of the organisations. In this case, whilst the powers of the offices of the Federal branch are significantly impacted by the *Determination* for the period of the Administration, I am not persuaded that the Rules themselves have been altered. For the purposes of the *Act*, I must take the Rules of both the respondent and the Federal branch as they currently exist and as I find them. This is what the *Act* requires in s 71(4).
- 96 In terms of the certificate, under the *Determination*, the Federal branch remains in existence. The offices remain and have not been vacated in Western Australia, as has been the case elsewhere in other State branches. This is in contrast to the cases referred to above, in which there had been the abolition of offices in the relevant counterpart federal body, such that there was little or nothing on which the certificate could operate, to have any continuing effect. Accordingly, the certificate continues to operate according to its tenor, and the offices of the respondent continue to be filled by those persons occupying the corresponding offices in the Federal branch. Had the situation in Western Australia been the same as in other States where offices have been vacated, then my conclusions may have been different, based on the cases considered earlier in these reasons.

#### *A further issue*

- 97 In letters to the parties of 10 and 17 April and 2 May 2025 from my Associate, the question of the Federal branch holding elections and relevant rules, and the effect of cl's 7(2) and (3) of the *Determination* were raised as possibly relevant issues and the parties were invited to make further submissions. A further issue raised was whether an extension of office of officeholders of the Federal branch under cl 7(3), means that they hold office in accordance with the *Determination*, and not the Federal branch Rules, and if so, whether this has any consequences given the terms of s 71(5)(a) of the *Act*. The parties made further written submissions in relation to these issues on 24 April and 9 May 2025.
- 98 Clarification was also sought as to whether the Administrator had extended the terms of office of the Federal branch officeholders. A letter dated 7 May 2025, attached to the respondent's further submissions of 9 May 2025, from the Administrator to the respondent's solicitors, confirmed that the terms of office of the officeholders of the Federal branch have, under cl 7(2) of the *Determination*, been extended to 1 September 2025. In the letter to the parties dated 17 April 2025, reference is made to the Fair Work Commission confirming that there has not yet been an election in the Federal branch, despite one being due, with successful candidates to take office by 2 January 2025.
- 99 In response to the invitation in the 10 and 17 April 2025 letters, the Registrar submitted that it is apparent that elections which ought to have been conducted by the Federal branch in 2024, did not take place. She noted the effect of cl 7(3) of the *Determination*, which prohibits elections for offices in the Federal branch, unless a written authority is provided by the Administrator. The Registrar also referred to cl 7(2) of the *Determination*, a power now confirmed by the Administrator to have been exercised, which is in the following terms:
- (2) The term of any unvacated office that ends during the period of Administration may be extended, for a period of time set by the Administrator.
- 100 The Registrar contended that the significance of cl 7(3) of the *Determination* and the above matters just noted, are relevant in two respects. First, if I conclude that the s 71 certificate is no longer operative, whether and if so what, orders should be made. Second, if the s 71 certificate remains operative, a basis exists for further orders that could be made on separate and distinct grounds. Given my conclusions in relation to the certificate, I do not need to consider the former.
- 101 If there continue to be officeholders of the Federal branch, now confirmed as a result of an extension under cl 7(2) of the *Determination*, having regard to the objects of the *Act*, the Registrar submitted a basis would exist for making orders under s 66. The Registrar referred to her earlier substantive submissions in relation to the importance of the democratic control of a State organisation by its members, regardless of the existence of a counterpart federal body. In reliance on the objects of the *Act* in s 6(f), which I have set out earlier in these reasons, the Registrar noted the powers of the Chief Commissioner under s 66(2)(a)(v), which enables an order to be made to disallow any rule of a State organisation which, in the opinion of the Chief Commissioner, is inconsistent with the democratic control of the organisation by its members.
- 102 In this regard, the Registrar referred to r 16(4A) of the respondent's Rules, that I have referred to earlier in these reasons. This enables an office in the respondent to be held by the corresponding officeholder in the Federal branch. The Registrar submitted on the basis that:
- (a) the present officeholders of the Federal branch, contrary to the *Act* and the *FW (RO) Act*, may continue to hold office beyond the maximum four year term for officeholders under the respective State and Federal branch Rules, and which terms may be extended indefinitely;
- (b) the decision to hold elections in the Federal branch is at the sole discretion of the Administrator; and
- (c) it appears that presently, there have been no steps taken to conduct an election,

- it would be open for the Commission to conclude that r 16(4A) of the Respondent's rules is inconsistent with the objects of the *Act* in s 6(f), regarding the democratic control of the respondent by its members, and should be disallowed under s 66(2)(a)(v) of the *Act*.
- 103 It was contended by the Registrar that such a course would involve no conflict with s 71(9)(a) of the *Act*, regarding the alteration of a rule such as r 16(4A) by the Commission in Court Session. This is because s 71(9)(a) is a rule alteration as specified in s 62 of the *Act*, as opposed to a disallowance order made under s 66(2)(a). In the event that a disallowance order was made, the Registrar further submitted that it would be appropriate for the appointment of an interim executive, until an election could be held.
- 104 On behalf of the respondent, in short, it was contended that cl 7(3) of the *Determination* is not relevant to the exercise of the discretion and powers of the Chief Commissioner under s 66 of the *Act* in the context of the present proceedings. The respondent submitted that consideration of cl 7(3) of the *Determination* only arises in circumstances where the Commission determines that the s 71 certificate continues to be operative, which I have. In these circumstances, it was submitted that there could be no conclusion reached that the Rules of the respondent, or their observance or manner of their observance, would give rise to any uncertainty or doubt, leading to the exercise of the discretion of the Chief Commissioner under s 66 of the *Act*. It was submitted that the *Determination*, whether it may be inconsistent with the election scheme under the *Act*, is not a matter which gives rise to the exercise of power under s 66(2) of the *Act*, relating to the *Determination* itself.
- 105 Furthermore, in relation to ss 52A and 71 of the *Act*, any 'scheme' established by these provisions does not concern itself with the matter of regularity or frequency of elections of officeholders of a counterpart federal body. Rather, they concern themselves with rules in relation to eligibility for membership and the existence of offices within a Federal branch of a State organisation. I agree that these provisions of the *Act* do not expressly deal with the frequency or regularity of elections for officeholders of counterpart federal bodies. These are matters specified in the *FW (RO) Act*, the Federal branch Rules and the *Determination*.
- 106 The reason the respondent contends that cl 7(3) of the *Determination* is irrelevant to the exercise of the Chief Commissioner's powers and discretion under s 66(2) of the *Act*, is that the s 71 certificate continues to operate and holders of office in the Federal branch continue to hold office in the respondent. Those persons were duly elected prior to the commencement of the Scheme under the *Determination*. In accordance with r 16(4A) of the respondent's Rules, they continue to hold office in the respondent by the ongoing operation of the certificate.
- 107 The respondent submitted that the Scheme for the administration of the Federal branch under the *Determination* is not indefinite, and has an end date of no later than five years from its commencement under the *FW (RO) Act*. Accordingly, the suspension of elections for officeholders of the Federal branch under the terms of cl 7(3) of the *Determination*, will cease to operate by that time or earlier. Thus, the requirement to hold elections under the Federal branch Rules will come back into effect from no later than 23 August 2029. In these respects, the respondent contended that the Administrator's powers in relation to elections under the *Determination*, are not relevant to the provisions of the *Act* in ss 52A and 71, as they are not concerned with the calling of elections in a counterpart federal body.
- 108 In any event, the respondent contended that the officeholders of the Federal branch continue to hold office 'in accordance with the rules of the State organisation's counterpart federal body' under s 71(5)(a) of the *Act*. It was submitted this was because under r 38(b) of its Rules, there has been a delay in the conduct of an election, and, as is contemplated by r 38(b)(i), the incumbents in office will remain in office until a successor takes up office after an election is held. Accordingly, on this footing, the respondent contended that as there has been no election because the Administrator has not authorised one, this constitutes a 'delay' for the purposes of r 38(b), upon which r 38(b)(i) operates to hold over existing office holders until the results of the next election are declared.
- 109 Irrespective of this, the respondent referred to its primary submissions above regarding the s 71 certificate operating according to its tenor. It was said that even if the officeholders of the Federal branch have ceased to hold office as a result of s 71(5)(a), and do so under cl 7(2) of the *Determination*, the certificate continues to operate because it makes no mention of the Federal branch Rules or holding office in accordance with them.
- 110 The Registrar submitted that the letter from the Administrator means that the officeholders of the Federal branch hold office not under r 38(b)(i) of its Rules, but under cl 7(2) of the *Determination*. On the basis that the Commission accepts that the *Determination* does not operate 'over the top' of the Rules of the Federal branch, the effect of the continuation in office of Federal branch officeholder is that they do not hold office 'in accordance with the rules of the State organisation's counterpart federal body' for the purposes of s 71(5)(a) of the *Act*.
- 111 Furthermore, the Registrar contended the effect of rr 38(b) and 38(b)(i) is not as the respondent maintained. The Registrar submitted that consideration must be given to the context of the Rules of the Federal branch as a whole, and s 145 of the *FW (RO) Act*. The latter provides that rules of a federal organisation must provide that terms of officeholders are not to exceed four years. Accordingly, read in this light, r 38(b)(i) is intended to operate only where an election is underway and is being finalised. This is not the case in this matter, as there has been no election and there may not be one for several years. Finally, as to the certificate and the respondent's argument it operates according to its tenor, the Registrar referred to her earlier submissions that the 'tenor' of the certificate is set out ss 71(5)(c) and (d), and not otherwise.
- 112 On reflection, having carefully considered the arguments advanced by both the Registrar and the respondent, I must approach these matters with the jurisdiction and powers conferred on me under s 66 of the *Act* firmly in mind. As noted earlier, s 66(2) enables the Chief Commissioner to 'make such order or give such directions relating to the rules of the organisation, their observance or non-observance or the manner of their observance, either generally or in the particular case...'. Whilst very broad, the primary purpose, and scope, of the powers under s 66(2) of the *Act*, are to ensure the observance of a State organisation's Rules and to keep an organisation 'on track': *Harry Arnott v Western Australian Police Union of Workers* [2022] WAIRC 00208; (2022) 102 WAIG 369 per Kenner CC at [67], citing and applying *Stacey*.
- 113 There is a power under s 66(2)(a)(v) to disallow a rule which is 'inconsistent with the democratic control of the organisation by its members'. It seems to me however, that the focus of the particular powers in s 66(2)(a) of the *Act*, to disallow a rule on the

bases set out in (i) to (v), are directed to the circumstance where the content of a particular rule itself, would have the relevant effect, in relation to the members of the organisation: *D.J. Stanton, L.G. Searle, G.K. Palmer and G.T. Kennedy v O.S. Middleton, President, The Civil Service Association of Western Australia Incorporated* (1991) 71 WAIG 46; *Michael Frederick Williams v The Shop, Distributive and Allied Employee's Association of Western Australia* [2005] WAIRC 00854; (2005) 85 WAIG 1961; *Jarrett v The Western Australian Locomotive Engine Drivers', Firemens' and Cleaners' Union of Workers* (1997) 77 WAIG 1386.

- 114 For example, in the *SDA case*, the issue was whether a rule banning a 'known communist' from nominating for office, was contrary to ss 66(2)(a) (ii) and (iv). In the *CSA case*, the issue was whether rules enabling a life member to occupy the office of President, was contrary to the democratic control of the organisation. In *Jarrett*, the matter in issue was whether a rule of the respondent union enabling the General President to suspend a member, was contrary to the democratic control of the organisation by its members. In the present case, the issue is the effect of another instrument, the *Determination*, on the Federal branch Rules, and in turn, on the operation of a rule of the respondent, r 16(4A), for the purposes of the *Act*. I think the connection is too remote.
- 115 However, irrespective of this particular issue of the scope of the powers in s 66(2)(a) of the *Act*, I consider the respondent's general submissions are to be preferred. In the present circumstances, the question is the effect of the *Determination*, and its impact on the operation of the *Act*. I do not think that is a matter that would enliven my jurisdiction under s 66(2). For the same reasons, nor do I think the operation of the Rules of the Federal branch in relation to elections, is a matter that I can inquire into for these purposes.
- 116 As long as there remain officeholders in the Federal branch, largely for the same reasons that I have concluded that there is no basis for me to go behind the s 71 certificate in relation to the first two issues considered in these proceedings, the certificate continues to have effect according to its tenor. Those in office in the Federal branch have not had their offices vacated under the *Determination* and, as a result, continue to hold office in the respondent, under the certificate, 'for all purposes'. There is no proscription of elections under the *Determination*. That is a matter for the Administrator to determine, no doubt in conjunction with the officers of the Federal branch, for as long as the *Determination* remains in effect. The *Determination* has an end date, and it may be concluded under its terms, prior to the end date. Once the Administration ceases, the Federal branch Rules in relation to elections and r 16(4A) of the respondent's Rules, will be re- enlivened.

#### Conclusion

- 117 For the foregoing reasons, I am not persuaded that there is a basis upon which I should exercise my discretion under s 66 of the *Act*. The application by the respondent to alter its Rules, presently before the Registrar, should proceed. This application must be dismissed.

2025 WAIRC 00307

#### ORDER PURSUANT TO S.66

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

#### PARTIES

REGISTRAR, WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

APPLICANT

-v-

THE CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION OF WORKERS

RESPONDENT

#### CORAM

CHIEF COMMISSIONER S J KENNER

#### DATE

FRIDAY, 16 MAY 2025

#### FILE NO/S

PRES 11 OF 2024

#### CITATION NO.

2025 WAIRC 00307

**Result** Application dismissed

#### Appearances

**Applicant** Mr S Pack of counsel

**Respondent** Mr E Heenan SC of counsel and with him Mr D Rafferty of counsel

#### Order

This matter having come on for hearing before me on 14 November 2024, and written submissions received on 24 April 2025 and 9 May 2025, and having heard Mr S Pack of counsel on behalf of the applicant and Mr E Heenan SC of counsel and with him Mr D Rafferty of counsel on behalf of the respondent, the Chief Commissioner, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), hereby orders –

THAT the application be and is hereby dismissed.

(Sgd.) S J KENNER,  
Chief Commissioner.

[L.S.]

## PROCEDURAL DIRECTIONS AND ORDERS—

2025 WAIRC 00294

### APPLICATION PURSUANT TO SECTION 80BH TO NAME WESTERN AUSTRALIAN MUNICIPAL, ADMINISTRATIVE, CLERICAL AND SERVICES UNION OF EMPLOYEES AS A PARTY TO THE LOCAL GOVERNMENT INDUSTRY AWARD 2020

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

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

-v-

CITY OF MELVILLE AND OTHERS REFERRED TO IN THE ATTACHED SCHEDULE

**RESPONDENTS****CORAM**

SENIOR COMMISSIONER R COSENTINO

**DATE**

WEDNESDAY, 14 MAY 2025

**FILE NO/S**

APPL 164 OF 2024

**CITATION NO.**

2025 WAIRC 00294

**Result**

Order issued

**Representation****Applicant**

Mr C Fogliani (of counsel)

**Respondents**

Ms D Lamb (of counsel) on behalf of the Shire of East Pilbara

Ms J Flinn (of counsel) on behalf of the Shire of Dundas

**Intervenor**

Relations

Ms R Panetta (of counsel) on behalf of the Hon. Minister for Industrial

*Order*

HAVING heard from Mr Fogliani on behalf of the applicant and Ms Lamb on behalf of the Shire of East Pilbara, Ms Flinn on behalf of the Shire of Dundas, and Ms Panetta on behalf of the intervenor, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA) (IR Act), hereby orders –

THAT any application by the Catalina Regional Council to be joined as party to these proceedings and to file written submissions in relation to the preliminary issue are to be filed by no later than 21 May 2025.

(Sgd.) R COSENTINO,  
Senior Commissioner.

[L.S.]

Schedule of Respondents

First Respondent	City of Melville
Second Respondent	City of Subiaco
Third Respondent	City of Swan
Fourth Respondent	Eastern Metropolitan Regional Council
Fifth Respondent	Shire of Beverley
Sixth Respondent	Shire of Boyup Brook
<del>Seventh Respondent</del>	<del>Shire of Bruce Rock</del>
Eighth Respondent	Shire of Capel
Ninth Respondent	Shire of Carnarvon
Tenth Respondent	Shire of Chapman Valley
Eleventh Respondent	Shire of Chittering
Twelfth Respondent	Shire of Coolgardie
Thirteenth Respondent	Shire of Coorow
Fourteenth Respondent	Shire of Cuballing
Fifteenth Respondent	Shire of Cunderdin

<del>Sixteenth Respondent</del>	<del>Shire of Dalwallinu</del>
Seventeenth Respondent	Shire of Dandaragan
Eighteenth Respondent	Shire of Dardanup
Nineteenth Respondent	Shire of Denmark
Twentieth Respondent	Shire of Donnybrook-Balingup
Twenty-First Respondent	Shire of Dundas
Twenty-Second Respondent	Shire of East Pilbara
Twenty-Third Respondent	Shire of Gingin
Twenty-Fourth Respondent	Shire of Gnowangerup
<del>Twenty-Fifth Respondent</del>	<del>Shire of Halls Creek</del>
Twenty-Sixth Respondent	Shire of Irwin
Twenty-Seventh Respondent	Shire of Jerramungup
Twenty-Eighth Respondent	Shire of Katanning
Twenty-Ninth Respondent	Shire of Kellerberrin
Thirtieth Respondent	Shire of Koorda
Thirty-First Respondent	Shire of Kulin
Thirty-Second Respondent	Shire of Lake Grace
Thirty-Third Respondent	Shire of Meekatharra
<del>Thirty-Fourth Respondent</del>	<del>Shire of Menzies</del>
Thirty-Fifth Respondent	Shire of Merredin
Thirty-Sixth Respondent	Shire of Mingenew
Thirty-Seventh Respondent	Shire of Moora
<del>Thirty-Eighth Respondent</del>	<del>Shire of Morawa</del>
<del>Thirty-Ninth Respondent</del>	<del>Shire of Mount Magnet</del>
Fortieth Respondent	Shire of Mount Marshall
Forty-First Respondent	Shire of Mukinbudin
Forty-Second Respondent	Shire of Murchison
Forty-Third Respondent	Shire of Narrogin
Forty-Fourth Respondent	Shire of Nganyatjarraku
Forty-Fifth Respondent	Shire of Northam
Forty-Sixth Respondent	Shire of Nungarin
Forty-Seventh Respondent	Shire of Quairading
Forty-Eighth Respondent	Shire of Serpentine-Jarrahdale
Forty-Ninth Respondent	Shire of Shark Bay
Fiftieth Respondent	Shire of Tammin
Fifty-First Respondent	Shire of Trayning
Fifty-Second Respondent	Shire of West Arthur
Fifty-Third Respondent	Shire of Wickepin
Fifty-Fourth Respondent	Shire of Williams
Fifty-Fifth Respondent	Shire of Wongan-Ballidu
Fifty-Sixth Respondent	Shire of Wyalkatchem
Fifty-Seventh Respondent	Town of East Fremantle
Fifty-Eighth Respondent	Town of Mosman Park
Fifty-Ninth Respondent	Western Metropolitan Regional Council
Sixtieth Respondent	Shire of Mundaring
Sixty-First Respondent	Shire of Esperance

2025 WAIRC 00289

**APPLICATION PURSUANT TO SECTION 80BH TO NAME WESTERN AUSTRALIAN MUNICIPAL,  
ADMINISTRATIVE, CLERICAL AND SERVICES UNION OF EMPLOYEES AS A PARTY TO THE LOCAL  
GOVERNMENT INDUSTRY AWARD 2020**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

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

**APPLICANT**

-v-

CITY OF MELVILLE AND OTHERS REFERRED TO IN THE ATTACHED SCHEDULE

**RESPONDENTS****CORAM**

SENIOR COMMISSIONER R COSENTINO

**DATE**

TUESDAY, 13 MAY 2025

**FILE NO/S**

APPL 164 OF 2024

**CITATION NO.**

2025 WAIRC 00289

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<b>Result</b>	Order issued
<b>Representation</b>	
<b>Applicant</b>	Mr C Fogliani (of counsel)
<b>Respondents</b>	Ms D Lamb (of counsel) on behalf of the Shire of East Pilbara Ms J Flinn (of counsel) on behalf of the Shire of Dundas
<b>Intervenor</b> Relations	Ms R Panetta (of counsel) on behalf of the Hon. Minister for Industrial

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*Order*

HAVING heard from Mr Fogliani on behalf of the applicant and Ms Lamb on behalf of the Shire of East Pilbara, Ms Flinn on behalf of the Shire of Dundas, and Ms Panetta on behalf of the intervenor, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA) (IR Act), hereby orders –

1. THAT pursuant to section 30 of the IR Act, the Honourable Minister for Industrial Relations has leave to intervene on behalf of the State in these proceedings in relation to the preliminary issue.
2. THAT the applicant has leave to amend its application to remove the Shire of Dalwallinu and the Shire of Halls Creek as respondents to this matter.
3. THAT any application by the Murchison Regional Vermin Council, and the Rivers Regional Council to be joined as parties to these proceedings and to file written submissions in relation to the preliminary issue are to be filed by no later than 21 May 2025.

(Sgd.) R COSENTINO,  
Senior Commissioner.

[L.S.]

Schedule of Respondents

First Respondent	City of Melville
Second Respondent	City of Subiaco
Third Respondent	City of Swan
Fourth Respondent	Eastern Metropolitan Regional Council
Fifth Respondent	Shire of Beverley
Sixth Respondent	Shire of Boyup Brook
<del>Seventh Respondent</del>	<del>Shire of Bruce Rock</del>
Eighth Respondent	Shire of Capel
Ninth Respondent	Shire of Carnarvon
Tenth Respondent	Shire of Chapman Valley
Eleventh Respondent	Shire of Chittering
Twelfth Respondent	Shire of Coolgardie
Thirteenth Respondent	Shire of Coorow
Fourteenth Respondent	Shire of Cuballing
Fifteenth Respondent	Shire of Cunderdin

<del>Sixteenth Respondent</del>	<del>Shire of Dalwallinu</del>
Seventeenth Respondent	Shire of Dandaragan
Eighteenth Respondent	Shire of Dardanup
Nineteenth Respondent	Shire of Denmark
Twentieth Respondent	Shire of Donnybrook-Balingup
Twenty-First Respondent	Shire of Dundas
Twenty-Second Respondent	Shire of East Pilbara
Twenty-Third Respondent	Shire of Gingin
Twenty-Fourth Respondent	Shire of Gnowangerup
<del>Twenty-Fifth Respondent</del>	<del>Shire of Halls Creek</del>
Twenty-Sixth Respondent	Shire of Irwin
Twenty-Seventh Respondent	Shire of Jerramungup
Twenty-Eighth Respondent	Shire of Katanning
Twenty-Ninth Respondent	Shire of Kellerberrin
Thirtieth Respondent	Shire of Koorda
Thirty-First Respondent	Shire of Kulin
Thirty-Second Respondent	Shire of Lake Grace
Thirty-Third Respondent	Shire of Meekatharra
<del>Thirty-Fourth Respondent</del>	<del>Shire of Menzies</del>
Thirty-Fifth Respondent	Shire of Merredin
Thirty-Sixth Respondent	Shire of Mingenew
Thirty-Seventh Respondent	Shire of Moora
<del>Thirty-Eighth Respondent</del>	<del>Shire of Morawa</del>
<del>Thirty-Ninth Respondent</del>	<del>Shire of Mount Magnet</del>
Fortieth Respondent	Shire of Mount Marshall
Forty-First Respondent	Shire of Mukinbudin
Forty-Second Respondent	Shire of Murchison
Forty-Third Respondent	Shire of Narrogin
Forty-Fourth Respondent	Shire of Nganyatjarraku
Forty-Fifth Respondent	Shire of Northam
Forty-Sixth Respondent	Shire of Nungarin
Forty-Seventh Respondent	Shire of Quairading
Forty-Eighth Respondent	Shire of Serpentine-Jarrahdale
Forty-Ninth Respondent	Shire of Shark Bay
Fiftieth Respondent	Shire of Tammin
Fifty-First Respondent	Shire of Trayning
Fifty-Second Respondent	Shire of West Arthur
Fifty-Third Respondent	Shire of Wickepin
Fifty-Fourth Respondent	Shire of Williams
Fifty-Fifth Respondent	Shire of Wongan-Ballidu
Fifty-Sixth Respondent	Shire of Wyalkatchem
Fifty-Seventh Respondent	Town of East Fremantle
Fifty-Eighth Respondent	Town of Mosman Park
Fifty-Ninth Respondent	Western Metropolitan Regional Council
Sixtieth Respondent	Shire of Mundaring
Sixty-First Respondent	Shire of Esperance

2025 WAIRC 00259

**APPLICATION PURSUANT TO SECTION 80BH TO NAME WESTERN AUSTRALIAN MUNICIPAL,  
ADMINISTRATIVE, CLERICAL AND SERVICES UNION OF EMPLOYEES AS A PARTY TO THE LOCAL  
GOVERNMENT INDUSTRY AWARD 2020**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

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

**APPLICANT**

-v-

CITY OF MELVILLE AND OTHERS REFERRED TO IN THE ATTACHED SCHEDULE

**RESPONDENTS****CORAM**

SENIOR COMMISSIONER R COSENTINO

**DATE**

TUESDAY, 29 APRIL 2025

**FILE NO/S**

APPL 164 OF 2024

**CITATION NO.**

2025 WAIRC 00259

**Result** Order issued

**Representation** On the papers

*Order*

WHEREAS on 18 March 2025 the Commission issued Direction [2025] WAIRC 00173, which, amongst other directions, specified timeframes for parties to make an application to be struck out as party to this matter, or to be joined as a party to this matter;

AND WHEREAS, in line with Direction 4, the Commission received applications from the Shire of Morawa, the Shire of Bruce Rock, the Shire of Menzies and the Shire of Mount Magnet seeking to be struck out as parties to this matter;

AND WHEREAS, in line with the Direction 5, the Shire of Esperance made an application seeking to be joined as a party to this matter;

AND WHEREAS the parties were invited to inform the Commission of any objections to the strike out applications and to the application to be joined as a party;

AND WHEREAS the Commission has not been informed by any party of any objection or opposition to the applications;

AND WHEREAS in these circumstances the Commission has determined that it is appropriate to deal with the applications on the papers;

AND WHEREAS the Commission has considered the applications and is satisfied that:

- (a) The Shire of Esperance ought to have been named as a party to the proceedings;
- (b) The Shires of Morawa, Bruce Rock, Menzies and Mount Magnet ought not to have been named as parties to the proceedings as the *Local Government Industry Award 2020* did not apply to them at the relevant time;

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

1. THAT pursuant to s 27(1)(j) of the Act, the Shire of Morawa, the Shire of Bruce Rock, the Shire of Menzies and the Shire of Mount Magnet are struck out as respondents and;
2. THAT pursuant to s 27(1)(j) of the Act, the Shire of Esperance is joined as the Sixty-First Respondent to this matter.

(Sgd.) R COSENTINO,  
Senior Commissioner.

[L.S.]

Schedule of Respondents

First Respondent	City of Melville
Second Respondent	City of Subiaco
Third Respondent	City of Swan
Fourth Respondent	Eastern Metropolitan Regional Council
Fifth Respondent	Shire of Beverley
Sixth Respondent	Shire of Boyup Brook
<del>Seventh Respondent</del>	<del>Shire of Bruce Rock</del>
Eighth Respondent	Shire of Capel
Ninth Respondent	Shire of Carnarvon

Tenth Respondent	Shire of Chapman Valley
Eleventh Respondent	Shire of Chittering
Twelfth Respondent	Shire of Coolgardie
Thirteenth Respondent	Shire of Coorow
Fourteenth Respondent	Shire of Cuballing
Fifteenth Respondent	Shire of Cunderdin
Sixteenth Respondent	Shire of Dalwallinu
Seventeenth Respondent	Shire of Dandaragan
Eighteenth Respondent	Shire of Dardanup
Nineteenth Respondent	Shire of Denmark
Twentieth Respondent	Shire of Donnybrook-Balingup
Twenty-First Respondent	Shire of Dundas
Twenty-Second Respondent	Shire of East Pilbara
Twenty-Third Respondent	Shire of Gingin
Twenty-Fourth Respondent	Shire of Gnowangerup
Twenty-Fifth Respondent	Shire of Halls Creek
Twenty-Sixth Respondent	Shire of Irwin
Twenty-Seventh Respondent	Shire of Jerramungup
Twenty-Eighth Respondent	Shire of Katanning
Twenty-Ninth Respondent	Shire of Kellerberrin
Thirtieth Respondent	Shire of Koorda
Thirty-First Respondent	Shire of Kulin
Thirty-Second Respondent	Shire of Lake Grace
Thirty-Third Respondent	Shire of Meekatharra
<del>Thirty-Fourth Respondent</del>	<del>Shire of Menzies</del>
Thirty-Fifth Respondent	Shire of Merredin
Thirty-Sixth Respondent	Shire of Mingenew
Thirty-Seventh Respondent	Shire of Moora
<del>Thirty-Eighth Respondent</del>	<del>Shire of Morawa</del>
<del>Thirty-Ninth Respondent</del>	<del>Shire of Mount Magnet</del>
Fortieth Respondent	Shire of Mount Marshall
Forty-First Respondent	Shire of Mukinbudin
Forty-Second Respondent	Shire of Murchison
Forty-Third Respondent	Shire of Narrogin
Forty-Fourth Respondent	Shire of Ngannatjarraku
Forty-Fifth Respondent	Shire of Northam
Forty-Sixth Respondent	Shire of Nungarin
Forty-Seventh Respondent	Shire of Quairading
Forty-Eighth Respondent	Shire of Serpentine-Jarrahdale
Forty-Ninth Respondent	Shire of Shark Bay
Fiftieth Respondent	Shire of Tammin
Fifty-First Respondent	Shire of Trayning
Fifty-Second Respondent	Shire of West Arthur
Fifty-Third Respondent	Shire of Wickelpin
Fifty-Fourth Respondent	Shire of Williams
Fifty-Fifth Respondent	Shire of Wongan-Ballidu
Fifty-Sixth Respondent	Shire of Wyalkatchem
Fifty-Seventh Respondent	Town of East Fremantle
Fifty-Eighth Respondent	Town of Mosman Park

Fifty-Ninth Respondent	Western Metropolitan Regional Council
Sixtieth Respondent	Shire of Mundaring
Sixty-First Respondent	Shire of Esperance

2025 WAIRC 00173

**APPLICATION PURSUANT TO SECTION 80BH TO NAME WESTERN AUSTRALIAN MUNICIPAL,  
ADMINISTRATIVE, CLERICAL AND SERVICES UNION OF EMPLOYEES AS A PARTY TO THE LOCAL  
GOVERNMENT INDUSTRY AWARD 2020**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

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

-v-

CITY OF MELVILLE AND OTHERS REFERRED TO IN THE ENCLOSED SCHEDULE OF  
RESPONDENTS**RESPONDENTS**

<b>CORAM</b>	SENIOR COMMISSIONER R COSENTINO
<b>DATE</b>	TUESDAY, 18 MARCH 2025
<b>FILE NO.</b>	APPL 164 OF 2024
<b>CITATION NO.</b>	2025 WAIRC 00173

**Result** Direction issued**Representation****Applicant**

Mr R Knox

**Respondents**

Ms D Lamb on behalf of the Shire of East Pilbara  
Ms V Cullen and Ms J Love on behalf of the Shire of Dundas  
Mr C Watts on behalf of the Shire of Merredin

*Direction*

HAVING heard from Mr Knox on behalf of the Western Australian Municipal, Administrative, Clerical and Services Union of Employees (**WASU**) and Ms Lamb on behalf of the Shire of East Pilbara, Ms Cullen and Ms Love on behalf of the Shire of Dundas, and Mr Watts on behalf of the Shire of Merredin, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), hereby directs –

1. THAT the Shire of Merredin has permission to appear at the directions hearing of 17 March 2025 remotely.
2. THAT the Shire of Merredin's application for leave to appear remotely in these proceedings, and all other such applications, be adjourned for later determination.
3. THAT WASU's application pursuant to s 27(1)(a) of the Act, dated 5 March 2025 and its application to amend that application dated 14 March 2025 are each dismissed.
4. THAT any application under s 27(1)(j) of the Act by a respondent to be struck out as a respondent on the basis that the *Local Government Industry Award 2020* did not apply to it at a relevant time is to be filed on or before 14 April 2025.
5. THAT any application by a non-party local government under s 27(1)(j) to be joined as a respondent on the basis that the *Local Government Industry Award 2020* did apply to it at a relevant time is to be filed on or before 14 April 2025.
6. THAT the question of whether the *Local Government Industry Award 2020* is a single New State Instrument applying collectively to local government employers or whether there is a separate New State Instrument in respect of individual local government employers be determined as a preliminary issue ('Preliminary Issue').
7. THAT WASU is to file written submissions and a list of authorities in relation to the Preliminary Issue by 31 March 2025.
8. THAT the Shire of Dundas is to file written submissions and a list of authorities in relation to the Preliminary Issue by 21 April 2025.
9. THAT if any other respondent wishes to be heard in relation to the Preliminary Issue, the respondent must file any written submissions and list of authorities by 9 May 2025. Submissions must not repeat the Shire of Dundas' written submissions but should be confined to any additional or expanded submissions. For clarity, if a

respondent has filed a Response adopting the Shire of Dundas' Response, the respondent will be taken to also adopt the Shire of Dundas' submissions without having to file any written submissions in relation to the Preliminary Issue.

10. THAT the Preliminary Issue be listed for hearing on a date to be fixed, not before 9 May 2025.

(Sgd.) R COSENTINO,  
Senior Commissioner.

[L.S.]

Schedule of Respondents

First Respondent - City of Melville  
 Second Respondent - City of Subiaco  
 Third Respondent - City of Swan  
 Fourth Respondent - Eastern Metropolitan Regional Council  
 Fifth Respondent - Shire of Beverley  
 Sixth Respondent - Shire of Boyup Brook  
 Seventh Respondent - Shire of Capel  
 Eighth Respondent - Shire of Carnarvon  
 Ninth Respondent - Shire of Chapman Valley  
 Tenth Respondent - Shire of Chittering  
 Eleventh Respondent - Shire of Coolgardie  
 Twelfth Respondent - Shire of Coorow  
 Thirteenth Respondent - Shire of Cuballing  
 Fourteenth Respondent - Shire of Cunderdin  
 Fifteenth Respondent - Shire of Dalwallinu  
 Sixteenth Respondent - Shire of Dandaragan  
 Seventeenth Respondent - Shire of Dardanup  
 Eighteenth Respondent - Shire of Denmark  
 Nineteenth Respondent - Shire of Dalwallinu  
 Twentieth Respondent - Shire of Donnybrook-Balingup  
 Twenty-First Respondent - Shire of Dundas  
 Twenty-Second Respondent - Shire of East Pilbara  
 Twenty-Third Respondent - Shire of Gingin  
 Twenty-Fourth Respondent - Shire of Gnowangerup  
 Twenty-Fifth Respondent - Shire of Halls Creek  
 Twenty-Sixth Respondent - Shire of Irwin  
 Twenty-Seventh Respondent - Shire of Jerramungup  
 Twenty-Eighth Respondent - Shire of Katanning  
 Twenty-Ninth Respondent - Shire of Kellerberrin  
 Thirtieth Respondent - Shire of Koorda  
 Thirty-First Respondent - Shire of Kulin  
 Thirty-Second Respondent - Shire of Lake Grace  
 Thirty-Third Respondent - Shire of Meekatharra  
 Thirty-Fourth Respondent - Shire of Menzies  
 Thirty-Fifth Respondent - Shire of Merredin  
 Thirty-Sixth Respondent - Shire of Mingenew  
 Thirty-Seventh Respondent - Shire of Moora  
 Thirty-Eighth Respondent - Shire of Morawa  
 Thirty-Ninth Respondent - Shire of Mount Magnet  
 Fortieth Respondent - Shire of Mount Marshall  
 Forty-First Respondent - Shire of Mukinbudin  
 Forty-Second Respondent - Shire of Murchison  
 Forty-Third Respondent - Shire of Narrogin

Forty-Fourth Respondent - Shire of Ngannytjarraku  
 Forty-Fifth Respondent - Shire of Northam  
 Forty-Sixth Respondent - Shire of Nungarin  
 Forty-Seventh Respondent - Shire of Quairading  
 Forty-Eighth Respondent - Shire of Serpentine-Jarrahdale  
 Forty-Ninth Respondent - Shire of Shark Bay  
 Fiftieth Respondent - Shire of Tammin  
 Fifty-First Respondent - Shire of Trayning  
 Fifty-Second Respondent - Shire of West Arthur  
 Fifty-Third Respondent - Shire of Wickepin  
 Fifty-Fourth Respondent - Shire of Williams  
 Fifty-Fifth Respondent - Shire of Wongan-Ballidu  
 Fifty-Sixth Respondent - Shire of Wyalkatchem  
 Fifty-Seventh Respondent - Town of East Fremantle  
 Fifty-Eighth Respondent - Town of Mosman Park  
 Fifty-Ninth Respondent - Western Metropolitan Regional Council  
 Sixtieth Respondent - Shire of Mundaring

2024 WAIRC 01061

**APPLICATION PURSUANT TO SECTION 80BH TO NAME WESTERN AUSTRALIAN MUNICIPAL,  
 ADMINISTRATIVE, CLERICAL AND SERVICES UNION OF EMPLOYEES AS A PARTY TO THE LOCAL  
 GOVERNMENT INDUSTRY AWARD 2020**

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
<b>PARTIES</b>	WESTERN AUSTRALIAN MUNICIPAL, ADMINISTRATIVE, CLERICAL AND SERVICES UNION OF EMPLOYEES	<b>APPLICANT</b>
	-v-	
	CITY OF MELVILLE AND OTHERS	<b>RESPONDENTS</b>
<b>CORAM</b>	SENIOR COMMISSIONER R COSENTINO	
<b>DATE</b>	FRIDAY, 20 DECEMBER 2024	
<b>FILE NO/S</b>	APPL 164 OF 2024	
<b>CITATION NO.</b>	2024 WAIRC 01061	

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<b>Result</b>	Order issued
<b>Representation</b>	(On the papers)

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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 time for any respondent to file a response to the application be extended to 4:00pm on Friday, 24 January 2025.

(Sgd.) R COSENTINO,  
 Senior Commissioner.

[L.S.]

2025 WAIRC 00235

## APPLICATION PURSUANT TO S 72A

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

## PARTIES

TRANSPORT WORKERS' UNION INDUSTRIAL UNION OF WORKERS WESTERN  
AUSTRALIAN BRANCH

APPLICANT

-v-

(NOT APPLICABLE)

RESPONDENT

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

FIRST INTERVENOR

LOCAL GOVERNMENT, RACING AND CEMETERIES EMPLOYEES UNION (WA)

SECOND INTERVENOR

CITY OF STIRLING

THIRD INTERVENOR

CITY OF MELVILLE

FOURTH INTERVENOR

CITY OF GOSNELLS

FIFTH INTERVENOR

## CORAM

COMMISSION IN COURT SESSION  
CHIEF COMMISSIONER S J KENNER  
SENIOR COMMISSIONER R COSENTINO  
COMMISSIONER T KUCERA

## DATE

THURSDAY, 10 APRIL 2025

## FILE NO.

CICS 3 OF 2025

## CITATION NO.

2025 WAIRC 00235

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<b>Result</b>	Direction issued
<b>Representation</b>	
<b>Applicant</b>	Mr L Slaney
<b>Intervenors</b>	Mr R Knox on behalf the Western Australian Municipal, Administrative, Clerical and Services Union of Employees Mr K Trainer on behalf of the Local Government, Racing and Cemeteries Employees Union (WA) Mr C Beetham of counsel on behalf of the City of Stirling and the City of Melville Mr T Hastings on behalf of the City of Gosnells

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*Direction*

HAVING heard Mr L Slaney on behalf of the applicant, Mr R Knox on behalf of the WASU, Mr K Trainer on behalf of the LGRCEU, Mr C Beetham of counsel on behalf of the City of Stirling and the City of Melville and Mr T Hastings on behalf of the City of Gosnells, the Commission in Court Session, pursuant to the powers conferred on it by the *Industrial Relations Act 1979* (WA), hereby directs –

- (1) THAT the WASU, the LGRCEU, the City of Stirling, the City of Melville and the City of Gosnells (the Intervenors) file and serve any responses to the application by no later than 1 May 2025.
- (2) THAT the applicant file:
  - (a) Any documents on which it intends to rely by no later than 22 May 2025; and
  - (b) Any witness outlines in accordance with Practice Note 9 of 2021 by no later than 22 May 2025.
- (3) THAT the Intervenors file:
  - (a) Any documents upon which they intend to rely by no later than 12 June 2025; and
  - (b) Any witness outlines in accordance with Practice Notice 9 by no later than 12 June 2025.
- (4) THAT the applicant file a written outline of submissions and a list of authorities upon which it intends to rely by 26 June 2025.

- (5) THAT the Intervenor file a written outline of submissions and a list of authorities upon which they intend to rely by 17 July 2025.
- (6) THAT the applicant and the Intervenor give notice to one another notice of witnesses they require to attend at the proceedings for the purposes of cross-examination by 17 July 2025.
- (7) THAT the application by listed for hearing on dates to be fixed.
- (8) THAT there be liberty to apply on short notice.

By the Commission in Court Session

[L.S.]

(Sgd.) S J KENNER,  
Chief Commissioner.

2025 WAIRC 00234

**APPLICATION PURSUANT TO S 72A**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

TRANSPORT WORKERS' UNION INDUSTRIAL UNION OF WORKERS WESTERN  
AUSTRALIAN BRANCH

**APPLICANT**

-v-

(NOT APPLICABLE)

**RESPONDENT**

**CORAM**

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER S J KENNER

SENIOR COMMISSIONER R COSENTINO

COMMISSIONER T KUCERA

**DATE**

THURSDAY, 10 APRIL 2025

**FILE NO/S**

CICS 3 OF 2025

**CITATION NO.**

2025 WAIRC 00234

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<b>Result</b>	Order issued
<b>Representation</b>	
<b>Applicant</b>	Mr L Slaney
<b>Proposed</b>	
<b>Intervenor</b>	Mr R Knox on behalf the Western Australian Municipal, Administrative, Clerical and Services Union of Employees
	Mr K Trainer on behalf of the Local Government, Racing and Cemeteries Employees Union (WA)
	Mr C Beetham of counsel on behalf of the City of Stirling and the City of Melville
	Mr T Hastings on behalf of the City of Gosnells

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*Order*

HAVING heard Mr L Slaney on behalf of the applicant, Mr R Knox on behalf of the WASU, Mr K Trainer on behalf of the LGRCEU, Mr C Beetham of counsel on behalf of the City of Stirling and the City of Melville and Mr T Hastings on behalf of the City of Gosnells, the Commission in Court Session, pursuant to the powers conferred on it by the *Industrial Relations Act 1979* (WA), hereby orders –

THAT the Western Australian Municipal, Administrative, Clerical and Services Union of Employees, the Local Government, Racing and Cemeteries Employees Union (WA), the City of Stirling, the City of Melville and the City of Gosnells be and are hereby granted leave to intervene in the herein proceedings.

By the Commission in Court Session

[L.S.]

(Sgd.) S J KENNER,  
Chief Commissioner.

2025 WAIRC 00337

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

MITCHELL J

DATE

MONDAY, 9 JUNE 2025

FILE NO/S

IAC 2 OF 2025

CITATION NO.

2025 WAIRC 00337

Result

Programming Order

Order

- 1. The appellant's notice of motion filed 3 June 2025 is granted.

[L.S.]

(Sgd.) S BASTIAN, Clerk of Court.

2025 WAIRC 00320

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 RELATIONS COMMISSION

PARTIES

THE CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION OF WORKERS

APPLICANT

-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

THURSDAY, 29 MAY 2025

FILE NO/S

IAC 2 OF 2025

CITATION NO.

2025 WAIRC 00320

Result

Programming Order Issued

Order

- 1. The time for the appellant to file its submissions and a list of legal authorities be extended to 30 May 2025.
2. The time for the respondent and each intervenor to file submissions and a list of legal authorities be extended to 27 June 2025.

[L.S.]

(Sgd.) S KEMP,  
Clerk of Court.

2025 WAIRC 00327

**APPEAL AGAINST THE DECISION OF THE FULL BENCH IN FBA 9 OF 2024**

WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT

**PARTIES**

IDA PALALOI

**APPELLANT**

-v-

DIRECTOR GENERAL, DEPARTMENT OF EDUCATION

**RESPONDENT****CORAM**

BUSS J

**DATE**

TUESDAY, 3 JUNE 2025

**FILE NO/S**

IAC 4 OF 2024

**CITATION NO.**

2025 WAIRC 00327

**Result**

Programming Order Issued

*Order*

1. The appellant's additional document received on 30 May 2025 be accepted for filing.

[L.S.]

(Sgd.) S KEMP,  
Clerk of Court.

2025 WAIRC 00308

**APPEAL AGAINST THE DECISION OF THE FULL BENCH IN FBA 9 OF 2024**

WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT

**PARTIES**

IDA PALALOI

**APPELLANT**

-v-

DIRECTOR GENERAL, DEPARTMENT OF EDUCATION

**RESPONDENT****CORAM**

BUSS J

**DATE**

FRIDAY, 16 MAY 2025

**FILE NO/S**

IAC 4 OF 2024

**CITATION NO.**

2025 WAIRC 00308

**Result**

Programming Order Issued

*Order*

1. The appellant's additional documents received on 14 May 2025 be accepted for filing.
2. By 4.00pm on 10 June 2025 the respondent file and serve written submissions and any affidavits in opposition to the appellant's notice of motion filed 9 May 2025.
3. By 4.00pm on 24 June 2025 the appellant file and serve any written submissions in reply.
4. The appellant's notice of motion filed 9 May 2025 is to be heard at the hearing of the appeal.

[L.S.]

(Sgd.) S KEMP,  
Clerk of Court.

2025 WAIRC 00335

**UNFAIR DISMISSAL APPLICATION**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

OLASOJI RAYMOND BAYONLE FALOHUN

**APPLICANT**

-v-

DEPARTMENT OF COMMUNITIES

**RESPONDENT**

**CORAM** COMMISSIONER T B WALKINGTON  
**DATE** FRIDAY, 6 JUNE 2025  
**FILE NO.** U 8 OF 2025  
**CITATION NO.** 2025 WAIRC 00335

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**Result** Directions issued  
**Representation**  
**Applicant** Mr O Falohun  
**Respondent** Mr M McIlwaine

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*Direction*

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

1. THAT the respondent file and serve an outline of submissions and any list of authorities upon which they intend to rely in the interlocutory matter, by no later than 15 July 2025;
2. THAT the applicant file and serve an outline of submissions and any list of authorities upon which they intend to rely in the interlocutory matter, by no later than 22 July 2025;
3. THAT the parties have liberty to apply on short notice.

(Sgd.) T B WALKINGTON,  
 Commissioner.

[L.S.]



2025 WAIRC 00331

**UNFAIR DISMISSAL APPLICATION**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

CAMERON MITCHELL

**APPLICANT**

-v-

DIRECTOR GENERAL, DEPARTMENT OF JUSTICE

**RESPONDENT**

**CORAM** COMMISSIONER T B WALKINGTON  
**DATE** THURSDAY, 5 JUNE 2025  
**FILE NO.** U 21 OF 2025  
**CITATION NO.** 2025 WAIRC 00331

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**Result** Direction issued  
**Representation**  
**Applicant** Mr C Mitchell  
**Respondent** Mr J Carroll (of counsel)

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*Direction*

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

1. THAT the question of whether the Commission ought to accept the application filed 'out of time', being more than 28 days after the termination of employment, be heard and determined as a preliminary matter;
2. THAT the applicant file and serve any outlines of witness evidence, any documents or materials and any submissions including a list of authorities upon which they intend to rely, that are relevant to the determination of the out of time issue, by no later than 19 June 2025;
3. THAT the respondent file and serve any outlines of witness evidence, any documents or materials and any submissions including a list of authorities, upon which they intend to rely, that are relevant to the determination of the out of time issue, by no later than 3 July 2025;
4. THAT the preliminary matter be listed for a one day hearing on a date to be fixed not before 10 July 2025; and
5. THAT the parties have liberty to apply on short notice.

(Sgd.) T B WALKINGTON,  
Commissioner.

[L.S.]

2025 WAIRC 00330

**UNFAIR DISMISSAL APPLICATION**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

CAMERON MITCHELL

**APPLICANT**

-v-

CHIEF EXECUTIVE OFFICER, DEPARTMENT OF JUSTICE

**RESPONDENT**

**CORAM**

COMMISSIONER T B WALKINGTON

**DATE**

THURSDAY, 5 JUNE 2025

**FILE NO/S**

U 21 OF 2025

**CITATION NO.**

2025 WAIRC 00330

**Result**

Name of respondent amended

**Representation**

**Applicant**

Mr C Mitchell

**Respondent**

Mr J 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 under the *Industrial Relations Act 1979* (WA), and by consent, hereby orders —

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

(Sgd.) T B WALKINGTON,  
Commissioner.

[L.S.]

2025 WAIRC 00332

**UNFAIR DISMISSAL APPLICATION**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

LISA KING

**APPLICANT**

-v-

THE TRUSTEE FOR SARAHS FAMILY TRUST

**RESPONDENT**

**CORAM**

COMMISSIONER T B WALKINGTON

**DATE**

FRIDAY, 6 JUNE 2025

**FILE NO.**

U 23 OF 2024

**CITATION NO.**

2025 WAIRC 00332

**Result** Direction issued  
**Representation**  
**Applicant** Ms Lisa King  
**Respondent** Ms Sarah O’Sullivan

*Direction*

HAVING heard from the applicant on her own behalf, and Ms O’Sullivan 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 —

1. THAT the time for compliance with Direction 9 of the directions made by the Commission on 1 April 2025 is extended to 10 June 2025; and
2. THAT the parties have liberty to apply on short notice.

(Sgd.) T B WALKINGTON,  
Commissioner.

[L.S.]



**2025 WAIRC 00300**

**UNFAIR DISMISSAL APPLICATION**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

STEVEN ANDREW LLOYD

**APPLICANT**

-v-

DIRECTOR GENERAL, DEPARTMENT OF JUSTICE

**RESPONDENT**

**CORAM** COMMISSIONER T B WALKINGTON

**DATE** THURSDAY, 15 MAY 2025

**FILE NO.** U 104 OF 2024

**CITATION NO.** 2025 WAIRC 00300

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

*Direction*

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 —

1. THAT the applicant file and serve any outlines of witness evidence and any documents upon which they intend to rely, by no later than 5 June 2025;
2. THAT the respondent file and serve any outlines of witness evidence and any documents upon which they intend to rely, by no later than 26 June 2025;
3. THAT the applicant file and serve any outlines of submissions and any list of authorities upon which they intend to rely, by no later than 10 July 2025;
4. THAT the respondent file and serve any outlines of submissions and any list of authorities upon which they intend to rely, by no later than 24 July 2025;
5. THAT the matter be listed for hearing on a date to be fixed not before 24 July 2025; and
6. THAT the parties have liberty to apply on short notice.

(Sgd.) T B WALKINGTON,  
Commissioner.

[L.S.]



2025 WAIRC 00326

**UNFAIR DISMISSAL APPLICATION**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

STACEY MCCABE

**APPLICANT**

-v-

DAVID AQUAILIA FAMILY TRUST

**RESPONDENT**

**CORAM** COMMISSIONER T B WALKINGTON  
**DATE** TUESDAY, 3 JUNE 2025  
**FILE NO.** U 105 OF 2024  
**CITATION NO.** 2025 WAIRC 00326

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**Result** Direction issued  
**Representation**  
**Applicant** Ms S McCabe  
**Respondent** Mr I Bennett (of counsel)

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*Direction*

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

1. THAT the question of whether the Commission ought to accept the application out of time be heard and determined as a preliminary matter;
2. THAT the applicant file and serve any outlines of witness evidence, any documents, an outline of submissions and any list of authorities upon which they intend to rely, that are relevant to the determination of the out of time issue, by no later than 17 June 2025;
3. THAT the respondent file and serve any outlines of witness evidence, documents, an outline of submissions and any list of authorities upon which they intend to rely, that are relevant to the determination of the out of time issue, by no later than 1 July 2025;
4. THAT the preliminary matter be listed for hearing, on a date to be determined not before 8 July 2025; and
5. THAT the parties have liberty to apply on short notice.

(Sgd.) T B WALKINGTON,  
Commissioner.

[L.S.]

2025 WAIRC 00324

**APPLICATION FOR EXTERNAL REVIEW PURSUANT TO SECTION 229 OF THE WORK HEALTH AND SAFETY ACT 2020**

THE WORK HEALTH AND SAFETY TRIBUNAL

**PARTIES**

DALWALLINU CONCRETE PTY LTD

**APPLICANT**

-v-

WORKSAFE COMMISSIONER

**RESPONDENT**

**CORAM** COMMISSIONER T EMMANUEL  
**DATE** FRIDAY, 30 MAY 2025  
**FILE NO/S** WHST 4-8 OF 2024  
**CITATION NO.** 2025 WAIRC 00324

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**Result** Order issued  
**Representation**  
**Applicant** Mr M Minucci (of counsel)

**Respondent** Mr E Heenan SC (of counsel)

*Order*

HAVING heard from Mr M Minucci (of counsel) on behalf of the applicant and Mr E Heenan SC (of counsel) on behalf of the respondent;

NOW THEREFORE the Work Health and Safety Tribunal (**Tribunal**), pursuant to the powers conferred under the *Work Health and Safety Act 2020* (WA) and the *Industrial Relations Act 1979* (WA), orders –

1. THAT the documents produced by the respondent to the Tribunal on 9 May 2025 in response to the five *Form 9 – Summons to Produce Documents* filed on 13 March 2025 (**Summonses**) be inspected by the Tribunal only to determine the respondent’s *Form 1A – Multipurpose Form* application to set aside the Summonses;
2. THAT the applicant is not permitted to inspect the documents produced by the respondent to the Tribunal on 9 May 2025 in response to the Summonses; and
3. THAT the Summonses be set aside.

(Sgd.) T EMMANUEL,  
Commissioner.

[L.S.]



**2025 WAIRC 00336**

**APPLICATION FOR EXTERNAL REVIEW - S229 - WHS ACT 2020**

THE WORK HEALTH AND SAFETY TRIBUNAL

**PARTIES**

BORVEK PTY LTD

**APPLICANT**

-v-

DEPARTMENT OF ENERGY, MINES, INDUSTRY REGULATION AND SAFETY (DEMIRS)

**RESPONDENT**

**CORAM** COMMISSIONER T EMMANUEL

**DATE** MONDAY, 9 JUNE 2025

**FILE NO/S** WHST 4 OF 2025

**CITATION NO.** 2025 WAIRC 00336

**Result** Order issued

**Representation**

**Applicant** Mr J Broad (as agent)

**Respondent** N/A

*Order*

WHEREAS this is an application to the Work Health and Safety Tribunal (**Tribunal**) for external review under the *Work Health and Safety Act 2020* (WA);

AND WHEREAS on 9 June 2025 the applicant emailed the Tribunal before application WHST 4 of 2025 had been served on the respondent, and informed it that he intended to name ‘WorkSafe Commissioner’ as the respondent to application WHST 4 of 2025;

NOW THEREFORE the Tribunal, pursuant to the powers conferred under the *Work Health and Safety Act 2020* (WA) and the *Industrial Relations Act 1979* (WA), orders–

THAT the name of the respondent be corrected to ‘WorkSafe Commissioner’.

(Sgd.) T EMMANUEL,  
Commissioner.

[L.S.]



**INDUSTRIAL AGREEMENTS—Notation of—**

<b>Agreement Name/Number</b>	<b>Date of Registration</b>	<b>Parties</b>		<b>Commissioner</b>	<b>Result</b>
City of Greater Geraldton Industrial Agreement 2023 - 2026 AG 32/2025	06/06/2025	City of Greater Geraldton	Western Australian Municipal, Administrative, Clerical and Services Union	Commissioner T Kucera	Agreement registered
Department of Communities (Child Protection) CSA Agreement 2024 AG 34/2025	04/06/2025	Department of Communities	Civil Service Association of Western Australia Incorporated	Senior Commissioner R Cosentino	Agreement Registered
Department of Justice Prison Officers' Industrial Agreement 2024 AG 22/2025	30/05/2025	Department of Justice	Western Australian Prison Officers Union	Commissioner T B Walkington	Agreement registered

**NOTICES—Appointments—****2025 WAIRC 00338****APPOINTMENT****ADDITIONAL PUBLIC SERVICE ARBITRATOR**

I, the undersigned Chief Commissioner of the Western Australian Industrial Relations Commission, acting pursuant to the provisions of section 80D of the *Industrial Relations Act 1979*, hereby appoint, subject to the provisions of the Act, Commissioner C Tsang to be an additional Public Service Arbitrator for a period of one year from the 1<sup>st</sup> day of July 2025.

Dated the 9<sup>th</sup> day of June 2025.

[L.S.]

(Sgd.) S J KENNER,  
Chief Commissioner.

**2025 WAIRC 00340****APPOINTMENT****ADDITIONAL PUBLIC SERVICE ARBITRATOR**

I, the undersigned Chief Commissioner of the Western Australian Industrial Relations Commission, acting pursuant to the provisions of section 80D of the *Industrial Relations Act 1979*, hereby appoint, subject to the provisions of the Act, Commissioner T Emmanuel to be an additional Public Service Arbitrator for a period of one year from the 1<sup>st</sup> day of July 2025.

Dated the 9<sup>th</sup> day of June 2025.

[L.S.]

(Sgd.) S J KENNER,  
Chief Commissioner.

**2025 WAIRC 00341****APPOINTMENT****ADDITIONAL PUBLIC SERVICE ARBITRATOR**

I, the undersigned Chief Commissioner of the Western Australian Industrial Relations Commission, acting pursuant to the provisions of section 80D of the *Industrial Relations Act 1979*, hereby appoint, subject to the provisions of the Act, Commissioner T Kucera to be an additional Public Service Arbitrator for a period of one year from the 1<sup>st</sup> day of July 2025.

Dated the 9<sup>th</sup> day of June 2025.

[L.S.]

(Sgd.) S J KENNER,  
Chief Commissioner.

2025 WAIRC 00339

**APPOINTMENT****ADDITIONAL PUBLIC SERVICE ARBITRATOR**

I, the undersigned Chief Commissioner of the Western Australian Industrial Relations Commission, acting pursuant to the provisions of section 80D of the *Industrial Relations Act 1979*, hereby appoint, subject to the provisions of the Act, Commissioner T Walkington to be an additional Public Service Arbitrator for a period of one year from the 1<sup>st</sup> day of July 2025.

Dated the 9<sup>th</sup> day of June 2025.

(Sgd.) S J KENNER,  
Chief Commissioner.

[L.S.]

**PUBLIC SERVICE APPEAL BOARD—**

2025 WAIRC 00329

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

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

AARON INNES

**APPELLANT**

-v-

COMMISSIONER OF POLICE, WESTERN AUSTRALIA POLICE FORCE

**RESPONDENT****CORAM**

PUBLIC SERVICE APPEAL BOARD

COMMISSIONER T B WALKINGTON — CHAIRPERSON

MS BRODIE SKALKO — BOARD MEMBER

MR BRUCE HAWKINS — BOARD MEMBER

**DATE**

TUESDAY, 4 JUNE 2025

**FILE NO**

PSAB 12 OF 2024

**CITATION NO.**

2025 WAIRC 00329

**Result** Leave to discontinue appeal granted

**Representation**

**Appellant** Mr S Hicks (of counsel)

**Respondent** Ms A Miller (of counsel)

*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 12 February 2025 the appellant informed the Commission in writing that he wished to discontinue his appeal PSAB 12 of 2024 (**Appeal**);

AND WHEREAS the respondent advised on 28 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 12 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 00302

**APPEAL AGAINST THE DECISION OF THE EMPLOYER TAKEN ON 9 DECEMBER 2024**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

KATE JENKINS

**APPELLANT**

-v-

HEALTH SUPPORT SERVICES

**RESPONDENT****CORAM**

PUBLIC SERVICE APPEAL BOARD

COMMISSIONER T EMMANUEL - CHAIRPERSON

MR G THOMPSON - BOARD MEMBER

MR B KIRWAN - BOARD MEMBER

**DATE**

FRIDAY, 16 MAY 2025

**FILE NO**

PSAB 37 OF 2024

**CITATION NO.**

2025 WAIRC 00302

**Result**

Application discontinued

**Representation****Appellant**

On her own behalf

**Respondent**

Mr J Carroll (of counsel)

*Order*

HAVING heard from the appellant on her own behalf and Mr J Carroll (of counsel) on behalf of the respondent;

WHEREAS application PSAB 37 of 2024 was listed for a show cause hearing on 16 May 2025, because the Public Service Appeal Board (**Board**) was concerned that Ms Jenkins was not prosecuting her case;

AND WHEREAS at the show cause hearing, Ms Jenkins said that she wanted to discontinue application PSAB 37 of 2024, and Health Support Services did not object to application PSAB 37 of 2024 being discontinued;

NOW THEREFORE the Board, pursuant to the powers conferred by the *Industrial Relations Act 1979* (WA), orders –

THAT application PSAB 37 of 2024 is discontinued.

(Sgd.) T EMMANUEL,  
Commissioner,

[L.S.]

On behalf of the Public Service Appeal Board.

2025 WAIRC 00310

**APPEAL AGAINST THE DISCIPLINARY DECISION AND PENALTY GIVEN ON 29 JULY 2024**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

REZA RUDD

**APPELLANT**

-v-

PUBLIC TRANSPORT AUTHORITY OF WESTERN AUSTRALIA

**RESPONDENT****CORAM**

PUBLIC SERVICE APPEAL BOARD

COMMISSIONER T KUCERA - CHAIRPERSON

MS B ANDERSON - BOARD MEMBER

MR J BATCHELOR - BOARD MEMBER

**DATE**

MONDAY, 19 MAY 2025

**FILE NO**

PSAB 23 OF 2024

**CITATION NO.**

2025 WAIRC 00310

**Result**

Application dismissed

**Representation**

**Appellant** No appearance  
**Respondent** Mr J Carroll (of counsel)

*Order*

WHEREAS the appellant on 1 October 2024, filed a *Form 8B – Notice of Appeal - Government Officers, Public Service Officers* under s80I(1)(d) of the *Industrial Relations Act 1979 (IR Act)* against a decision that was made by the respondent on 29 July 2024 to dismiss the appellant from his employment (**appeal**);

AND WHEREAS the respondent on 15 October 2024, filed a *Form 4 Response* to the appeal in which the respondent objected to the Board hearing the appeal on the ground that it was filed approximately six and a half weeks out of time;

AND WHEREAS on 14 February 2025 the Board made programming orders issued by consent (**programming orders**) for the Board to hear as a preliminary issue, the question of whether the appellant would be granted leave to appeal out of time (**preliminary issue**);

AND WHEREAS the appellant failed to file any witness outlines and any documents upon which he intended to rely that were not agreed documents in respect of the preliminary issue, as required by order 4 of the programming orders by 28 February 2025;

AND WHEREAS the appellant failed to file an outline of submissions on the preliminary issue, which the appellant was required to file pursuant to order 6 the programming orders by 21 March 2025;

AND WHEREAS the respondent on 24 March 2025 in accordance with order 7 of the programming orders, filed its submissions opposing the appellant's application for an extension of time (**respondent's submissions**);

AND WHEREAS the Board by way of an email to the appellant's representative dated 24 March 2025, directed the appellant to provide a response to the respondent's submissions by the close of business, 26 March 2025;

AND WHEREAS the appellant did not as directed, provide a response to the respondent's submissions;

AND WHEREAS on 1 April 2025 the application was listed for a show cause hearing to be held on 14 May 2025 (**show cause hearing**);

AND WHEREAS representatives for the respondent on 14 May 2025 appeared at the show cause hearing but there was no appearance by the appellant or his representative;

NOW THEREFORE, the Public Service Appeal Board, pursuant to the powers vested in it under s 27 of the IR Act hereby orders –

THAT the appeal be dismissed for want of prosecution.

(Sgd.) T KUCERA,  
 Commissioner,

On behalf of the Public Service Appeal Board.

[L.S.]

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