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AWARDS/AGREEMENTS AND ORDERS—Variation of—

2025 WAIRC 00777

REVIEW OF THE BAKERS' (METROPOLITAN) AWARD NO. 13 OF 1987 PURSUANT TO S 40B OF THE
INDUSTRIAL RELATIONS ACT 1979 (WA)

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

CITATION : 2025 WAIRC 00777
CORAM : SENIOR COMMISSIONER R COSENTINO
HEARD : TUESDAY, 9 SEPTEMBER 2025
DELIVERED : THURSDAY, 11 SEPTEMBER 2025
FILE NO. : APPL 16 OF 2025, APPL 19 OF 2025
BETWEEN : COMMISSIONS OWN MOTION
 Applicant
 AND
 (NOT APPLICABLE)
 Respondent

CatchWords : Industrial Law (WA) - Award Variation - Commission's own motion - Section 37D and Section 40B of the *Industrial Relations Act 1979 (WA)* - *Bakers (Metropolitan) Award No 13 of 1987* - To widen scope to encompass bakery industry throughout Western Australia and consolidate three separate awards into a single award - Removal of obsolete, out of date and discriminatory provisions - Variations to ensure award facilitates efficient organisation and performance of work balanced with fairness - Award varied.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 : *Industrial Relations Act 1979 (WA)*
Minimum Conditions of Employment Act 1993 (WA)
Equal Opportunity Act 1984 (WA)
Acts Amendment and Repeal (Competition Policy) Act 2003 (WA)
The Bread Act 1982 (WA)
Bread Act 1903 (WA)
Long Service Leave Act 1958 (WA)

Result : Award varied

Representation:

Mr B Entrekin and Ms D Arntzen on behalf of the Honourable Minister for Industrial Relations

Mr G Hansen of behalf of UnionsWA

Case(s) referred to in reasons:

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

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

2025 Location Allowance General Order [2025] WAIRC 00363; (2025) 105 WAIG 1194

Reasons for Decision

- 1 The Western Australian Industrial Relations **Commission** of its own motion, initiated two matters for variation of the *Bakers' (Metropolitan) Award No 13 of 1987*. Application 16 of 2025 was initiated under s 40B of the *Industrial Relations Act 1979 (WA) (IR Act)* and Application 19 of 2025 was initiated under section 37D of the IR Act. The applications were dealt with in tandem and ultimately consolidated. These are the reasons for the order issued in both matters, as consolidated.
- 2 Section 37D allows the Commission to vary the scope provisions of an award. Such a variation must be in accordance with s 37D(3) – (5) and (7):
 - (3) A variation must specify that the scope of the private sector award extends to and binds —
 - (a) employers of a class or classes specified in the award, whether or not the employers are also specified by name in the award; and
 - (b) employees —
 - (i) of employers referred to in paragraph (a); and
 - (ii) of a class or classes specified in the award.
 - (4) For the purposes of subsection (3)(a) and (b)(ii), the class may be described by reference to —
 - (a) a particular industry or part of an industry; or
 - (b) a particular kind of work
 - (5) A variation that stops the private sector award from extending to and binding particular employers or employees must not be made unless the Commission is satisfied that another appropriate award will extend to and bind them.
 - ...
 - (7) If the Commission varies the scope of a private sector award under this section, the Commission may also make other changes to the award that are consequential on the variation of the scope.
- 3 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.
- 4 The primary purpose for which the Commission moved to vary the scope of the Award was to achieve a consolidation of the Award with the *Bakers' (Country) Award No. 18 of 1977 (Country Award)* and the *Pastrycooks' Award No. 24 of 1981*.
- 5 All three awards contained provisions that were outdated or obsolete, or were less favourable than the MCE Act.
- 6 The Commission provided notice of its intention to vary the Award under s 40B and s 37D to:
 - (a) UnionsWA;
 - (b) Chamber of Commerce and Industry WA;
 - (c) Minister for Industrial Relations; and
 - (d) United Workers **Union** (WA) as the union party to the Award.

There are no employer parties to the Award.
- 7 The Commission also provided notice of its intention to vary the Award under s 37D to:
 - (a) the Baking Industry Employers Association of Western Australia; and

- (b) 15 employers who, in my opinion, constituted a sufficient number of employers reasonably representative of employers who would be bound by the variations.
- 8 The Commission then sought input from interested persons about the issues with the Award, and the appropriate revisions to address them. Mr Brendon Entrekin from the Private Sector Labour Relations division of the Department of Local Government, Industry Regulation and Safety provided the Commission with a detailed comparison of the terms and conditions of across the three awards. Mr Entrekin and his team also provided the Commission with information and feedback to assist in drafting proposed variations, for which I am grateful.
- 9 Any interested persons have had now an opportunity to provide comments in relation to draft variations which were circulated. The Union advised the Commission that it did not seek to be heard in relation to the draft variations.
- 10 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 9 September 2025 for the purpose of affording interested persons an opportunity to be heard in relation to those proposed variations.
- 11 The Minister indicated support for the proposed variations with some further minor variations to correct typographical errors. UnionsWA was also supportive of the variation.
- 12 I determined that it is appropriate to vary the Award by deleting all current provisions and substituting the Award in its entirety. I issued an order giving effect to the Award variations from 1 October 2025: *Commission's Own Motion v (Not Applicable) [2025] WAIRC 00771*.
- 13 In the following paragraphs, I set out briefly the rationale for the Award variations.

Variations to Scope

- 14 The Award scope applied within a radius of 45 kilometres from the Perth General Post Office, and the Country Award scope applied outside that radius. These geographical scope limits reflected the regulation of bakeries under the *Bread Act 1903 (WA)*.
- 15 The *Bread Act 1982 (WA)* repealed the *Bread Act 1903 (WA)* on 1 March 1983. The need for separate awards for country and metropolitan bakeries disappeared at that time, as geographical distinctions were removed in the *Bread Act 1982(WA)*.
- 16 The Award and the Country Award contained other provisions reflecting the regulation of bakeries under the *Bread Act 1982 (WA)*. That Act was repealed by the *Acts Amendment and Repeal (Competition Policy) Act 2003 (WA): s 3(1)*. With that repeal, any bread manufacturing industry specific considerations and rationale for special industry terms and conditions of employment for bakeries as distinct from patisseries were also diminished, if not totally removed.
- 17 The geographical scope limitations of the Country Award and metropolitan Award had anomalous consequences because the geographical boundaries have not kept up with the growth of the Perth metropolitan area. The effect of that delineation of scope today would be that a bakery in northern areas of Baldivis would be within the scope of the metropolitan Award, but bakeries in South Baldivis would not, and bakeries in South Carabooda would be within the scope of the metropolitan Award, but those north of Carabooda and in Yanchep would not.
- 18 The scope of the Award has been amended to refer to employers in the Baking Industry and their employees engaged in the classifications listed in the Award. Baking Industry is defined in clause 5 to mean the manufacturing, making and baking of bread, yeast goods, cakes, pies, pastries and pastry and sponge goods for sale. The Baking Industry includes bakeries, patisseries and bakehouses.
- 19 The new scope clause no longer refers to the *Bread Act 1982 (WA)*, and does not have geographical limits within Western Australia. It is intended that the new scope clause cover all employees and employers currently covered by the Award, and also employers and employees currently covered by the Country Award and the Pastrycooks' Award.
- 20 The clause specifies that it covers labour hire and group training arrangements when employees are hosted in the Baking Industry, consistent with standard provisions in other awards which have been varied under s 37D.
- 21 The Area clause has similarly been updated to a form consistent with standard provisions in other awards which have been varied under s 37D.
- 22 The classifications in the Award now include reference to trainees, to ensure that trainees in the Baking Industry, should there be any, are covered by the Award.

Variations that are incidental to the Scope variations

- 23 To give effect to the broadening of the scope of the Award, without resulting in any employee being worse off as a result, other incidental variations have been made.
- 24 The title is amended to refer to the Baking Industry, consistent with the varied scope.
- 25 The definitions clause includes definitions relevant to patisseries.
- 26 The hours of work clause has been standardised to give effect to the consolidation of the three awards, in circumstances where the *Bread Act 1982 (WA)* no longer has relevance to hours worked in the industry.
- 27 The Shiftwork clause from the Country Award, and the Protective Equipment and Uniforms provisions of the Pastrycooks' Award have been included, to ensure no loss of conditions resulting from the consolidation.
- 28 The Wages and Allowances clause includes classifications that existed in the Pastrycooks' Award.
- 29 Because the scope of the Award now applies beyond the Perth metropolitan area, a new clause 17 Fares and Travelling Time is included, taken from the Country Award, entitling employees to reimbursement of travelling expenses for travel outside their main town or city.

30 For the same reason, a new Location Allowance clause has been included, reflecting the Commission's General Order for Location Allowances: **2025 Location Allowance General Order** [2025] WAIRC 00363; (2025) 105 WAIG 1194

31 The clause contains a savings provision, clause 23, to ensure that no employee previously covered by the Award is worse off as a result of the variations.

Clause 1 – Title

32 The title of the Award has been modernised.

33 The year of the Award has been removed from its title, consistent with contemporary practice.

Clause 2 - Arrangement

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

Old Clause 3 - Term

35 This clause has been deleted as it is now obsolete.

Clause 6 – Definitions

36 There is a new definition for 'Modern Award' being the *Food, Beverage and Tobacco Manufacturing Award 2020* made under the *Fair Work Act 2009* (Cth) (**FW Act**). Some provisions, as varied, now make reference to the Modern Award.

37 The defined term 'Jobber' has been removed. The type of employment the definition described would likely now be referred to as casual employment.

38 The definitions for 'Making a dough' and 'making of' have been removed as those phrases are not used in the body of the Award and so the definitions are obsolete.

39 The Award refers to 'Leading hand' in place of 'Foreperson'.

Clause 7 – Contract of Employment

40 This clause has been renumbered from clause 13 which was previously titled 'Contract of Service.'

41 Provisions relating to termination are now contained in a separate clause 10.

42 The clause has been simplified for clarity about the types of engagement and how they are entered into.

43 Casual employment is defined by reference to s7B of the IR Act and a minimum engagement period of 3 hours for a casual employee is specified.

Clause 8 – Flexible Working Arrangements Requests

44 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 9 – Introduction of Change

45 The old clause 29 has been moved to clause 9 without substantive changes.

Clause 10 – Termination of Employment

46 This clause replaces the provisions about termination previously contained in clause 13 of the Award. The provisions about termination did not comply with the requirements of s117 of the FW Act which apply to State system employers and employees by virtue of Part 6.3 Division 3 of the FW Act.

Clause 11 – Redundancy

47 The old clause 30 has been moved to clause 11.

48 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**).

49 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.

50 Redundant provisions about superannuation benefits have been removed. These provisions were likely inconsistent with the General Order.

51 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.

52 Reference to the Dispute Settlement Procedure has been removed as it is unnecessary.

Clause 12 – Hours

53 This clause has been simplified. As the *Bread Act 1982* has been repealed, the prescriptive provisions about hours of work are obsolete.

Clause 13 – Overtime

54 Reference to the MCE Act provisions about reasonable overtime has been added to the clause to ensure compliance with the MCE Act.

55 Meal allowance amounts now refer to the amount contained in the Modern Award as varied from time to time, to ensure that the amount is self-updating.

Clause 14 – Wages

- 56 References to arbitrated safety net adjustments have been removed as obsolete and unnecessary.
57 Minor changes have been made to simplify the structure of the clause.

Clause 15–Penalty Rates

- 58 The Penalty Rates clause is new but it maintains the substantive provisions previously contained in the Hours clause, with a simplified format.

Clause 19 – Apprentices

- 59 Minor changes have been made to what was previously clause 17. The term ‘journeymen’ is replaced with ‘trade qualified employees’.

Clause 20 – Supported Wage System

- 60 This clause replaces the old clause 15 – Aged and Infirm Workers which was outdated and discriminatory.

Clause 21 – Payment of Wages

- 61 This clause has been renamed from the clause previously titled ‘38 Hour Week.’ Obsolete provisions introduced for the purpose of transitioning from a 40 hour to a 38 hour working week have been removed. Other variations have been made to simplify the clause and remove reference to payment of wages by cheque.

Clause 22 – Superannuation

- 62 This clause replaces clause 26 which was out-of-date and inconsistent with the IR Act and Commonwealth superannuation legislation in many respects. Those outdated provisions have been removed. The clause is now consistent with s48B of the IR Act.

Clause 24 – Public Holidays

- 63 The clause previously headed ‘Holidays’ dealt with both public holidays and annual leave. It has been separated into two separate clauses.
64 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 25 - Annual Leave

- 65 The annual leave provisions in the Holidays clause were inconsistent with the MCE Act in several respects.
66 The new clause aligns leave provisions with the MCE Act and retains the existing provisions for 17.5% annual leave loading.

Clause 26 – Personal Leave

- 67 ‘Absence through sickness’ was previously dealt with in clause 16. It was inconsistent with the MCE Act provisions about personal leave in several respects.
68 Clause 26 is now aligned with the personal leave provisions of the MCE Act.
69 The existing provisions about replacement of annual leave with personal leave, and transferring leave balances in circumstances of a transfer of business have been retained.

Clause 27 – Long Service Leave

- 70 This clause is renumbered from clause 18.
71 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 28 – Bereavement Leave

- 72 This clause is renumbered from clause 22- ‘Compassionate Leave.’ The clause has been renamed. The existing provisions were inconsistent with the MCE Act in several respects.
73 The Award has been updated in line with the provisions of the MCE Act.

Clause 29 – Parental Leave

- 74 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 30 – Family and Domestic Violence Leave

- 75 This is a new clause. It incorporates the provisions of the FW Act and the MCE Act concerning paid and unpaid family and domestic violence leave.

Clause 32: Records and Right of Entry

- 76 This clause replaces the appendix. It mirrors the IR Act’s provisions about maintenance of employment records and right of entry and inspection rights.

Clause 33 – Posting of Award

- 77 Minor variations have been made to this clause to remove obsolete references to counter signing of union notices, and to enable provision of the Award by electronic means.

Clause 34- Dispute Resolution Procedure

78 Minor variations have been made including renaming the clause and removing obsolete provisions.

Schedule A- Parties to the Award

79 The name of the union party has been updated to the Union's current name.

Other Changes

80 Clause 19 Allowances has been deleted as it is obsolete in light of the new hours provisions.

81 Clause 24 Income Maintenance Allowance has been removed as it is obsolete.

82 Clause 25 Liberty to Apply has been deleted as it is obsolete.

83 Schedules B and C have been removed. They contained provisions that relate to particular enterprises which no longer operate in the State system.

84 Former clauses 27 'Enterprise Hours of Work' and 28 'Enterprise Agreements' have been deleted as they were likely invalid, being contrary to the principles set out in *Commission's Own Motion v (Not Applicable)* [2023] WAIRC 00836; (2023) 103 WAIG 1836.

85 Gendered language has been removed.

86 The word 'worker' has been replaced with the word 'employee' throughout the Award for consistency.

87 Clauses have been renumbered and cross-referencing updated accordingly.

88 Percentages and numbers expressed in words have been replaced by numerals and symbols where appropriate.

Order

89 The variations contained in the schedule to these reasons will take effect on 1 October 2025.

SCHEDULE

Delete the entire contents of the *Bakers' (Metropolitan) Award No. 13 of 1987* (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:

BAKING INDUSTRY AWARD**PART 1 – GENERAL****1. - TITLE**

This award shall be known as the Baking Industry Award.

2. - 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 \$953.00 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 \$953.00 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 2025.

(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 2025 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 \$791.30 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 \$791.30 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 2025.
- (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.

3. - ARRANGEMENT

PART 1 – GENERAL

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

PART 2 – EMPLOYMENT RELATIONSHIP

- 7. Contract of Employment
- 8. Flexible Working Arrangement Requests
- 9. Introduction of Change
- 10. Termination of employment
- 11. Redundancy

PART 3 – HOURS

- 12. Hours
- 13. Overtime

PART 4 – WAGES AND ALLOWANCES

- 14. Wages and Allowances
- 15. Penalty Rates
- 16. Higher duties
- 17. Fares and Travelling
- 18. Location Allowance
- 19. Apprentices
- 20. Supported Wage
- 21. Payment of Wages
- 22. Superannuation
- 23. Savings Provision

PART 5 - LEAVE

- 24. Public Holidays
- 25. Annual Leave
- 26. Personal Leave
- 27. Long Service Leave
- 28. Bereavement Leave
- 29. Parental Leave
- 30. Family and Domestic Violence Leave

PART 6 - OTHER

- 31. Protective Equipment and Uniforms
- 32. Records and Right of Entry
- 33. Posting of Award and Union Notices
- 34. Dispute Resolution Procedure

Schedule A - Parties to the Award

4. – AREA

- (1) This Award has effect throughout Western Australia.
- (2) This Award also has effect with respect to employers who are connected to the State of Western Australia and their employees while performing work covered by this Award.

Note: For a non-exhaustive list of indicators of when an employer may be connected to the State of Western Australia, see section 3(2) of the *Industrial Relations Act 1979*. Indicators include, but are not limited to, whether the employer is:

- Domiciled or resident in, or has an office or a place of business in, the State; or
- registered, incorporated, or established under a law of the State; or
- the holder of a licence, lease, tenement, permit, or other authority, granted under a law of the State or by a public authority.

5. – SCOPE

- (1) This award applies to employers in the Baking Industry and their employees in the classifications listed in Clause 14 - Wages and Allowances to the exclusion of any other State award.
- (2) This award also applies to:
 - (a) employers that supply labour on an on-hire basis to host employers in respect of on-hire employees employed in the classifications provided in Clause 14 –Wages and Allowances of this award, and those on-hire employees, while engaged in the performance of work covered by this award; and
 - (b) employers that provide group training services for apprentices and/or trainees in the Baking Industry in respect of apprentices and/or trainees employed in one or more of the classifications mentioned in this award, and those apprentices and/or trainees, while engaged by a host employer in the performance of work covered by this award.
- (3) This award does not apply to:
 - (a) employers and employees who are subject to the national industrial relations system; and
 - (b) employees who are covered by the *Transport Workers (General) Award*.

6.- DEFINITIONS

- (1) “Assistant” means an employee, not being a Baker, Pastrycook or apprentice, who assists in the operations involved in the making and baking of bread, cakes or pastries, but does not handle, mix, mould or bake dough. Indicative tasks of an Assistant include sweeping up, scrubbing tables, greasing tins, sifting and emptying flour, pre-heating ovens, packaging products, preparing and weighing ingredients, papering tins, washing utensils, labelling, simple icing and piping, operating machines and other similar work.
- (2) “Bakehouse” means any establishment exclusively or principally manufacturing, making, baking or ornamenting bread, yeast goods, cakes, pies, pastries, pastry products or sponge goods for resale in another business.
- (3) "Baker" means an employee who is competent by training and experience to perform and who may be required to perform any or all of the operations involved in the baking of bread. Such operations, without limiting the definition, include the mixing, handling, moulding or baking of dough. Provided that such a baker may be required by the employer to perform any general work in connection with the bakehouse.
- (4) “Baking Industry” means the manufacturing, making and baking of bread, yeast goods, cakes, pies, pastries, pastry products and sponge goods for sale and includes bakeries, patisseries and bakehouses.
- (5) “Cake Decorator” means a person skilled in the art and employed in decorating and ornamenting cakes.
- (6) "Leading Hand" means an employee who has charge of the work and of one or more employees, including apprentices. Where an employer is himself substantially engaged in doing the actual work of an operative employee and also exercising supervision of the work in the bakehouse, they may be classed as a Leading Hand, but not otherwise.
- (7) “Modern Award” means the *Food, Beverage and Tobacco Manufacturing Award 2020* made under the *Fair Work Act 2009* (Cth).
- (8) “Pastrycook” means an employee other than an Assistant, Baker or apprentice who is employed in manufacturing, making, baking or ornamenting cakes, pastry, sponge goods and yeast goods for sale.
- (9) "Single Hand Baker" means a Baker who is employed in a bakehouse where there is no other person regularly employed in the mixing, handling or baking of dough, except where the employer regularly and substantially works in the bakehouse.
- (10) "Single Hand Pastrycook" means a tradesperson pastrycook employed in a bakehouse where there is no other tradesperson pastrycook employed.

PART 2 – EMPLOYMENT RELATIONSHIP

7. - CONTRACT OF EMPLOYMENT

- (1) An employer may engage an employee on either a full time, part time or casual basis subject to the terms of this Award. On engagement the employer must notify the employee in writing whether the employment is full time, part-time or casual and if the employment is for a fixed term, the end date of the fixed term.
- (2) Part-time employees are entitled to be paid the ordinary hourly rate for their classification in respect of all hours worked by the employee

- (3) A part time employee shall receive payment for wages, annual leave, personal leave and long service leave on a pro-rata basis in the same proportion as the number of hours regularly worked each week bears to 38 hours.
- (4) **Casual Employment**
- (a) "Casual employee" means an employee determined to be a casual employee in accordance with s 7B of the *Industrial Relations Act 1979* (WA).
- (b) At the time of engagement an employee must be notified in writing that the engagement is on a casual basis.
- (c) A casual employee may be engaged for not more than 38 ordinary hours per week nor more than 7.6 hours in one day.
- (d) Where this award refers to a penalty rate, overtime rate or shift loading, that rate or loading, for a casual employee, will be calculated on the ordinary hourly rate before the casual loading is applied.
- (e) Work performed by casual employees in excess of the hours specified in clause (c) shall be paid for at overtime rates of pay.
- (f) The minimum period of engagement for a casual employee shall be a minimum payment of 3 hours for any single shift.
- (g) The period of notice an employer or employee is to give to terminate casual employment is one hour. If the required period of notice is not given by the employer, one hour's wages must be paid in lieu of notice.
- (5) An employer may direct an employee to carry out such duties and to use such tools and equipment as are within the limits of the employee's skills, competence and training provided that such duties are not designed to promote deskilling and are consistent with the employer's obligation to provide a safe and healthy workplace.
- (6) **Standing Down of Employees**
- (a) (i) The employer is entitled to deduct payment for any day or part of a day on which an employee (including an apprentice) cannot be usefully employed because of industrial action by the union party to this award, or by any other association or union.
- (ii) If an employee is required to attend for work on any day but because of failure or shortage of electric power work is not provided, such employee must be entitled to two hours' pay and further, where any employee commences work the employee must be provided with four hours' employment or be paid for four hours' work.
- (b) The provisions of subclause (6)(a) of this clause also apply where the employee cannot be usefully employed through any cause which the employer could not reasonably have prevented but only if, and to the extent that, the employer and the union concerned so agree.

8. - 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).

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, programme, organisation, structure or technology that are likely to have "significant effect" on employees, the employer must notify the employees who may be affected by the proposed changes and their 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 the restructuring of jobs. Provided that where the award makes provision for alteration of any of the matters referred to herein an alteration must be deemed not to have "significant effects".
- (2) **Employer's Duty to Discuss Change**
- (a) The employer must discuss with the employees affected and their union, the introduction of the changes referred to in subclause (1) of this clause among other things, the effects the changes are likely to have on employees, measures to avoid or minimise the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their Union in relation to the changes.
- (b) The discussion must commence as soon as is practicable after a definite decision has been made by the employer to make the changes referred to in subclause (1) of this clause.
- (c) For the purpose of such discussion, the employer must provide in writing to the employees concerned and their union, all relevant information about the changes including the nature of the changes proposed; the expected effect of the changes on employees and other matters likely to affect employees provided that any employer must not be required to disclose confidential information the disclosure of which would be inimical to the employer's interests.

10. - TERMINATION OF EMPLOYMENT

- (1) An employer must give the employee written notice of termination in accordance with the following table:

Period of continuous service with employer	Period of notice
--	------------------

Not more than 1 year	At least 1 week
More than 1 year but less than 3 years	At least 2 weeks
More than 3 years but less than 5 years	At least 3 weeks
More than 5 years	At least 4 weeks

- (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:
- the employee's ordinary hours of work (even if they are not standard hours); and
 - the amounts ordinarily payable to the employee in respect of those hours, including for example, allowances, loadings and penalties; and
 - 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) (a) For the purpose of this clause continuity of service is not broken on account of -
- any interruption or termination of the employment by the employer if such interruption or termination has been made merely with the intention of avoiding obligations hereunder in respect of leave of absence;
 - any absence from work for which an employee is entitled to claim leave as prescribed by this award or on account of leave lawfully granted by the employer; or
 - any absence with reasonable cause, proof whereof must be upon the employee.
- (b) Service by the employee with a business which has been transferred from one employer to another and the employee's service has been deemed continuous in accordance with the *Long Service Leave Act 1958 (WA)* also constitutes continuous service for the purpose of this clause.
- (7) Notice of Termination by Employee: The notice required to be given by an employee shall be the same as that required of an employer, save and except that there shall be no additional notice based on the age of the employee concerned.
- (8) Time Off During Notice Period
- Where an employer has given notice of termination to an employee, that employee is, for the purpose of seeking other employment, entitled to be absent from work up to a maximum of one day without deduction of pay. The time off must be taken at times that are convenient to the employee after consultation with the employer.
- (9) Statement of Employment
- The employer must, upon receipt of a request from an employee whose employment has been terminated, provide to the employee a written statement specifying the period of employment and the classification or the type of work performed by the employee.
- (10) Except for subclause (9), this clause does not apply to casual employees.

11. - REDUNDANCY

- (1) Discussions Before Terminations
- Where an employer had made a definite decision that the employer no longer wishes the job the employee has been doing done by anyone and that decision may lead to termination of employment, the employer must hold discussions with the employees directly affected and with their union.
 - The discussion must take place as soon as is practicable after the employer has made a definite decision which will invoke the provisions of paragraph (a) of this subclause and must cover among other things, any reasons for the proposed termination, measures to avoid or minimise the termination and measures to minimise any adverse effect of any terminations on the employees concerned.
 - For the purpose of such discussion the employer must provide in writing to the employees concerned and their union, all relevant information about the proposed terminations including the reasons for the proposed termination, 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 any employer must not be required to disclose confidential information the disclosure of which would be inimical 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)(a) of this clause the employee must be entitled to the same period of notice of transfer as the employee would have been entitled to had the employment been terminated, and the employer may at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former ordinary weekly rate of wage and the new lower ordinary weekly rate of wage for the number of weeks of notice still owing.

(3) Severance Pay

(a) Employers who engage 15 or more employees at the time of any redundancies

In addition to the period of notice prescribed in subclause (1) and (2) of clause 10 - Termination of this award and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in subclause (1)(a) of this clause is 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
2 years but less than 3 years	6 weeks
3 years but less than 4 years	7 weeks
4 years but less than 5 years	8 weeks
5 years but less than 6 years	10 weeks
6 years but less than 7 years	11 weeks
7 years but less than 8 years	13 weeks
8 years but less than 9 years	14 weeks
9 years but less than 10 years	16 weeks
10 years and over	12 weeks

"Weeks pay" means the ordinary weekly rate of wage for the employee concerned.

(b) Employers who engage less than 15 employees at the time of any redundancies:

In addition to the period of notice prescribed in subclause (1) and (2) of clause 10 - Termination of this award and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in subclause (1)(a) of this clause is 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
2 years but less than 3 years	6 weeks
3 years but less than 4 years	7 weeks
4 years and over	8 weeks

"Weeks pay" means the ordinary weekly rate of wage for the employee concerned.

(c) For the purpose of this clause continuity of service is not broken on account of:

- (i) Any interruption or termination of the employment by the employer if such interruption or termination has been made merely with the intention of avoiding obligations hereunder in respect of leave of absence;
- (ii) Any absence from work on account for which an employee is entitled to paid leave as prescribed by this award or on account of leave lawfully granted by the employer; or
- (iii) Any absence with reasonable cause, proof whereof must be upon the employee.

Provided that in the calculation of continuous service under this subclause any time in respect of which an employee is absent from work except time for which an employee is entitled to claim paid leave as prescribed by this award must not count as time worked.

- (d) Service by the employee with a business which has been transferred from one employer to another and the employee's service has been deemed continuous in accordance with the *Long Service Leave Act 1958 (WA)* also constitutes continuous service for the purpose of this clause.

(4) Employee Leaving During Notice

An employee whose employment is to be terminated for reasons set out in subclause (1)(a) of this clause may terminate employment during the period of notice and, if so, must be entitled to the same benefits and payments under this clause had the employee remained with the employer until the expiry of such notice. Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

(5) Alternative Employment

An employer, in a particular redundancy case, may make application to the 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 of employment given by an employer, an employee whose employment is to be terminated for reasons set out in subclause (1)(a) of this clause is, for the purpose of seeking other employment, entitled to be absent from work during each week of notice up to a maximum of one day without deduction of pay.
- (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 must, at the request of the employer, be required to produce proof of

attendance at an interview or the employee must 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)(a) of this clause, the employer must 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) Employees With Less Than One Year's Service

This clause does not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity and to take such steps as may be reasonable to facilitate the obtaining by employees of suitable alternative employment.

(9) Employees Exempted

This clause must not apply where employment is terminated as a consequence of conduct that justifies instant dismissal or in the case of casual employees, apprentices or employees engaged for a specific period of time or for a specified task or tasks.

(10) Incapacity to Pay

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

PART 3 – HOURS

12. – HOURS

- (1) The ordinary hours of work shall be an average of 38 per week to be worked on one of the following basis:
- 38 hours within a work cycle not exceeding seven consecutive days; or
 - 76 hours within a work cycle not exceeding 14 consecutive days; or
 - 114 hours within a work cycle not exceeding 21 consecutive days; or
 - 152 hours within a work cycle not exceeding 28 consecutive days.
- (2) (a) The ordinary hours of work shall be worked in no more than 5 shifts with a maximum of 10 ordinary hours in any one shift.
- (b) The 5 shifts referred to in subclause (a) shall be worked on consecutive days and at least one of the days not worked in a 7 day cycle must be Saturday or Sunday.
- (3) The ordinary daily working hours shall be worked continuously except for meal breaks and rest periods.
- (4) A meal break of not less than 30 minutes shall be allowed to each employee such that an employee shall not be compelled to work for more than 5 hours without a meal break.
- (5) Where a shift exceeds four hours, an employee is entitled to a rest period of not less than 10 minutes, counted as time worked, taken at a time that is convenient to the employer.
- (6) Employees are entitled to a break of 10 consecutive hours between successive shifts.
- (7) At least 7 days prior the commencement of a weekly roster period, the employer must provide the weekly roster to employees, showing the time each employee is to commence work on each shift during that week for which they are rostered. The roster may be provided in an electronic form that is readily accessible to employees.

13. - OVERTIME

- (1) All time worked on any day or in any week in excess of or outside the ordinary hours prescribed under Clause 12 shall be paid for at the rate of time and one half for the first two hours and double time thereafter.
- (2) All overtime worked on a Sunday shall be paid at the rate of double time.
- (3) In the computation of overtime rates, each day shall stand alone.
- (4) Notwithstanding anything contained in this award –
- Subject to the provisions of Part 2A of the *Minimum Conditions of Employment Act 1993 (WA)*, an employer may require any employee to work reasonable overtime at overtime rates and such employee shall work overtime in accordance with such requirement.
 - No organisation, party to this award, or employee covered by this award, shall in any way, whether directly or indirectly, be a party to or concerned in any ban, limitation or restriction upon the working of overtime in accordance with the requirements of this subclause.
- (5) For the purposes of any calculations necessary under this award:-
- 8 to 22 minutes shall be deemed 1/4 hour
 - 23 to 37 minutes shall be deemed 1/2 hour
 - 38 to 52 minutes shall be deemed 3/4 hour

53 to 67 minutes shall be deemed one hour

- (6) (a) An employee required to work overtime for two hours or more shall be supplied with a meal by their employer or paid an allowance equal to the amount specified in clause 20.3(a) of the Modern Award as varied from time to time.
- (b) If the amount of overtime required to be worked necessitates a second or subsequent meal, the employer shall provide such meal or pay an amount equal to the amount specified in clause 20.3(a) of the Modern Award as varied from time to time for each such meal.
- (c) An employee called on to work for more than five hours after commencing work who has not been granted a meal break shall be paid at overtime rates until the meal break is granted or until the end of the shift, whichever is earlier.
- (d) The provisions of paragraphs (a) and (b) of this subclause do not apply:
- (i) in respect of any period of overtime for which the employee has been notified on the previous day or earlier that they will be required, or
- (ii) to any employee who lives in the locality in which the place of work is situated in respect of any meal for which they can reasonably go home.
- (7) (a) An employee (other than a casual employee) who works so much overtime between the end of their ordinary hours on one day and the commencement of their ordinary hours on the next day that they have not had at least 10 consecutive hours off duty between those times shall, subject to this subclause, be released after completion of such overtime until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- (b) If, on the instructions of the employer, such employee resumes or continues work without having had such 10 consecutive hours off duty, they shall be paid at double rates until they are released from duty for such period and the employee shall then be entitled to be absent until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

WAGES AND ALLOWANCES

14. – WAGES AND ALLOWANCES

- (1) The minimum weekly ordinary wages payable under this award are:

Classification	Award Rate
	\$
Trainee	As provided for in the <i>Miscellaneous Award 2020</i> , Schedule E, Clause E.4.
Doughmaker	1053.70
Single Hand Baker	1053.70
Single Hand Pastrycook	1034.10
Baker	1032.70
Pastrycook	1031.20
Cake Decorator	975.30
Assistant	953.00

- (2) A casual employee shall be paid an hourly rate equal to 1/38th of the ordinary rate for the relevant classification in which they are employed plus 25% casual loading. A casual employee is entitled to a minimum payment of 3 consecutive hours on any day.
- (3) In addition to the total wage prescribed in this clause a Leading Hand shall be paid an allowance equal to the applicable percentage of the weekly rate for a Doughmaker, rounded to the nearest 10 cents, as set out below:
- | | % of Dough maker rate |
|---|-----------------------|
| (i) if placed in charge of less than four other employees (per week) | 2.7 |
| (ii) if placed in charge of four but less than ten other employees (per week) | 4.4 |
| (iii) if placed in charge of ten and less than 20 other employees (per week) | 6.8 |
| (iv) if placed in charge of 20 or more other employees (per week) | 8.8 |
- (4) Laundry Allowance
Where the employer requires uniforms to be worn they shall be supplied, laundered and remain the property of the employer, provided that in lieu of the employer laundering the same, the employee shall be paid \$5 per week towards the costs of laundering.
- (5) Employees aged under 21
(i) Employees aged under 21 shall be paid the following percentages of the appropriate adult rate for the work upon which they are engaged.

- | | |
|--------------------------------|-----|
| | % |
| Under 16 years of age | 45 |
| Between 16 and 17 years of age | 60 |
| Between 17 and 18 years of age | 70 |
| Between 18 and 19 years of age | 80 |
| Between 19 and 20 years of age | 90 |
| Between 20 and 21 years of age | 100 |
- (ii) If an employee aged under 21 has completed an apprenticeship in the Baking industry, and is employed as a tradesperson, they are entitled to be paid the adult tradesperson rate of pay.

15. PENALTY RATES

- (1) For working ordinary hours (other than on a Public Holiday) an employee shall be paid the following rates expressed as a percentage of the ordinary hourly rate applicable between 6:00 a.m. and 6:00 p.m. on any day of the week, other than Saturday or Sunday:

	Midnight to 6:00 a.m.	6:00 a.m. to 6:00 p.m.	6:00 pm to midnight
Monday to Friday inclusive	136%	100%	136%

- (2) All work performed on Saturdays shall be paid at the rate of time and half.
- (3) All work performed on Sundays shall be paid at the rate of double time.
- (4) Where an employee is required to work on a public holiday as prescribed by this award, the employee shall be paid at the rate of double time and one half for all hours worked.
- (5) Payment of the rates prescribed in this clause shall only be for each hour worked in the specified time periods and shall not be cumulative with overtime penalties.

16. - HIGHER DUTIES

Employees called upon to perform duties for which a higher rate is prescribed than that which they are in receipt of, shall be paid such higher rate for such time as they are actually performing such higher duties, if so employed for less than four hours and, if employed for four hours or more, they shall receive a day's pay at such higher rate.

17. – FARES AND TRAVELLING TIME

An employee relieving in any location outside the town or city of their ordinary place of work shall be paid their reasonable cost of transport including travelling expenses from the employee's home to the place of work and return.

18. - LOCATION ALLOWANCES

- (1) Subject to the provisions of this clause, in addition to the rates prescribed in the wages clause of this award, an employee shall be paid the following weekly allowances when employed in the towns prescribed hereunder. Provided that where the wages are prescribed as fortnightly rates of pay, these allowances shall be shown as fortnightly allowances.

TOWN	PER WEEK
Agnew	\$25.90
Argyle	\$70.00
Balladonia	\$27.20
Barrow Island	\$45.60
Boulder	\$11.10
Broome	\$41.90
Bullfinch	\$12.10
Carnarvon	\$21.50
Cockatoo Island	\$45.80
Coolgardie	\$11.10
Cue	\$26.70
Dampier	\$36.50
Denham	\$21.50
Derby	\$43.50
Esperance	\$7.40
Eucla	\$29.10
Exmouth	\$38.50
Fitzroy Crossing	\$52.90
Halls Creek	\$61.40

Kalbarri	\$9.40
Kalgoorlie	\$11.10
Kambalda	\$11.10
Karratha	\$44.10
Koolan Island	\$45.80
Koolyanobbing	\$12.10
Kununurra	\$70.00
Laverton	\$26.60
Learmonth	\$38.50
Leinster	\$25.90
Leonora	\$26.60
Madura	\$28.20
Marble Bar	\$68.20
Meekatharra	\$23.10
Mount Magnet	\$29.00
Mundrabilla	\$28.70
Newman	\$24.90
Norseman	\$23.30
Nullagine	\$68.10
Onslow	\$45.60
Pannawonica	\$33.90
Paraburdoo	\$33.80
Port Hedland	\$36.40
Ravensthorpe	\$13.60
Roebourne	\$50.80
Sandstone	\$25.90
Shark Bay	\$21.50
Southern Cross	\$12.10
Telfer	\$62.50
Teutonic Bore	\$25.90
Tom Price	\$33.80
Whim Creek	\$43.60
Wickham	\$42.00
Wiluna	\$26.10
Wyndham	\$65.40

- (2) Except as provided in subclause (3) of this clause, an employee who has:
- (a) a dependant shall be paid double the allowance prescribed in subclause (1) of this clause;
 - (b) a partial dependant shall be paid the allowance prescribed in subclause (1) of this clause plus the difference between that rate and the amount such partial dependant is receiving by way of a district or location allowance.
- (3) Where an employee:
- (a) is provided with board and lodging by their employer, free of charge; or
 - (b) is provided with an allowance in lieu of board and lodging by virtue of the award or an order or agreement made pursuant to the *Act*;
- such employee shall be paid $66 \frac{2}{3}$ per cent of the allowances prescribed in subclause (1) of this clause.
- (4) Subject to subclause (2) of this clause, junior employees, casual employees, part time employees, apprentices receiving less than adult rate and employees employed for less than a full week shall receive that proportion of the location allowance as equates with the proportion that their wage for ordinary hours that week is to the adult rate for the work performed.
- (5) Where an employee is on annual leave or receives payment in lieu of annual leave they shall be paid for the period of such leave the location allowance to which they would ordinarily be entitled.
- (6) Where an employee is on long service leave or other approved leave with pay (other than annual leave) they shall only be paid location allowance for the period of such leave they remain in the location in which they are employed.

- (7) For the purposes of this clause:
- (a) "Dependant" shall mean -
- (i) a spouse or defacto partner; or
- (ii) a child where there is no spouse or defacto partner;
- who does not receive a location allowance or who, if in receipt of a salary or wage package, receives no consideration for which the location allowance is payable pursuant to the provisions of this clause.
- (b) "Partial Dependant" shall mean a "dependant" as prescribed in paragraph (a) of this subclause who receives a location allowance which is less than the location allowance prescribed in subclause (1) of this clause or who, if in receipt of a salary or wage package, receives less than a full consideration for which the location allowance is payable pursuant to the provisions of this clause.
- (8) Where an employee is employed in a town or location not specified in this clause the allowance payable for the purpose of subclause (1) of this clause shall be such amount as may be agreed between Australian Mines and Metals Association, the Chamber of Commerce and Industry of Western Australia and UnionsWA or, failing such agreement, as may be determined by the Commission.
- (9) Subject to the making of a General Order pursuant to s 50 of the Act, that part of each location allowance representing prices shall be varied from the beginning of the first pay period commencing on or after the 1st day in July of each year in accordance with the annual percentage change in the Consumer Price Index (excluding housing) for Perth, measured to the end of the immediately preceding March quarter, the calculation to be taken to the nearest ten cents.

19. - APPRENTICES

- (1) The maximum number of apprentices allowed to any employer shall be in the proportion of one to every four or fraction of four trade qualified employees employed. Provided that the employer who is bona fide working as a baker shall be regarded as a trade qualified employee permanently employed.
- (2) Apprentices shall, with the approval of the employer and the union, be interchangeable between bakeries for the purpose of experience and their services shall be deemed to be continuous for Long Service Leave and all other benefits, provided they return to their original employer.
- (3) Apprentices (percentage of the Baker's rate per week)
- | | |
|-----------------------------|----|
| Four year term: | % |
| First year | 42 |
| Second year | 55 |
| Third year | 75 |
| Fourth year | 88 |
| Three and a half year term: | |
| First six months | 42 |
| Next following year | 55 |
| Next following year | 75 |
| Final year | 88 |
| Three year term: | |
| First year | 55 |
| Second year | 75 |
| Final year | 88 |

20. - 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.
- (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.

21. - PAYMENT OF WAGES

- (1) Each employee shall be paid the appropriate rate shown in Clause 14. – Wages and Allowances of this award. Subject to subclause (2) of this clause payment shall be pro-rata where less than the full week is worked.
- (2) Wages shall be paid as follows:
- (a) Actual ordinary hours:
In the case of an employee whose ordinary hours of work are such that the employee works the same number of ordinary hours each week, wages shall be paid weekly or fortnightly according to the actual ordinary hours worked each week or fortnight.
- (b) Average of ordinary hours:
Subject to subclauses (3) hereof, in the case of an employee whose ordinary hours of work are averaged during a particular work cycle, wages shall be paid weekly or fortnightly according to a weekly average of ordinary hours worked even though more or less ordinary hours may be worked in any particular week of the work cycle.
- (3) Method of Payment:
An employee may be paid wages by cash or electronic transfer into a bank or building society account specified by the employee. Where wages are paid in cash, payment may be made during the employee's time, provided that the employee is kept waiting no longer than 15 minutes.
- (4) Payslips:
The employer must provide pay slips in accordance with s 49DA of the *Industrial Relations Act 1979* (WA).
- (5) Calculation of Hourly Rate:
The ordinary rate per hour shall be calculated by dividing the appropriate weekly rate by 38.

22. – 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 an employee.

23. - SAVINGS PROVISION

- (1) This clause applies to employees who were employed by an employer bound by this award as at 1 October 2025.
- (2) If an employee was entitled to receive a rate of pay, allowance or benefit under the award which applied to the employee immediately prior to 1 October 2025 which is greater than the rate of pay, allowance or benefit contained in this award, the employee shall continue to be entitled to be paid the greater rate of pay or allowance and to receive the greater benefit.

PART 5 – LEAVE

24. – PUBLIC HOLIDAYS

- (1) 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.
- (2) 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.
- (3) 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).

- (4) When work is performed on any of the days mentioned in subclause(1) the employee shall be paid at the rate of double time and a half for all hours worked.
- (5) (a) At the request of an employee who works on any prescribed public holiday, and with the agreement of the employer, paid time off in lieu of payment for the work done may be taken. Such time off in lieu, when taken during ordinary hours, shall compensate for the penalty premium at which the time off in lieu accrued. For example, two and one half ordinary hours compensates for one hour of double and one half time.
- (b) The taking of paid time off in lieu of payment for work done on any prescribed public holiday shall be agreed at the time of the employee accepting the offer to work on the public holiday otherwise payment in accordance with paragraph (4) of this subclause shall be made.
- (c) Subject to the limitations imposed by paragraphs (a) and (b) of this subclause, part payment and part paid time off in lieu of payment for work done on any prescribed holiday may be agreed between the employee and employer.

25. - ANNUAL LEAVE

- (1) Annual leave is provided for in the *Minimum Conditions of Employment Act 1993* (WA).
- (2) (a) During a period of annual leave an employee shall be paid a loading being the greater of:
- (i) 17.5% calculated on the employee's ordinary wage as prescribed; or
- (ii) The penalty loadings prescribed by clause 15 - Penalty Rates for shifts which the employee would have been rostered to work had the employee not been on leave during the relevant period.
- (b) The loading prescribed by this subclause shall not apply to proportionate leave on termination.
- (3) The provisions of this clause shall not apply to casual employees.

26. - PERSONAL LEAVE

- (1) Personal leave is as provided for in the *Minimum Conditions of Employment Act 1993* (WA).
- (2) If an employee is absent on the ground of personal ill health or injury for a period longer than their entitlement to paid personal leave, payment may be adjusted at the end of the relevant year of service, or at the time the employee's services terminate, if before the end of that year of service, to the extent that the employee has become entitled to further paid personal leave during that year of service.
- (3) (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 25 - Annual Leave shall be deemed to have been paid with respect to the replaced annual leave.
- (4) 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.
- (2) Other than the entitlement to unpaid carer's leave, the provisions of this clause do not apply to casual employees

27. - LONG SERVICE LEAVE

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

28. - BEREAVEMENT LEAVE

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

29. - PARENTAL LEAVE

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

30. - 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).

PART 6 – OTHER

31.- PROTECTIVE EQUIPMENT AND UNIFORMS

- (1) Each employer shall be required to provide suitable accommodation for employees to change their working clothes and suitable washing facilities.
- (2) Where the conditions of work are such that employees are unable to avoid their clothing becoming excessively wet or dirty, they shall be supplied with suitable protective clothing or materials. Such protective clothing or materials shall remain the property of the employer and shall be returned when required in good order and condition, fair wear and tear excepted.

32. - RECORDS AND RIGHT OF ENTRY

- (1) An employer must keep employment records and provide pay slips in accordance with Part II, Division 2F Keeping of and access to employment records and pay slips of the *Industrial Relations Act 1979* (WA) and section 26 of the *Long Service Leave Act 1958* (WA).
- (2) Conditions regarding right of entry by authorised representatives of the union are dealt with in Part II, Division 2G Right of entry and inspection by authorised representatives of the *Industrial Relations Act 1979* (WA).

33. - POSTING OF AWARD AND UNION NOTICES

- (1) An employer shall provide a notice board of reasonable dimensions to be erected in a prominent position in the employer’s establishment upon which an accredited union representative shall be permitted to post union notices.
- (2) A copy of this award shall be allowed to be posted on the notice board referred it in subclause (1) of this clause or provided to employees by electronic means.

34. - DISPUTE RESOLUTION PROCEDURE

Any questions, disputes or claims arising in relation to this award, or in relation to employment generally shall be dealt with in the following manner:

- (1) In the first instance all the facts of the dispute matter or grievance will be discussed without delay between the employee/s concerned and the appropriate supervisor/s. The appropriate Shop Steward/s to be present if requested by the employee/s.
- (2) If not settled, the matter shall be discussed between an accredited Union Representative and the delegated Officer of the employer.
- (3) If agreement has not then been reached, the matter shall be discussed between a Management Representative of the employer and an appropriate Official of the Union.
- (4) If the matter is still not settled, it shall be submitted to the Western Australian Industrial Relations Commission for decision which shall, subject to any appeal in accordance with the *Act*, be final.
- (5) Until the matter is determined, work shall continue in accordance with the pre-dispute conditions. No party shall be prejudiced as to the final settlement by the continuance of work in accordance with this subclause.
- (6) The parties will co-operate to ensure that these procedures are carried out expeditiously.
- (7) In the event of a work stoppage, such employees as are necessary shall, where appropriate, complete production in process to avoid spoilage and clean the plant according to hygiene requirements before stopping work.

SCHEDULE A - PARTIES TO THE AWARD

The following organisation is a party to this award:

United Workers Union (WA)

2025 WAIRC 00771

REVIEW OF THE BAKERS' (METROPOLITAN) AWARD NO. 13 OF 1987 PURSUANT TO S 40B OF THE INDUSTRIAL RELATIONS ACT 1979 (WA)

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
COMMISSIONS OWN MOTION

PARTIES

APPLICANT

-v-
(NOT APPLICABLE)

RESPONDENT

CORAM SENIOR COMMISSIONER R COSENTINO

DATE WEDNESDAY, 10 SEPTEMBER 2025

FILE NO/S APPL 16 OF 2025, APPL 19 OF 2025

CITATION NO. 2025 WAIRC 00771

Result Award varied

Representation

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

Ms D Arntzen on behalf of the Honourable Minister for Industrial Relations

Mr G Hansen on behalf of UnionsWA

Order

HAVING heard from Mr B Entrekin and Ms D Arntzen on behalf of the Honourable Minister for Industrial Relations and Mr G Hansen on behalf of UnionsWA, the Commission, pursuant to the powers conferred under s 37D and s 40B of *Industrial Relations Act 1979* (WA), hereby orders –

THAT the *Bakers' (Metropolitan) Award No. 13 of 1987* be varied in accordance with the attached Schedule, such variations to have effect on and from 1 October 2025.

[L.S.]

(Sgd.) R COSENTINO,
Senior Commissioner.

SCHEDULE

Delete the entire contents of the *Bakers' (Metropolitan) Award No. 13 of 1987* (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:

BAKING INDUSTRY AWARD

PART 1 – GENERAL

1. - TITLE

This award shall be known as the Baking Industry Award.

2. - 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 \$953.00 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 \$953.00 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 2025.
- (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 2025 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 \$791.30 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 \$791.30 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 2025.
- (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.

3. - ARRANGEMENT

PART 1 – GENERAL

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

PART 2 – EMPLOYMENT RELATIONSHIP

7. Contract of Employment
8. Flexible Working Arrangement Requests
9. Introduction of Change
10. Termination of employment
11. Redundancy

PART 3 – HOURS

12. Hours
13. Overtime

PART 4 – WAGES AND ALLOWANCES

14. Wages and Allowances
15. Penalty Rates
16. Higher duties
17. Fares and Travelling
18. Location Allowance
19. Apprentices
20. Supported Wage
21. Payment of Wages
22. Superannuation
23. Savings Provision

PART 5 - LEAVE

24. Public Holidays
25. Annual Leave
26. Personal Leave
27. Long Service Leave
28. Bereavement Leave
29. Parental Leave
30. Family and Domestic Violence Leave

PART 6 - OTHER

31. Protective Equipment and Uniforms
32. Records and Right of Entry
33. Posting of Award and Union Notices
34. Dispute Resolution Procedure

Schedule A - Parties to the Award

4. – AREA

- (1) This Award has effect throughout Western Australia.

- (2) This Award also has effect with respect to employers who are connected to the State of Western Australia and their employees while performing work covered by this Award.

Note: For a non-exhaustive list of indicators of when an employer may be connected to the State of Western Australia, see section 3(2) of the *Industrial Relations Act 1979*. Indicators include, but are not limited to, whether the employer is:

- Domiciled or resident in, or has an office or a place of business in, the State; or
- registered, incorporated, or established under a law of the State; or
- the holder of a licence, lease, tenement, permit, or other authority, granted under a law of the State or by a public authority.

5. – SCOPE

- (1) This award applies to employers in the Baking Industry and their employees in the classifications listed in Clause 14 - Wages and Allowances to the exclusion of any other State award.
- (2) This award also applies to:
- (a) employers that supply labour on an on-hire basis to host employers in respect of on-hire employees employed in the classifications provided in Clause 14 –Wages and Allowances of this award, and those on-hire employees, while engaged in the performance of work covered by this award; and
 - (b) employers that provide group training services for apprentices and/or trainees in the Baking Industry in respect of apprentices and/or trainees employed in one or more of the classifications mentioned in this award, and those apprentices and/or trainees, while engaged by a host employer in the performance of work covered by this award.
- (3) This award does not apply to:
- (a) employers and employees who are subject to the national industrial relations system; and
 - (b) employees who are covered by the *Transport Workers (General) Award*.

6.- DEFINITIONS

- (1) "Assistant" means an employee, not being a Baker, Pastrycook or apprentice, who assists in the operations involved in the making and baking of bread, cakes or pastries, but does not handle, mix, mould or bake dough. Indicative tasks of an Assistant include sweeping up, scrubbing tables, greasing tins, sifting and emptying flour, pre-heating ovens, packaging products, preparing and weighing ingredients, papering tins, washing utensils, labelling, simple icing and piping, operating machines and other similar work.
- (2) "Bakehouse" means any establishment exclusively or principally manufacturing, making, baking or ornamenting bread, yeast goods, cakes, pies, pastries, pastry products or sponge goods for resale in another business.
- (3) "Baker" means an employee who is competent by training and experience to perform and who may be required to perform any or all of the operations involved in the baking of bread. Such operations, without limiting the definition, include the mixing, handling, moulding or baking of dough. Provided that such a baker may be required by the employer to perform any general work in connection with the bakehouse.
- (4) "Baking Industry" means the manufacturing, making and baking of bread, yeast goods, cakes, pies, pastries, pastry products and sponge goods for sale and includes bakeries, patisseries and bakehouses.
- (5) "Cake Decorator" means a person skilled in the art and employed in decorating and ornamenting cakes.
- (6) "Leading Hand" means an employee who has charge of the work and of one or more employees, including apprentices. Where an employer is himself substantially engaged in doing the actual work of an operative employee and also exercising supervision of the work in the bakehouse, they may be classed as a Leading Hand, but not otherwise.
- (7) "Modern Award" means the *Food, Beverage and Tobacco Manufacturing Award 2020* made under the *Fair Work Act 2009* (Cth).
- (8) "Pastrycook" means an employee other than an Assistant, Baker or apprentice who is employed in manufacturing, making, baking or ornamenting cakes, pastry, sponge goods and yeast goods for sale.
- (9) "Single Hand Baker" means a Baker who is employed in a bakehouse where there is no other person regularly employed in the mixing, handling or baking of dough, except where the employer regularly and substantially works in the bakehouse.
- (10) "Single Hand Pastrycook" means a tradesperson pastrycook employed in a bakehouse where there is no other tradesperson pastrycook employed.

PART 2 – EMPLOYMENT RELATIONSHIP

7. - CONTRACT OF EMPLOYMENT

- (1) An employer may engage an employee on either a full time, part time or casual basis subject to the terms of this Award. On engagement the employer must notify the employee in writing whether the employment is full time, part-time or casual and if the employment is for a fixed term, the end date of the fixed term.
- (2) Part-time employees are entitled to be paid the ordinary hourly rate for their classification in respect of all hours worked by the employee
- (3) A part time employee shall receive payment for wages, annual leave, personal leave and long service leave on a pro-rata basis in the same proportion as the number of hours regularly worked each week bears to 38 hours.
- (4) Casual Employment

- (a) "Casual employee" means an employee determined to be a casual employee in accordance with s 7B of the *Industrial Relations Act 1979* (WA).
 - (b) At the time of engagement an employee must be notified in writing that the engagement is on a casual basis.
 - (c) A casual employee may be engaged for not more than 38 ordinary hours per week nor more than 7.6 hours in one day.
 - (d) Where this award refers to a penalty rate, overtime rate or shift loading, that rate or loading, for a casual employee, will be calculated on the ordinary hourly rate before the casual loading is applied.
 - (e) Work performed by casual employees in excess of the hours specified in clause (c) shall be paid for at overtime rates of pay.
 - (f) The minimum period of engagement for a casual employee shall be a minimum payment of 3 hours for any single shift.
 - (g) The period of notice an employer or employee is to give to terminate casual employment is one hour. If the required period of notice is not given by the employer, one hour's wages must be paid in lieu of notice.
- (5) An employer may direct an employee to carry out such duties and to use such tools and equipment as are within the limits of the employee's skills, competence and training provided that such duties are not designed to promote deskilling and are consistent with the employer's obligation to provide a safe and healthy workplace.
- (6) **Standing Down of Employees**
- (a) (i) The employer is entitled to deduct payment for any day or part of a day on which an employee (including an apprentice) cannot be usefully employed because of industrial action by the union party to this award, or by any other association or union.
 - (ii) If an employee is required to attend for work on any day but because of failure or shortage of electric power work is not provided, such employee must be entitled to two hours' pay and further, where any employee commences work the employee must be provided with four hours' employment or be paid for four hours' work.
 - (b) The provisions of subclause (6)(a) of this clause also apply where the employee cannot be usefully employed through any cause which the employer could not reasonably have prevented but only if, and to the extent that, the employer and the union concerned so agree.

8. - 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).

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, programme, organisation, structure or technology that are likely to have "significant effect" on employees, the employer must notify the employees who may be affected by the proposed changes and their 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 the restructuring of jobs. Provided that where the award makes provision for alteration of any of the matters referred to herein an alteration must be deemed not to have "significant effects".
- (2) **Employer's Duty to Discuss Change**
- (a) The employer must discuss with the employees affected and their union, the introduction of the changes referred to in subclause (1) of this clause among other things, the effects the changes are likely to have on employees, measures to avoid or minimise the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their Union in relation to the changes.
 - (b) The discussion must commence as soon as is practicable after a definite decision has been made by the employer to make the changes referred to in subclause (1) of this clause.
 - (c) For the purpose of such discussion, the employer must provide in writing to the employees concerned and their union, all relevant information about the changes including the nature of the changes proposed; the expected effect of the changes on employees and other matters likely to affect employees provided that any employer must not be required to disclose confidential information the disclosure of which would be inimical to the employer's interests.

10. - TERMINATION OF EMPLOYMENT

- (1) An employer must give the employee written notice of termination in accordance with the following table:

Period of continuous service with employer	Period of notice
Not more than 1 year	At least 1 week
More than 1 year but less than 3 years	At least 2 weeks
More than 3 years but less than 5 years	At least 3 weeks

- | More than 5 years | At least 4 weeks |
|--|------------------|
| (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) (a) For the purpose of this clause continuity of service is not broken on account of - | |
| (i) any interruption or termination of the employment by the employer if such interruption or termination has been made merely with the intention of avoiding obligations hereunder in respect of leave of absence; | |
| (ii) any absence from work for which an employee is entitled to claim leave as prescribed by this award or on account of leave lawfully granted by the employer; or | |
| (iii) any absence with reasonable cause, proof whereof must be upon the employee. | |
| (b) Service by the employee with a business which has been transferred from one employer to another and the employee's service has been deemed continuous in accordance with the <i>Long Service Leave Act 1958 (WA)</i> also constitutes continuous service for the purpose of this clause. | |
| (7) Notice of Termination by Employee: The notice required to be given by an employee shall be the same as that required of an employer, save and except that there shall be no additional notice based on the age of the employee concerned. | |
| (8) Time Off During Notice Period | |
| Where an employer has given notice of termination to an employee, that employee is, for the purpose of seeking other employment, entitled to be absent from work up to a maximum of one day without deduction of pay. The time off must be taken at times that are convenient to the employee after consultation with the employer. | |
| (9) Statement of Employment | |
| The employer must, upon receipt of a request from an employee whose employment has been terminated, provide to the employee a written statement specifying the period of employment and the classification or the type of work performed by the employee. | |
| (10) Except for subclause (9), this clause does not apply to casual employees. | |

11. - REDUNDANCY

- (1) Discussions Before Terminations
- (a) Where an employer had made a definite decision that the employer no longer wishes the job the employee has been doing done by anyone and that decision may lead to termination of employment, the employer must hold discussions with the employees directly affected and with their union.
- (b) The discussion must take place as soon as is practicable after the employer has made a definite decision which will invoke the provisions of paragraph (a) of this subclause and must cover among other things, any reasons for the proposed termination, measures to avoid or minimise the termination and measures to minimise any adverse effect of any terminations on the employees concerned.
- (c) For the purpose of such discussion the employer must provide in writing to the employees concerned and their union, all relevant information about the proposed terminations including the reasons for the proposed termination, 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 any employer must not be required to disclose confidential information the disclosure of which would be inimical 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)(a) of this clause the employee must be entitled to the same period of notice of transfer as the employee would have been entitled to had the employment been terminated, and the employer may at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former ordinary weekly rate of wage and the new lower ordinary weekly rate of wage for the number of weeks of notice still owing.
- (3) Severance Pay
- (a) Employers who engage 15 or more employees at the time of any redundancies

In addition to the period of notice prescribed in subclause (1) and (2) of clause 10 - Termination of this award and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in subclause (1)(a) of this clause is 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
2 years but less than 3 years	6 weeks
3 years but less than 4 years	7 weeks
4 years but less than 5 years	8 weeks
5 years but less than 6 years	10 weeks
6 years but less than 7 years	11 weeks
7 years but less than 8 years	13 weeks
8 years but less than 9 years	14 weeks
9 years but less than 10 years	16 weeks
10 years and over	12 weeks

"Weeks pay" means the ordinary weekly rate of wage for the employee concerned.

(b) Employers who engage less than 15 employees at the time of any redundancies:

In addition to the period of notice prescribed in subclause (1) and (2) of clause 10 - Termination of this award and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in subclause (1)(a) of this clause is 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
2 years but less than 3 years	6 weeks
3 years but less than 4 years	7 weeks
4 years and over	8 weeks

"Weeks pay" means the ordinary weekly rate of wage for the employee concerned.

(c) For the purpose of this clause continuity of service is not broken on account of:

- (i) Any interruption or termination of the employment by the employer if such interruption or termination has been made merely with the intention of avoiding obligations hereunder in respect of leave of absence;
- (ii) Any absence from work on account for which an employee is entitled to paid leave as prescribed by this award or on account of leave lawfully granted by the employer; or
- (iii) Any absence with reasonable cause, proof whereof must be upon the employee.

Provided that in the calculation of continuous service under this subclause any time in respect of which an employee is absent from work except time for which an employee is entitled to claim paid leave as prescribed by this award must not count as time worked.

- (d) Service by the employee with a business which has been transferred from one employer to another and the employee's service has been deemed continuous in accordance with the *Long Service Leave Act 1958 (WA)* also constitutes continuous service for the purpose of this clause.

(4) Employee Leaving During Notice

An employee whose employment is to be terminated for reasons set out in subclause (1)(a) of this clause may terminate employment during the period of notice and, if so, must be entitled to the same benefits and payments under this clause had the employee remained with the employer until the expiry of such notice. Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

(5) Alternative Employment

An employer, in a particular redundancy case, may make application to the 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 of employment given by an employer, an employee whose employment is to be terminated for reasons set out in subclause (1)(a) of this clause is, for the purpose of seeking other employment, entitled to be absent from work during each week of notice up to a maximum of one day without deduction of pay.
- (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 must, at the request of the employer, be required to produce proof of attendance at an interview or the employee must 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)(a) of this clause, the employer must 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) Employees With Less Than One Year's Service
This clause does not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity and to take such steps as may be reasonable to facilitate the obtaining by employees of suitable alternative employment.
- (9) Employees Exempted
This clause must not apply where employment is terminated as a consequence of conduct that justifies instant dismissal or in the case of casual employees, apprentices or employees engaged for a specific period of time or for a specified task or tasks.
- (10) Incapacity to Pay
An employer, in a particular redundancy case may make application to the Commission to have the general severance pay prescription varied on the basis of the employer's incapacity to pay.

PART 3 – HOURS

12. – HOURS

- (1) The ordinary hours of work shall be an average of 38 per week to be worked on one of the following basis:
- 38 hours within a work cycle not exceeding seven consecutive days; or
 - 76 hours within a work cycle not exceeding 14 consecutive days; or
 - 114 hours within a work cycle not exceeding 21 consecutive days; or
 - 152 hours within a work cycle not exceeding 28 consecutive days.
- (2) (a) The ordinary hours of work shall be worked in no more than 5 shifts with a maximum of 10 ordinary hours in any one shift.
(b) The 5 shifts referred to in subclause (a) shall be worked on consecutive days and at least one of the days not worked in a 7 day cycle must be Saturday or Sunday.
- (3) The ordinary daily working hours shall be worked continuously except for meal breaks and rest periods.
- (4) A meal break of not less than 30 minutes shall be allowed to each employee such that an employee shall not be compelled to work for more than 5 hours without a meal break.
- (5) Where a shift exceeds four hours, an employee is entitled to a rest period of not less than 10 minutes, counted as time worked, taken at a time that is convenient to the employer.
- (6) Employees are entitled to a break of 10 consecutive hours between successive shifts.
- (7) At least 7 days prior the commencement of a weekly roster period, the employer must provide the weekly roster to employees, showing the time each employee is to commence work on each shift during that week for which they are rostered. The roster may be provided in an electronic form that is readily accessible to employees.

13. - OVERTIME

- (1) All time worked on any day or in any week in excess of or outside the ordinary hours prescribed under Clause 12 shall be paid for at the rate of time and one half for the first two hours and double time thereafter.
- (2) All overtime worked on a Sunday shall be paid at the rate of double time.
- (3) In the computation of overtime rates, each day shall stand alone.
- (4) Notwithstanding anything contained in this award –
- Subject to the provisions of Part 2A of the *Minimum Conditions of Employment Act 1993 (WA)*, an employer may require any employee to work reasonable overtime at overtime rates and such employee shall work overtime in accordance with such requirement.
 - No organisation, party to this award, or employee covered by this award, shall in any way, whether directly or indirectly, be a party to or concerned in any ban, limitation or restriction upon the working of overtime in accordance with the requirements of this subclause.
- (5) For the purposes of any calculations necessary under this award:-
- 8 to 22 minutes shall be deemed 1/4 hour
 - 23 to 37 minutes shall be deemed 1/2 hour
 - 38 to 52 minutes shall be deemed 3/4 hour
 - 53 to 67 minutes shall be deemed one hour

- (6) (a) An employee required to work overtime for two hours or more shall be supplied with a meal by their employer or paid an allowance equal to the amount specified in clause 20.3(a) of the Modern Award as varied from time to time.
- (b) If the amount of overtime required to be worked necessitates a second or subsequent meal, the employer shall provide such meal or pay an amount equal to the amount specified in clause 20.3(a) of the Modern Award as varied from time to time for each such meal.
- (c) An employee called on to work for more than five hours after commencing work who has not been granted a meal break shall be paid at overtime rates until the meal break is granted or until the end of the shift, whichever is earlier.
- (d) The provisions of paragraphs (a) and (b) of this subclause do not apply:
 - (i) in respect of any period of overtime for which the employee has been notified on the previous day or earlier that they will be required, or
 - (ii) to any employee who lives in the locality in which the place of work is situated in respect of any meal for which they can reasonably go home.
- (7) (a) An employee (other than a casual employee) who works so much overtime between the end of their ordinary hours on one day and the commencement of their ordinary hours on the next day that they have not had at least 10 consecutive hours off duty between those times shall, subject to this subclause, be released after completion of such overtime until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- (b) If, on the instructions of the employer, such employee resumes or continues work without having had such 10 consecutive hours off duty, they shall be paid at double rates until they are released from duty for such period and the employee shall then be entitled to be absent until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

WAGES AND ALLOWANCES

14. – WAGES AND ALLOWANCES

(1) The minimum weekly ordinary wages payable under this award are:

Classification	Award Rate
	\$
Trainee	As provided for in the <i>Miscellaneous Award 2020</i> , Schedule E, Clause E.4.
Doughmaker	1053.70
Single Hand Baker	1053.70
Single Hand Pastrycook	1034.10
Baker	1032.70
Pastrycook	1031.20
Cake Decorator	975.30
Assistant	953.00

- (2) A casual employee shall be paid an hourly rate equal to 1/38th of the ordinary rate for the relevant classification in which they are employed plus 25% casual loading. A casual employee is entitled to a minimum payment of 3 consecutive hours on any day.
- (3) In addition to the total wage prescribed in this clause a Leading Hand shall be paid an allowance equal to the applicable percentage of the weekly rate for a Doughmaker, rounded to the nearest 10 cents, as set out below:

	% of Dough maker rate
(i) if placed in charge of less than four other employees (per week)	2.7
(ii) if placed in charge of four but less than ten other employees (per week)	4.4
(iii) if placed in charge of ten and less than 20 other employees (per week)	6.8
(iv) if placed in charge of 20 or more other employees (per week)	8.8
- (4) Laundry Allowance
Where the employer requires uniforms to be worn they shall be supplied, laundered and remain the property of the employer, provided that in lieu of the employer laundering the same, the employee shall be paid \$5 per week towards the costs of laundering.
- (5) Employees aged under 21
 - (i) Employees aged under 21 shall be paid the following percentages of the appropriate adult rate for the work upon which they are engaged.

%

- | | |
|--------------------------------|-----|
| Under 16 years of age | 45 |
| Between 16 and 17 years of age | 60 |
| Between 17 and 18 years of age | 70 |
| Between 18 and 19 years of age | 80 |
| Between 19 and 20 years of age | 90 |
| Between 20 and 21 years of age | 100 |
- (ii) If an employee aged under 21 has completed an apprenticeship in the Baking industry, and is employed as a tradesperson, they are entitled to be paid the adult tradesperson rate of pay.

15. PENALTY RATES

- (1) For working ordinary hours (other than on a Public Holiday) an employee shall be paid the following rates expressed as a percentage of the ordinary hourly rate applicable between 6:00 a.m. and 6:00 p.m. on any day of the week, other than Saturday or Sunday:

	Midnight to 6:00 a.m.	6:00 a.m. to 6:00 p.m.	6:00 pm to midnight
Monday to Friday inclusive	136%	100%	136%

- (2) All work performed on Saturdays shall be paid at the rate of time and half.
- (3) All work performed on Sundays shall be paid at the rate of double time.
- (4) Where an employee is required to work on a public holiday as prescribed by this award, the employee shall be paid at the rate of double time and one half for all hours worked.
- (5) Payment of the rates prescribed in this clause shall only be for each hour worked in the specified time periods and shall not be cumulative with overtime penalties.

16. - HIGHER DUTIES

Employees called upon to perform duties for which a higher rate is prescribed than that which they are in receipt of, shall be paid such higher rate for such time as they are actually performing such higher duties, if so employed for less than four hours and, if employed for four hours or more, they shall receive a day's pay at such higher rate.

17. – FARES AND TRAVELLING TIME

An employee relieving in any location outside the town or city of their ordinary place of work shall be paid their reasonable cost of transport including travelling expenses from the employee's home to the place of work and return.

18. - LOCATION ALLOWANCES

- (1) Subject to the provisions of this clause, in addition to the rates prescribed in the wages clause of this award, an employee shall be paid the following weekly allowances when employed in the towns prescribed hereunder. Provided that where the wages are prescribed as fortnightly rates of pay, these allowances shall be shown as fortnightly allowances.

TOWN	PER WEEK
Agnew	\$25.90
Argyle	\$70.00
Balladonia	\$27.20
Barrow Island	\$45.60
Boulder	\$11.10
Broome	\$41.90
Bullfinch	\$12.10
Carnarvon	\$21.50
Cockatoo Island	\$45.80
Coolgardie	\$11.10
Cue	\$26.70
Dampier	\$36.50
Denham	\$21.50
Derby	\$43.50
Esperance	\$7.40
Eucla	\$29.10
Exmouth	\$38.50
Fitzroy Crossing	\$52.90
Halls Creek	\$61.40
Kalbarri	\$9.40

Kalgoorlie	\$11.10
Kambalda	\$11.10
Karratha	\$44.10
Koolan Island	\$45.80
Koolyanobbing	\$12.10
Kununurra	\$70.00
Laverton	\$26.60
Learmonth	\$38.50
Leinster	\$25.90
Leonora	\$26.60
Madura	\$28.20
Marble Bar	\$68.20
Meekatharra	\$23.10
Mount Magnet	\$29.00
Mundrabilla	\$28.70
Newman	\$24.90
Norseman	\$23.30
Nullagine	\$68.10
Onslow	\$45.60
Pannawonica	\$33.90
Paraburdoo	\$33.80
Port Hedland	\$36.40
Ravensthorpe	\$13.60
Roebourne	\$50.80
Sandstone	\$25.90
Shark Bay	\$21.50
Southern Cross	\$12.10
Telfer	\$62.50
Teutonic Bore	\$25.90
Tom Price	\$33.80
Whim Creek	\$43.60
Wickham	\$42.00
Wiluna	\$26.10
Wyndham	\$65.40

- (2) Except as provided in subclause (3) of this clause, an employee who has:
- a dependant shall be paid double the allowance prescribed in subclause (1) of this clause;
 - a partial dependant shall be paid the allowance prescribed in subclause (1) of this clause plus the difference between that rate and the amount such partial dependant is receiving by way of a district or location allowance.
- (3) Where an employee:
- is provided with board and lodging by their employer, free of charge; or
 - is provided with an allowance in lieu of board and lodging by virtue of the award or an order or agreement made pursuant to the *Act*;
- such employee shall be paid 66 2/3 per cent of the allowances prescribed in subclause (1) of this clause.
- (4) Subject to subclause (2) of this clause, junior employees, casual employees, part time employees, apprentices receiving less than adult rate and employees employed for less than a full week shall receive that proportion of the location allowance as equates with the proportion that their wage for ordinary hours that week is to the adult rate for the work performed.
- (5) Where an employee is on annual leave or receives payment in lieu of annual leave they shall be paid for the period of such leave the location allowance to which they would ordinarily be entitled.
- (6) Where an employee is on long service leave or other approved leave with pay (other than annual leave) they shall only be paid location allowance for the period of such leave they remain in the location in which they are employed.
- (7) For the purposes of this clause:

- (a) “Dependant” shall mean -
- (i) a spouse or defacto partner; or
 - (ii) a child where there is no spouse or defacto partner;

who does not receive a location allowance or who, if in receipt of a salary or wage package, receives no consideration for which the location allowance is payable pursuant to the provisions of this clause.
- (b) “Partial Dependant” shall mean a “dependant” as prescribed in paragraph (a) of this subclause who receives a location allowance which is less than the location allowance prescribed in subclause (1) of this clause or who, if in receipt of a salary or wage package, receives less than a full consideration for which the location allowance is payable pursuant to the provisions of this clause.
- (8) Where an employee is employed in a town or location not specified in this clause the allowance payable for the purpose of subclause (1) of this clause shall be such amount as may be agreed between Australian Mines and Metals Association, the Chamber of Commerce and Industry of Western Australia and UnionsWA or, failing such agreement, as may be determined by the Commission.
- (9) Subject to the making of a General Order pursuant to s 50 of the Act, that part of each location allowance representing prices shall be varied from the beginning of the first pay period commencing on or after the 1st day in July of each year in accordance with the annual percentage change in the Consumer Price Index (excluding housing) for Perth, measured to the end of the immediately preceding March quarter, the calculation to be taken to the nearest ten cents.

19. - APPRENTICES

- (1) The maximum number of apprentices allowed to any employer shall be in the proportion of one to every four or fraction of four trade qualified employees employed. Provided that the employer who is bona fide working as a baker shall be regarded as a trade qualified employee permanently employed.
- (2) Apprentices shall, with the approval of the employer and the union, be interchangeable between bakeries for the purpose of experience and their services shall be deemed to be continuous for Long Service Leave and all other benefits, provided they return to their original employer.
- (3) Apprentices (percentage of the Baker’s rate per week)
- | | |
|-----------------------------|----|
| Four year term: | % |
| First year | 42 |
| Second year | 55 |
| Third year | 75 |
| Fourth year | 88 |
| Three and a half year term: | |
| First six months | 42 |
| Next following year | 55 |
| Next following year | 75 |
| Final year | 88 |
| Three year term: | |
| First year | 55 |
| Second year | 75 |
| Final year | 88 |

20. - 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.
 - (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.

21. - PAYMENT OF WAGES

- (1) Each employee shall be paid the appropriate rate shown in Clause 14. – Wages and Allowances of this award. Subject to subclause (2) of this clause payment shall be pro-rata where less than the full week is worked.
- (2) Wages shall be paid as follows:
- (a) Actual ordinary hours:
In the case of an employee whose ordinary hours of work are such that the employee works the same number of ordinary hours each week, wages shall be paid weekly or fortnightly according to the actual ordinary hours worked each week or fortnight.
- (b) Average of ordinary hours:
Subject to subclauses (3) hereof, in the case of an employee whose ordinary hours of work are averaged during a particular work cycle, wages shall be paid weekly or fortnightly according to a weekly average of ordinary hours worked even though more or less ordinary hours may be worked in any particular week of the work cycle.
- (3) Method of Payment:
An employee may be paid wages by cash or electronic transfer into a bank or building society account specified by the employee. Where wages are paid in cash, payment may be made during the employee's time, provided that the employee is kept waiting no longer than 15 minutes.
- (4) Payslips:
The employer must provide pay slips in accordance with s 49DA of the *Industrial Relations Act 1979* (WA).
- (5) Calculation of Hourly Rate:
The ordinary rate per hour shall be calculated by dividing the appropriate weekly rate by 38.

22. – 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 an employee.

23. - SAVINGS PROVISION

- (1) This clause applies to employees who were employed by an employer bound by this award as at 1 October 2025.
- (2) If an employee was entitled to receive a rate of pay, allowance or benefit under the award which applied to the employee immediately prior to 1 October 2025 which is greater than the rate of pay, allowance or benefit contained in this award, the employee shall continue to be entitled to be paid the greater rate of pay or allowance and to receive the greater benefit.

PART 5 – LEAVE

24. – PUBLIC HOLIDAYS

- (1) 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.
- (2) 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.
- (3) 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).

- (4) When work is performed on any of the days mentioned in subclause(1) the employee shall be paid at the rate of double time and a half for all hours worked.
- (5) (a) At the request of an employee who works on any prescribed public holiday, and with the agreement of the employer, paid time off in lieu of payment for the work done may be taken. Such time off in lieu, when taken during ordinary hours, shall compensate for the penalty premium at which the time off in lieu accrued. For example, two and one half ordinary hours compensates for one hour of double and one half time.
- (b) The taking of paid time off in lieu of payment for work done on any prescribed public holiday shall be agreed at the time of the employee accepting the offer to work on the public holiday otherwise payment in accordance with paragraph (4) of this subclause shall be made.
- (c) Subject to the limitations imposed by paragraphs (a) and (b) of this subclause, part payment and part paid time off in lieu of payment for work done on any prescribed holiday may be agreed between the employee and employer.

25. - ANNUAL LEAVE

- (1) Annual leave is provided for in the *Minimum Conditions of Employment Act 1993* (WA).
- (2) (a) During a period of annual leave an employee shall be paid a loading being the greater of:
- (i) 17.5% calculated on the employee's ordinary wage as prescribed; or
- (ii) The penalty loadings prescribed by clause 15 - Penalty Rates for shifts which the employee would have been rostered to work had the employee not been on leave during the relevant period.
- (b) The loading prescribed by this subclause shall not apply to proportionate leave on termination.
- (3) The provisions of this clause shall not apply to casual employees.

26. - PERSONAL LEAVE

- (1) Personal leave is as provided for in the *Minimum Conditions of Employment Act 1993* (WA).
- (2) If an employee is absent on the ground of personal ill health or injury for a period longer than their entitlement to paid personal leave, payment may be adjusted at the end of the relevant year of service, or at the time the employee's services terminate, if before the end of that year of service, to the extent that the employee has become entitled to further paid personal leave during that year of service.
- (3) (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 25 - Annual Leave shall be deemed to have been paid with respect to the replaced annual leave.
- (4) 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.
- (2) Other than the entitlement to unpaid carer's leave, the provisions of this clause do not apply to casual employees

27. - LONG SERVICE LEAVE

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

28. - BEREAVEMENT LEAVE

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

29. - PARENTAL LEAVE

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

30. - 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).

PART 6 – OTHER

31.- PROTECTIVE EQUIPMENT AND UNIFORMS

- (1) Each employer shall be required to provide suitable accommodation for employees to change their working clothes and suitable washing facilities.
- (2) Where the conditions of work are such that employees are unable to avoid their clothing becoming excessively wet or dirty, they shall be supplied with suitable protective clothing or materials. Such protective clothing or materials shall remain the property of the employer and shall be returned when required in good order and condition, fair wear and tear excepted.

32. - RECORDS AND RIGHT OF ENTRY

- (1) An employer must keep employment records and provide pay slips in accordance with Part II, Division 2F Keeping of and access to employment records and pay slips of the *Industrial Relations Act 1979* (WA) and section 26 of the *Long Service Leave Act 1958* (WA).
- (2) Conditions regarding right of entry by authorised representatives of the union are dealt with in Part II, Division 2G Right of entry and inspection by authorised representatives of the *Industrial Relations Act 1979* (WA).

33. - POSTING OF AWARD AND UNION NOTICES

- (1) An employer shall provide a notice board of reasonable dimensions to be erected in a prominent position in the employer's establishment upon which an accredited union representative shall be permitted to post union notices.
- (2) A copy of this award shall be allowed to be posted on the notice board referred to in subclause (1) of this clause or provided to employees by electronic means.

34. - DISPUTE RESOLUTION PROCEDURE

Any questions, disputes or claims arising in relation to this award, or in relation to employment generally shall be dealt with in the following manner:

- (1) In the first instance all the facts of the dispute matter or grievance will be discussed without delay between the employee/s concerned and the appropriate supervisor/s. The appropriate Shop Steward/s to be present if requested by the employee/s.
- (2) If not settled, the matter shall be discussed between an accredited Union Representative and the delegated Officer of the employer.
- (3) If agreement has not then been reached, the matter shall be discussed between a Management Representative of the employer and an appropriate Official of the Union.
- (4) If the matter is still not settled, it shall be submitted to the Western Australian Industrial Relations Commission for decision which shall, subject to any appeal in accordance with the *Act*, be final.
- (5) Until the matter is determined, work shall continue in accordance with the pre-dispute conditions. No party shall be prejudiced as to the final settlement by the continuance of work in accordance with this subclause.
- (6) The parties will co-operate to ensure that these procedures are carried out expeditiously.
- (7) In the event of a work stoppage, such employees as are necessary shall, where appropriate, complete production in process to avoid spoilage and clean the plant according to hygiene requirements before stopping work.

SCHEDULE A - PARTIES TO THE AWARD

The following organisation is a party to this award:

United Workers Union (WA)

2025 WAIRC 00769

REVIEW OF BAKERS' (METROPOLITAN) AWARD NO. 13 OF 1987 SCOPE CLAUSE PURSUANT TO S 37D OF THE INDUSTRIAL RELATIONS ACT 1979 (WA)

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

COMMISSIONS OWN MOTION

APPLICANT

-v-

(NOT APPLICABLE)

RESPONDENT

CORAM

SENIOR COMMISSIONER R COSENTINO

DATE

WEDNESDAY, 10 SEPTEMBER 2025

FILE NO/S

APPL 19 OF 2025

CITATION NO.

2025 WAIRC 00769

Result Order issued

Representation

Mr B Entrekin on behalf of the Honourable Minister for Industrial Relations
 Ms D Arntzen on behalf of the Honourable Minister for Industrial Relations
 Mr G Hansen of behalf of UnionsWA

Order

The Commission, pursuant to the powers conferred under the IR Act, hereby orders –

THAT this matter be consolidated with Application 16 of 2025, and Application 16 of 2025 be the lead matter in the consolidated application.

[L.S.]

(Sgd.) R COSENTINO,
 Senior Commissioner.

2025 WAIRC 00829

ELECTRICAL TRADES (SECURITY ALARMS INDUSTRY) AWARD 1980

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

ELECTRICAL TRADES UNION WA

APPLICANT

-v-

CHUBB AUSTRALIA PTY LTD, IDAMENEO (NO. 789) LTD

RESPONDENT

CORAM COMMISSIONER T KUCERA

DATE MONDAY, 6 OCTOBER 2025

FILE NO/S APPL 39 OF 2025

CITATION NO. 2025 WAIRC 00829

Result Award Varied

Representation On the papers

Order

WHEREAS the Electrical Trades Union WA (**ETU**) applied on 20 August 2025 to vary the *Electrical Trades (Security Alarms Industry) Award 1980 (The Award)* pursuant to s 40 of the Industrial Relations Act 1979 (WA) (**IR Act**);

AND WHEREAS Schedule C of the application set out the grounds upon which it is made, indicating the application is made to increase the allowances in the Award by the percentage increase ordered in the 2025 State Wage case ([2025] WAIRC 00823; (104 WAIG 2043), that is an increase of 3.75% and by relevant CPI rates from June 2024 to June 2025;

AND WHEREAS the variations were not opposed by any respondent;

AND BEING satisfied that:

- (a) The amendments proposed do not effect any substantive change to the scope of the Award or its area of operation;
- (b) The application is not made within a term specified in the Award; and
- (c) The requirements for varying the Award are met;

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

THAT the *Electrical Trades (Security Alarms Industry) Award 1980* be varied in accordance with the following Schedule and that the variations shall have effect from the beginning of the first pay period commencing on or after the date of this order.

[L.S.]

(Sgd.) T KUCERA,
 Commissioner.

SCHEDULE

1. Clause 11. – Overtime: Delete paragraph (f) of subclause (3) of this Clause and insert in lieu thereof:

- (f) Subject to the provisions of paragraph (g) of this subclause, an employee required to work overtime for more than two hours shall be supplied with a meal by the employer or be paid **\$17.50** for a meal and, if owing to the amount of overtime worked, a second or subsequent meal is required they shall be supplied with each such meal by the employer or be paid **\$12.00** for each meal so required.

2. Clause 15. – Special Rates and Provisions:

A. Delete subclauses (1), (2), (3) and (4) of this Clause and insert in lieu thereof the following:

- (1) **Height Money:** An employee shall be paid an allowance of **\$4.00** for each day on which they work at a height of 15.5 metres or more above the nearest horizontal plane but this provision does not apply to linespersons nor to riggers and splicers on ships or buildings.
- (2) **Dirt Money:** An employee shall be paid an allowance of **81 cents** per hour when engaged on work of an unusually dirty nature where clothes are necessarily unduly soiled or damaged or boots are unduly damaged by the nature of the work done.
- (3) **Confined Space:** An employee shall be paid an allowance of **\$1.03** per hour when, because of the dimensions of the compartment or space in which they are working, the employee is required to work in a stooped or otherwise cramped position or without proper ventilation.
- (4) **Hot Work:** An employee shall be paid an allowance of **81 cents** per hour when they work in the shade in any place where the temperature is raised by artificial means to between 46.1 and 54.4 degrees Celsius.

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

(6) Percussion Tools:

An employee shall be paid an allowance of **52 cents** per hour when working a pneumatic rivetter of the percussion type and other pneumatic tools of the percussion type.

C. Delete subclauses (13) and (14) of this Clause and insert in lieu thereof the following:

- (13) An employee, holding either a Third Year First Aid Medallion of the St John Ambulance Association or a “C” Standard Senior First Aid Certificate of the Australian Red Cross Society, appointed by the employer to perform first aid duties shall be paid **\$16.70** per week in addition to their ordinary rate.
- (14) A Serviceperson – Special Class, a Serviceperson or an Installer who holds, and in the course of their employment may be required to use, a current “A” Grade or “B” Grade Licence issued pursuant to the relevant regulation in force on the 28th day of February, 1978 under the Electricity Act 1945 shall be paid an allowance of **\$33.50** per week.

5. Clause 28. – Wages: Delete subclauses (3), (4), and (5) of this Clause and insert in lieu thereof the following:

- (3) (a) Where an employer does not provide a tradesperson with the tools ordinarily required by that tradesperson in the performance of their work as a tradesperson the employer shall pay a tool allowance of **\$23.20** per week to such tradesperson for the purpose of such tradesperson supply and maintaining tools ordinarily required in the performance of their work as a tradesperson.
- (b) Any tool allowance paid pursuant to paragraph (a) of this subclause shall be included in, and form part of, the ordinary weekly wage prescribed in this Clause.
- (c) An employer shall provide for the use of tradespersons all necessary power tools, special purpose tools and precision measuring instruments.
- (d) A tradesperson shall replace or pay for any tools supplied by the employer if lost through their negligence.
- (4) (a) In addition to the appropriate rates of pay prescribed in this Clause an employee shall be paid –
- (i) **\$74.80** per week if they are engaged on the construction of a large industrial undertaking or any large civil engineering project.
- (ii) **\$69.90** per week if they are engaged in a multi-storeyed building but only until the exterior walls have been erected and the windows completed and a lift made available to carry the employee between the ground floor and the floor upon which they are required to work. A multi-storeyed building is a building which, when completed, will consist of at least five storeys.
- (iii) **\$39.20** per week if they are engaged otherwise on construction work falling within the definition of construction work in Clause 5. – Definitions of this Award.
- (b) Any dispute as to which of the aforesaid allowances apply to particular work shall be determined by the Board of Reference.
- (c) An allowance paid under this subclause includes any allowance otherwise payable under Clause 15. – Special Rates and Provisions of this Award except the allowance for work at heights, the first aid allowance and the licence allowance.
- (5) **Leading Hand:** In addition to the appropriate total wage prescribed in subclause (1) of this clause, a leading hand shall be paid –
- (a) If placed in charge of not less than three
and not more than ten other employees **\$42.60**
- (b) If placed in charge of not less than ten and
more than twenty other employees **\$64.70**
- (c) If placed in charge of more than twenty
other employees **\$83.60**

2025 WAIRC 00831

ELECTRONICS INDUSTRY AWARD NO. A 22 OF 1985

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

UP ENGINEERING COMPANY AUSTRALIA PTY. LTD

APPLICANT

-v-

(NOT APPLICABLE)

RESPONDENT

AMPAC DEVELOPMENTS PTY LTD, ELECTRICAL TRADES UNION WA, HINCO ENGINEERING, HUPHIM PTY LTD, IBES AUSTRALIA, OMNITRONICS PTY LTD, THE AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING AND KINDRED INDUSTRIES UNION OF WORKERS - WESTERN AUSTRALIAN BRANCH, VIX TECHNOLOGY (AUST) PTY LTD

S 29B PARTY

CORAM COMMISSIONER T KUCERA
DATE MONDAY, 6 OCTOBER 2025
FILE NO/S APPL 45 OF 2025
CITATION NO. 2025 WAIRC 00831

Result Award Varied**Representation** On the papers*Order*

WHEREAS UP Engineering Company Australia Pty Ltd (**UP Engineering**) applied on 27 August 2025 to vary the *Electronics Industry Award No. A 22 of 1985 (The Award)* pursuant to s 40 of the *Industrial Relations Act 1979 (WA) (IR Act)*;

AND WHEREAS the application set out the grounds upon which it is made, indicating the application is to remove the applicant as a party to the Award;

AND WHEREAS the named s 29B parties to the application were each duly served;

AND WHEREAS no response to the application was received within the time specified and the application is unopposed;

AND WHEREAS as UP Engineering is a party bound by the Award it has standing to bring the application under s 40(2) of the IR Act;

AND WHEREAS as the application is not made within the term specified in clause 4 of the Award, s 40(3) of the IR Act is inapplicable and no barrier to the amendments sought;

AND BEING satisfied that:

- (a) the amendment proposed does not effect any substantive change to the scope of the Award or its area of operation;
- (b) the application is not made within a term specified in the Award; and
- (c) the requirements for varying the Award are met;

NOW THEREFORE, the Commission, pursuant to the powers conferred by the IR Act, hereby orders –

THAT the *Electronics Industry Award No. A 22 of 1985* be varied and that the variations shall have effect from the beginning of the first pay period commencing on or after the date of this order.

(Sgd.) T KUCERA,
Commissioner.

[L.S.]

2025 WAIRC 00799

GATE, FENCE AND FRAMES MANUFACTURING AWARD
WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
ELECTRICAL TRADES UNION WA

PARTIES

APPLICANT

-v-

CAI FENCING PTY LTD, DBS FENCING, WOODFORD GATEMAKERS PTY LTD

RESPONDENT

CORAM COMMISSIONER T KUCERA
DATE FRIDAY, 19 SEPTEMBER 2025
FILE NO/S APPL 43 OF 2025
CITATION NO. 2025 WAIRC 00799

Result Award varied
Representation On the papers

Order

WHEREAS the Electrical Trades Union WA applied on 20 August 2025 to vary *the Gate, Fence and Frames Manufacturing Award* pursuant to s 40 of the *Industrial Relations Act 1979* (WA) (**IR Act**);

AND WHEREAS the application set out the grounds upon which it is made, indicating the application is made to increase allowances in the Award effected by the 2025 State Wage Case decisions and Consumer Price Index (CPI);

AND WHEREAS the proposed key amendments sought by the present application were set out in an attachment to the application supported by a second attachment showing the calculations underpinning the amendments sought;

AND WHEREAS the named respondents to the ETU's application were each duly served;

AND WHEREAS no response to the application was received within the time specified and the application is unopposed;

AND WHEREAS as the ETU is a party bound by the Award it has standing to bring the application under s 40(2) of the IR Act;

AND WHEREAS as the application is not made within the term specified in clause 4 of the Award, s 40(3) of the IR Act is inapplicable and no barrier to the amendments sought;

AND WHEREAS the Award does not specify a method for adjusting allowances which is at odds with the methods involved in this application. The adjustments sought are consistent with the wage fixing principles set out in the 2025 State Wage Case;

AND BEING satisfied that:

- (a) the amendments proposed do not effect any substantive change to the scope of the Award or its area of operation;
- (b) the application is not made within a term specified in the Award; and
- (c) the requirements for varying the Award are met;

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

THAT the *Gate, Fence and Frames Manufacturing Award* be varied in accordance with the following Schedule and that the variations shall have effect from the beginning of the first pay period commencing on or after the date of this order.

[L.S.]

(Sgd.) T KUCERA,
Commissioner.

SCHEDULE

1. Clause 7. – Overtime: Delete paragraph (f) of subclause (3) of this Clause and insert in lieu thereof the following:

- (f) Subject to the provisions of paragraph (h) of this subclause, an employee required to work overtime for more than two hours, shall be supplied with a meal by the employer or be paid **\$16.10** for a meal and, if owing to the amount of overtime worked, a second or subsequent meal is required the employee shall be supplied with such meal by the employer or paid **\$11.10** for each meal so required.

2. Clause 14. – Special Rates and Provisions:

A. Delete subclauses (1) and (2) of this Clause and insert in lieu thereof the following:

(1) **Dirt Money:** An employee shall be paid an allowance of **80 cents** per hour when engaged on work of an unusually dirty nature where clothes are necessarily unduly soiled or damaged or boots are unduly damaged by the nature of the work done.

(2) **Confined Space:** An employee shall be paid an allowance of **\$1.00** per hour when, because of the dimensions of the compartment or space in which the employee is working, the employee is required to work in a stooped or otherwise cramped position or without proper ventilation.

B. Delete subclause (4) of this Clause and insert in lieu thereof the following:

(4) An employee, holding a Third Year First Aid Medallion of the St. John Ambulance Association appointed by the employer to perform first aid duties, shall be paid **\$16.50** per week in addition to the ordinary rate.

3. First Schedule – Wages:

A. Delete subclause (2) of this Clause and insert in lieu thereof the following:

(2) **Leading Hand:** In addition to the appropriate rate prescribed in subclause (1) of this clause, a leading hand shall be paid:

		\$
(a)	If placed in charge of not less than three and not more than twenty other employees	43.00
(b)	If placed in charge of more than ten and not more than twenty other Employees	65.90
(c)	If placed in charge of more than twenty other employees	85.10

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

(6) (a) Where an employer does not provide a tradesperson or an apprentice with the tools ordinarily required by that tradesperson or apprentice in the performance of their work as a tradesperson or as an apprentice, the employer shall pay a tool allowance of –

- (i) **\$24.00** per week to such tradesperson, or
- (ii) In the case of an apprentice a percentage of **\$24.00** being the percentage which appears against the year of apprenticeship in subclause (a) of subclause (3) of this Schedule.

For the purpose of such tradesperson or apprentice supplying and maintaining tools ordinarily required in the performance of their work as a tradesperson or apprentice.

(b) Any tool allowance paid pursuant to paragraph (a) of this subclause shall be included in, and form part of, the ordinary weekly wage prescribed in this schedule.

(c) An employer shall provide for the use of tradespersons or apprentices all necessary power tools, special purpose tools and precision measuring instruments.

(d) A tradesperson or apprentice shall replace or pay for any tools supplied by the employer, if lost through their negligence.

2025 WAIRC 00830

RADIO AND TELEVISION EMPLOYEES' AWARD

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

ELECTRICAL TRADES UNION WA

APPLICANT

-v-

ALBANY TV SERVICES, TAHAL PTY LTD FORMERLY AMALGAMATED WIRELESS (AUSTRALASIA) LIMITED, HILLS LIMITED

RESPONDENTS

CORAM COMMISSIONER T KUCERA

DATE MONDAY, 6 OCTOBER 2025

FILE NO/S APPL 41 OF 2025

CITATION NO. 2025 WAIRC 00830

Result Award Varied

Representation On the papers

Order

WHEREAS the Electrical Trades Union WA (ETU) applied on 20 August 2025 to vary the *Radio and Television Employees' Award (The Award)* pursuant to s 40 of the Industrial Relations Act 1979 (WA) (IR Act);

AND WHEREAS Schedule C of the application set out the grounds upon which it is made, indicating the application is made to increase the allowances in the Award by the percentage increase ordered in the 2025 State Wage case ([2025] WAIRC 00823; (104 WAIG 2043), that is an increase of 3.75% and by relevant CPI rates from June 2024 to June 2025;

AND WHEREAS the variations were not opposed by any respondent;

AND BEING satisfied that:

- (a) The amendments proposed do not effect any substantive change to the scope of the Award or its area of operation;
- (b) The application is not made within a term specified in the Award; and
- (c) The requirements for varying the Award are met;

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

THAT the *Radio and Television Employees' Award* be varied in accordance with the following Schedule and that the variations shall have effect from the beginning of the first pay period commencing on or after the date of this order.

(Sgd.) T KUCERA,
Commissioner.

[L.S.]

SCHEDULE

1. Clause 9. – Overtime: Delete paragraph (f) of subclause (3) of this Clause and insert in lieu thereof:

- (f) Subject to the provisions of paragraph (g) of this subclause, an employee required to work overtime for more than two hours shall be supplied with a meal by the employer or be paid **\$17.50** or a meal and, if owing to the amount of overtime worked, a second or subsequent meal is required they shall be supplied with each such meal by the employer or be paid **\$11.80** for each meal so required.

4. Clause 29. – Wages:

A. Delete subclause (2) of this Clause and insert in lieu thereof:

(2) Leading Hands:

In addition to the appropriate total wage prescribed in subclause (1) of this Clause a leading hand shall be paid:

	\$
(a) If placed in charge of not less than three and not more than ten other employees	42.10
(b) If placed in charge of more than ten and not more than twenty other employees	64.10
(c) If placed in charge of more than twenty other employees	82.90

B. Delete subclause (5) of this Clause and insert in lieu thereof:

- (5) (a) Where an employer does not provide a Serviceperson, Installer, Assembler or an apprentice with the tools ordinarily required by that Serviceperson, Installer, Assembler or apprentice in the performance of their work as a Serviceperson, Installer, Assembler or as an apprentice the employer shall pay a tool allowance of:-
 - (i) **\$23.10** per week to such Serviceperson, Installer or Assembler; or
 - (ii) In the case of an apprentice a percentage of **\$23.10** being the percentage which appears against their year of apprenticeship in subclause (3) of this Clause.

for the purpose of such Serviceperson, Installer, Assembler or apprentice supplying and maintaining tools ordinarily required in the performance of their work as a Serviceperson, Installer, Assembler or apprentice.
- (b) Any tool allowance paid pursuant to paragraph (a) of this subclause shall be included in, and form part of, the ordinary weekly wage prescribed in this Clause.
- (c) An employer shall provide for the use of tradespersons or apprentices all necessary power tools, special purpose tools and precision measuring instruments.
- (d) A tradesperson or apprentice shall replace or pay for any tools supplied by the employer if lost through their negligence.

2025 WAIRC 00824

SHIRE OF EXMOUTH INDUSTRIAL AGREEMENT 2025

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIESSHIRE OF EXMOUTH, WESTERN AUSTRALIAN MUNICIPAL, ADMINISTRATIVE,
CLERICAL AND SERVICES UNION OF EMPLOYEES (WASU)**APPLICANT**

-v-

(NOT APPLICABLE)

RESPONDENT**CORAM**

SENIOR COMMISSIONER R COSENTINO

DATE

THURSDAY, 2 OCTOBER 2025

FILE NO/S

APPL 50 OF 2025

CITATION NO.

2025 WAIRC 00824

Result

Agreement varied

Representation**First Applicant**

Shire of Exmouth

Second Applicant

Western Australian Municipal, Administrative, Clerical and Services Union of Employees (WASU)

Order

WHEREAS the *Shire of Exmouth Industrial Agreement 2025* was made by the Shire of Exmouth and the Western Australian Municipal, Administrative, Clerical and Services Union of Employees (WASU) and was registered by the Commission on 10 September 2025 (*Shire of Exmouth, Western Australian Municipal, Administrative, Clerical and Services Union of Employees (WASU) -v- (Not Applicable)* [2025] WAIRC 00772);

AND WHEREAS the Shire of Exmouth and the WASU have subsequently made a new agreement and have jointly applied to vary the Agreement by the inclusion of an additional Schedule and an updated signing page;

AND WHEREAS the application complies with Regulation 55 and Regulation 57 of the *Industrial Relations Commission Regulations 2005* (WA);

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

THAT the *Shire of Exmouth Industrial Agreement 2025* be varied by substituting the agreement attached hereto, with effect from the date of this order.

(Sgd.) R COSENTINO,
Senior Commissioner.

[L.S.]

2025 WAIRC 00839

TEACHERS (PUBLIC SECTOR PRIMARY AND SECONDARY EDUCATION) AWARD 1993

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

DEPARTMENT OF EDUCATION

APPLICANT

-v-

STATE SCHOOL TEACHERS' UNION OF WESTERN AUSTRALIA, PRINCIPALS'
FEDERATION WESTERN AUSTRALIA**RESPONDENTS****CORAM**

COMMISSIONER C TSANG

DATE

TUESDAY, 7 OCTOBER 2025

FILE NO/S

APPL 46 OF 2025

CITATION NO.

2025 WAIRC 00839

Result	Award varied
Representation	
Applicant	Ms Z Johnston
First Respondent	Mr M Jarman
Second Respondent	Ms K Graves

Order

WHEREAS on 18 September 2025 an application was filed to vary the *Teachers (Public Sector Primary and Secondary Education) Award 1993 (Award)* pursuant to s 40 of the *Industrial Relations Act 1979 (WA)*;

AND WHEREAS the application seeks to rectify a minor typographical error at clause 39(18)(c)(ii) of the Award;

AND WHEREAS the parties have consented for the Award to be varied and for the application to be dealt with on the papers;

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

1. THAT clause 39(18)(c)(ii) of the Award be varied to read:
 - (ii) the child has reached the compulsory education period under section 6 of the *School Education Act 1999 (WA)*.
2. THAT the variation shall have effect from the beginning of the first pay period commencing on or after the date of this Order.

(Sgd.) C TSANG,
Commissioner.

[L.S.]

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

2025 WAIRC 00815

PASTRYCOOKS' AWARD NO. 24 OF 1981

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

COMMISSION'S OWN MOTION

APPLICANT

-v-

(NOT APPLICABLE)

RESPONDENT

CORAM SENIOR COMMISSIONER R COSENTINO

DATE WEDNESDAY, 1 OCTOBER 2025

FILE NO/S APPL 9 OF 2025

CITATION NO. 2025 WAIRC 00815

Result	Award cancelled
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Order

WHEREAS, the Commission initiated this matter of its own motion, considering there may be no employee to whom the *Pastrycooks' Award No. 24 of 1981* applies;

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

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

1. Give general notice by publication in the required manner of the intention of the Commission to cancel the *Award*, such notice being published on 25 February 2025; and
2. Serve copies of such notice on:
 - a. UnionsWA;
 - b. The Minister for Industrial Relations;
 - c. The Chamber of Commerce and Industry WA;

- d. Baking Industry Employers Association of WA; and
- e. Dongara Bakery;

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

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

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

THAT the *Pastrycooks' Award No. 24 of 1981* is cancelled.

(Sgd.) R COSENTINO,
Senior Commissioner.

[L.S.]

INDUSTRIAL MAGISTRATE—Claims before—

2025 WAIRC 00779

INDUSTRIAL MAGISTRATES COURT OF WESTERN AUSTRALIA

CITATION : 2025 WAIRC 00779
CORAM : INDUSTRIAL MAGISTRATE C. TSANG
HEARD : MONDAY, 9 JUNE 2025
DELIVERED : MONDAY, 15 SEPTEMBER 2025
FILE NO. : M 32 OF 2025
BETWEEN : CHRISTOPHER APLIN, DEPARTMENT OF ENERGY, MINES, INDUSTRY
REGULATION AND SAFETY

CLAIMANT

AND

LEE DOUGLAS ELLIOTT T/A LEESON PLUMBING (ABN 64 136 757 710)

RESPONDENT

CatchWords : INDUSTRIAL LAW – Application for default judgment – Proper construction of s 83A(1), s 83A(3) and s 83F(2) of the *Industrial Relations Act 1979* (WA) – Whether s 83A(1) requires the court to issue an order for the respondent to remedy the underpayments by payment to the employees, or whether the court may issue an order for the respondent to remedy the underpayments by payment to the industrial inspector

Legislation : *Industrial Relations Act 1979* (WA)
Industrial Relations Legislation Amendment Act 2021 (WA)
Industrial Magistrates Courts (General Jurisdiction) Regulations 2005 (WA)
Interpretation Act 1984 (WA)
Labour Relations Reform Act 2002 (WA)

Instrument : *Building Trades (Construction) Award 1987*

Cases referred to in reasons : *CIC Insurance Ltd v Bankstown Football Club Ltd* (1997) 141 ALR 618
Cody v JH Nelson Pty Ltd (1947) 74 CLR 629
Project Blue Sky Inc v Australian Broadcasting Authority [1998] HCA 28
Re Minister for Heritage; Ex Parte City of Fremantle [2000] WASCA 156
SZTAL v Minister for Immigration and Border Protection [2017] HCA 34
The Ombudsman v Laughton (2005) 64 NSWLR 114
Thorman v Dowgate Steamship Company Ltd [1910] 1 KB 410

Result : Application granted in part; orders to be made for payment to employees

Representation:

Claimant : Ms E Mills (of counsel)

Respondent : On his own behalf

REASONS FOR DECISION

1 These reasons concern the proper construction of ss 83A(1), 83A(3) and 83F(2) of the *Industrial Relations Act 1979* (WA)

(*Act*). Specifically, whether s 83A(1) requires the court to issue an order for the respondent to remedy the underpayment of employees by payment of the underpaid amounts to the employees; or permits the court to issue an order for the respondent to remedy the underpayment of employees by payment of the underpaid amounts to the claimant, an industrial inspector.

- 2 By Amended Particulars of Claim filed on 27 June 2025, the claimant clarified that the claim regarding the respondent's failure to comply with the *Building Trades (Construction) Award 1987 (Award)* is made pursuant to s 83(1) of the *Act*, current from 31 January 2025, i.e. version 16-10-00. Accordingly, in these reasons, references to the *Act* refer to version 16-10-00 unless otherwise stated.
- 3 Sections 83A of the *Act* states: (emphasis added)

83A. Underpayment of employee, orders to remedy

- (1) Where in any proceedings brought under section 83(1) against a person it appears to the industrial magistrate's court that an employee has not been paid the amount which the employee was entitled to be paid under an entitlement provision, **the industrial magistrate's court must**, subject to subsection (2), **order that person to pay to that employee** the amount by which the employee has been underpaid.
- (2) An order may only be made under subsection (1) –
 - (a) in respect of any amount relating to a period not being more than 6 years prior to the commencement of the proceedings; or
 - (b) if the person concerned appears to the industrial magistrate's court, or has been found under section 83E, to have contravened section 102(1)(a) or (b) by reason of having failed –
 - (i) to produce or exhibit a record relevant to the proceedings; or
 - (ii) to allow such a record to be examined; or
 - (iii) to answer a question relevant to the proceedings truthfully to the best of the person's knowledge, information and belief, as the case requires,
 in respect of any amount relating to a period not being more than 6 years prior to that failure.
- (3) When an order is made under subsection (1), **the amount stated in the order is taken to be a penalty imposed under this Act** and **may** be recovered accordingly, but on recovery **must be paid as stated in the order under section 83F**.
- (4) Nothing in this section limits the operation of section 83.

[Section 83A inserted: No. 20 of 2002 s. 155(1); amended: No. 30 of 2021 s. 48 and 76(2) and (3).]

- 4 Section 83F of the *Act* states: (emphasis added)

83F. Costs and penalties, payment of

- (1) Where the industrial magistrate's court, by an order made under section 83, **83A**, 83B or 83E, imposes a penalty or costs the industrial magistrate's court **must** state in the order –
 - (a) the name of the person liable to pay the penalty or costs; and
 - (b) the name of the person to whom the penalty is, or costs are, payable.
- (2) An industrial magistrate's court imposing a penalty by order under section 83, **83A**, 83B or 83E **may** order that the amount of the penalty, or part of that amount, be paid to –
 - (a) a person directly affected by the conduct to which the contravention relates; or
 - (b) **the applicant**; or
 - (c) the Treasurer.
- (3) In making an order for payment to a person referred to in subsection (2)(a) the court must take into account any other compensation that the person has received or is likely to receive in respect of the conduct concerned.

[Section 83F inserted: No. 20 of 2002 s. 157; amended: No. 30 of 2021 s. 76(2).]

Background

- 5 On 21 March 2025, the claimant filed an Originating Claim, outlining his employment with the Department of Energy, Mines, Industry Regulation and Safety and designation as an industrial inspector pursuant to s 98(1) of the *Act*; and seeking the following orders: (emphasis added)
 - a) an order that the Respondent pay the Claimant a penalty for each of the four contraventions of the Award, such penalties to be determined and imposed by the Court pursuant to section 83(4)(a)(ii) of the *Act*;
 - b) **an order pursuant to section 83A(1) of the Act that the Respondent pay to the Claimant \$6,501.38** for outstanding annual leave and annual leave loading entitlements of Mitchell Hosking under the Award;
 - c) **an order pursuant to section 83A(1) of the Act that the Respondent pay to the Claimant \$4,837.63** for outstanding annual leave and annual leave loading entitlements of Justin Hosking under the Award;
 - d) orders that the Respondent pay to the Claimant pre-judgment interest on the Award entitlements of Mitchell Hosking and Justin Hosking, pursuant to regulation 12(1) of the *Industrial Magistrates Courts (General Jurisdiction) Regulations 2005 [(Regulations)]*;
 - e) an order pursuant to section 83E(1)(b) of the *Act* that the Respondent pay the Claimant a penalty for the

contraventions of section 102(1)(a) of the *Act*;

- f) an order pursuant to sections 83C(1) and 83E(11) of the *Act* that the Respondent pay to the Claimant any disbursements incurred by the Claimant in relation to the proceedings; and
- g) an order pursuant to section 83E(2) of the *Act* requiring the Respondent to produce to the Claimant within 14 days of the order the following records held, controlled or capable of being accessed by the Respondent for Mitchell Hosking:
 - i. original records or all hours worked, such as time and wages records, timecards or rosters;
 - ii. details of all annual leave taken (amounts and dates taken);
 - iii. details of all sick leave taken (amounts and dates taken);
 - iv. details of any periods of unpaid leave (amounts and dates taken);
 - v. original payroll records, such as payroll reports or payslips for each pay period;
 - vi. bank records detailing payment of wages to Mitchell Hosking via electronic funds transfer (EFT);
 - vii. employment contract for Mitchell Hosking;
 - viii. all evidence, including receipts, relating to the payment of tools made by Leeson Plumbing for Mitchell Hosking.

- 6 On 14 May 2025, the claimant, upon the default of the respondent filing a Response within 21 days of service of the Originating Claim as prescribed by reg 14(1) of the *Regulations*, filed an application for default judgment seeking for the court to make the orders at [5] above (**Application**).
- 7 On 14 May 2025, the Clerk of the Court issued Orders for the claimant to serve the Application on the respondent, and required the respondent, if he opposes the Application, to file a Response to Claimant's Application by 4 June 2025. The respondent did not file a Response to Claimant's Application by 4 June 2025 or at all.
- 8 The Application was listed for hearing on 9 June 2025. At the hearing, the respondent agreed that Mitchell Hosking and Justin Hosking were entitled to be paid their accrued but untaken annual leave entitlements and annual leave loading on the termination of their employment; that he had not paid these entitlements to them; and that he would remedy the underpayments by making payment of the underpaid amounts.
- 9 Consequently, the court issued the following orders in relation to the Application, and ordered the remainder of the Originating Claim for penalties and costs to be adjourned and listed for a half-day penalty hearing:

Having heard from the parties at the hearing of the claimant's application for default judgment on 9 June 2025, and the respondent agreeing that he is in default of lodging a Response to the Originating Claim and consenting to the Industrial Magistrates Court issuing the orders sought in the claimant's application for default judgment that arise under ss 83A(1) and 83E(6) of the [*Act*] and regulation 12 of the [*Regulations*], the Court hereby orders that:

2. The claimant provide the respondent with a *Form 17 – Memorandum of Consent to Order or Judgment [(Consent Orders)]*, of the form of the orders that the parties consent to being issued on the claimant's application for default judgment and lodge it with the Court.
3. The claimant file and serve a written outline of submissions relevant to:
 - (a) Section 83A(1) of the *Act* and whether an order should issue requiring the respondent to remedy the underpayment by payment to the employees or to the claimant; and
 - (b) Regulation 12 of the *Regulations* including whether an order should issue under reg 12(1) or reg 12(4), the rate of interest, whether it may be expressed as a lump sum, and the relevant calculation.
- 10 On 10 June 2025, in accordance with Order 2 of the Orders made on 9 June 2025 (at [9] above), the claimant filed the parties' Consent Orders, in which the parties recorded their consent for the court to issue orders in the form of the orders set out in the Originating Claim and replicated in the Application (at [5] above).
- 11 On 10 June 2025 and 8 July 2025, in accordance with Order 3(a) of the Orders made on 9 June 2025 (at [9] above), the claimant filed submissions stating:

Statutory interpretation

- (a) The current method of statutory interpretation in Australia is the 'contextual or constructional choice': *CIC Insurance Ltd v Bankstown Football Club Ltd* (1997) 141 ALR 618, 635; *Project Blue Sky Inc v Australian Broadcasting Authority* [1998] HCA 28 [69] (*Project Blue Sky*); *SZTAL v Minister for Immigration and Border Protection* [2017] HCA 34 [14], [37]–[39].
- (b) The rule of *ejusdem generis* is not a rule of law; it refers to instances 'where there are general words following particular or specific words the general words should be confined to things of the same kind as those specified': *Cody v JH Nelson Pty Ltd* (1947) 74 CLR 629, 639. It 'is subordinate to the real intention of the parties, and does not control it; that is to say, that the canon of construction is but the instrument for getting at the meaning of the parties, and that the parties, if they use language intimating such intention, may exclude the operation of this or, I suppose, any other canon of construction': *Thorman v Dowgate Steamship Co Ltd* (1910) 1 KB 410, 419.
- (c) In any event, the rule of *ejusdem generis* is not relevant, as s 83A is not framed in a way that the rule applies. While s 83F provides a 'list' of sections to which it applies, it offers no limitation of which section applies when. Given s 83A(3) expressly refers to s 83F, then s 83A is always applicable in the context of s 83F.

- (d) The approach of *generalia specialibus non derogant*, was summarised by Spigelman CJ in *The Ombudsman v Laughton* (2005) 64 NSWLR 114 [19]:

The maxim of statutory construction *generalia specialibus non derogant* reflects an underlying principle that a legislature, which has created a detailed regime for regulating a particular matter, intends that regime to operate in accordance with its complete terms. Where any conflict arises with the general words of another provision, the very generality of the words of which indicates that the legislature is not able to identify or even anticipate every circumstance in which it may apply, the legislature is taken not to have intended to impinge upon its own comprehensive regime of a specific character.

- (e) Section 83A(1) is the general provision, modified by the specific provisions in ss 83A(3) and 83F(2). Section 83F explicitly refers to orders under s 83A(1) and makes provision for what the orders must state and who the court may order that the amount be paid to.
- (f) In any event, the general rule that ‘where possible, all words in an Act should be given effect’ is an express limitation on the *generalia specialibus non derogant* principle (citing Dennis C Pearce, *Statutory Interpretation in Australia* (LexisNexis, 9th ed, 2019) [4.52]).

Construction of ss 83A and 83F of the Act

- (g) Section 6 sets out the principal objects of the *Act*. Industrial inspectors and organisations have a longstanding and important role in the enforcement of minimum entitlements, recognising that individual employees, particularly vulnerable employees, may not have the resources or ability to practically pursue underpayments themselves. Sections 83(1), 83A and 83F are collectively intended to facilitate the enforcement of minimum entitlements, furthering the principal objective in s 6(d):

[T]o provide for the observance and enforcement of agreements, awards, the LSL Act, the MCE Act and other entitlement provisions...

- (h) A primary purpose of s 83F is to allow an applicant with the resources and expertise, such as an industrial inspector or union, to take the primary enforcement proceedings, and if necessary, to enforce any orders obtained under s 81CB.
- (i) Section 83F(2) is complementary to s 83(2), which provides for enforcement of an entitlement provision by, inter alia, an industrial inspector or union named as a party to an award or industrial agreement.
- (j) Therefore, the only interpretation of s 83A(1) that allows for a contextual or purposive interpretation is one that allows for an order made under s 83A(1) to be made payable to the applicant.
- (k) Numerous prior proceedings brought by an industrial inspector under s 83 involving migrant workers have resulted in the court ordering the underpayment to be made payable to an applicant industrial inspector pursuant to s 83F(2)(b).
- (l) Any interpretation of s 83A must be consistent with the *Act* as a whole. An order under s 83A is a penalty for non-compliance under the *Act*. Part of the enforcement process is compliance and recovery.
- (m) If s 83A is read to restrict the court in making orders for payments of penalty exclusively to an employee, then:
- (i) An industrial inspector loses their power to recover the debt in the Magistrates Court.
 - (ii) Section 83F(1)(b), requiring an order imposing a penalty under s 83A, to state the name of the person to whom the penalty is payable, has no work to do.
- (n) Therefore, the interpretation more consistent with the *Act* as a whole is that the express reference to s 83F in s 83A(3) and the express reference to s 83A(1) in s 83F, demonstrate that ss 83A and 83F are designed to work together.
- (o) Section 83F(2)(b) provides that the court, imposing a penalty by order under s 83A, may order the amount of the penalty, or part of that amount, be paid to the applicant. The only ‘penalty’ the court can impose under s 83A, is the amount of the underpayment that s 83A(3) deems to be a penalty. Therefore, a more consistent interpretation sees s 83A(3) as directing the court to s 83F for the options available when drafting a s 83A order.
- (p) Applying the contextual approach to interpretation of s 83A(1) requires an interpretation that is consistent and in harmony with other provisions of Part III Division 2, specifically s 83F.

Meaning of ‘must’ in s 83A(1) of the Act

- (q) The use of the word ‘must’ in s 83A(1), is intended to require the court to issue an order where it appears an employee has not been paid an amount to which the employee is entitled.
- (r) Applying a contextual or purposive approach requires taking into account the words of ss 83A(3) and 83F(1) and (2); and when read in context, leads to the conclusion that the order may be made payable to the applicant.
- (s) Furthermore, the ‘obligation’ must be applied taking into account the ordinary principles of interpretation. As noted in *Statutory Interpretation in Australia* [11.1]:

It could be assumed that, for interpretation purposes, the presence in legislation of words such as ‘shall’, ‘must’ or ‘is required’ suggest some kind of obligation... However, the courts have not adopted any rule to that effect... Instead, the courts have treated the resolution of obligatory/discretionary issues as having to be dealt with by reference to the ordinary principles of interpretation previously discussed.

- (t) Consequently, applying the ordinary principles of interpretation to s 83A(1), the court is empowered to, in accordance with s 83F(2) which applies by virtue of s 83A(3), make an order remedying an underpayment that is

payable to the applicant.

Consent Orders

- (u) The claimant does not press for orders that are on different terms to those in the Originating Claim and Application. The claimant does not seek orders payable to the employees; nor orders the claimant cannot enforce. Therefore, if the court considers that it does not have jurisdiction to make orders relating to underpayments payable to the claimant, the court should dismiss the Application.

Consideration

Principles for statutory construction

- 12 The principles for statutory construction (at [11(a)] above) provide that:
- (a) The focus of statutory construction is upon the text of the provision, having regard to its context and purpose;
 - (b) The context includes the legislative history and extrinsic materials which a court may have regard to in ascertaining the mischief which a statutory provision is intended to remedy; and
 - (c) The primary object of statutory construction is to construe the provision so that it is consistent with the language and purpose of all the provisions of the statute: *Project Blue Sky* [70]–[71]: (footnotes omitted)
 - 70 A legislative instrument must be construed on the prima facie basis that its provisions are intended to give effect to harmonious goals. Where conflict appears to arise from the language of particular provisions, the conflict must be alleviated, so far as possible, by adjusting the meaning of the competing provisions to achieve that result which will best give effect to the purpose and language of those provisions while maintaining the unity of all the statutory provisions. Reconciling conflicting provisions will often require the court ‘to determine which is the leading provision and which the subordinate provision, and which must give way to the other’. Only by determining the hierarchy of the provisions will it be possible in many cases to give each provision the meaning which best gives effect to its purpose and language while maintaining the unity of the statutory scheme.
 - 71 Furthermore, a court construing a statutory provision must strive to give meaning to every word of the provision. In *The Commonwealth v Baume* Griffith CJ cited *R v Berchet* to support the proposition that it was ‘a known rule in the interpretation of Statutes that such a sense is to be made upon the whole as that no clause, sentence, or word shall prove superfluous, void, or insignificant, if by any other construction they may all be made useful and pertinent’.
- 13 The *Interpretation Act 1984* (WA) (*Interpretation Act*) came into operation on 1 July 1984. Section 3(1) of the *Interpretation Act* provides that the provisions of the *Interpretation Act* apply to every written law, whether the law was enacted, passed, made or issued before or after the commencement of the *Interpretation Act*, unless express provision is made to the contrary; or the intent and object of an Act, or something in the subject or context of an Act, is inconsistent with such application.
- 14 Section 19 of the *Interpretation Act* states:
- 19. Extrinsic material, use of in interpretation**
- (1) Subject to subsection (3), in the interpretation of a provision of a written law, if any material not forming part of the written law is capable of assisting in the ascertainment of the meaning of the provision, consideration may be given to that material –
 - (a) to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law; or
 - (b) to determine the meaning of the provision when –
 - (i) the provision is ambiguous or obscure; or
 - (ii) the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law leads to a result that is manifestly absurd or is unreasonable.
 - (2) Without limiting the generality of subsection (1), the material that may be considered in accordance with that subsection in the interpretation of a provision of a written law includes –
 - (a) all matters not forming part of the written law that are set out in an official version of the law under the *Legislation Act 2021*; and
 - (b) any relevant report of a Royal Commission, Law Reform Commission, committee of inquiry or other similar body that was laid before either House of Parliament before the time when the provision was enacted; and
 - (c) any relevant report of a committee of Parliament or of either House of Parliament that was made to Parliament or that House of Parliament before the time when the provision was enacted; and
 - (d) any treaty or other international agreement that is referred to in the written law; and
 - (e) any explanatory memorandum relating to the Bill containing the provision, or any other relevant document, that was laid before, or furnished to the members of, either House of Parliament by a Minister before the time when the provision was enacted; and
 - (f) the speech made to a House of Parliament by a Minister on the occasion of the moving of a motion that the Bill containing the provision be read a second time in that House; and

- (g) any document (whether or not a document to which a preceding paragraph applies) that is declared by the written law to be a relevant document for the purposes of this section; and
- (h) any relevant material in any official record of proceedings in either House of Parliament.
- (3) In determining whether consideration should be given to any material in accordance with subsection (1), or in considering the weight to be given to any such material, regard shall be had, in addition to any other relevant matters, to –
- (a) the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law; and
- (b) the need to avoid prolonging legal or other proceedings without compensating advantage.

[Section 19 amended: No. 13 of 2021 s. 50.]

History of ss 83A and 83F of the Act

- 15 Section 83A of the Act was inserted by s 155(1) of the *Labour Relations Reform Act 2002* (WA) [No. 20 of 2002] (*Amending Act No. 20 of 2002*), and amended by ss 48, 76(2) and (3) of the *Industrial Relations Legislation Amendment Act 2021* (WA) [No. 30 of 2021] (*Amending Act No. 30 of 2021*).
- 16 Section 83F of the Act was inserted by s 157 of the *Amending Act No. 20 of 2002* and amended by s 76(2) of the *Amending Act No. 30 of 2021*.
- 17 The following table sets out ss 83A and 83F with the terms that were amended by the *Amending Act No. 30 of 2021* emphasised in bold and underlined:¹

Sections 83A and 83F of the Act (as introduced by the <i>Amending Act No. 20 of 2002</i>)	Sections 83A and 83F of the Act (as amended by the <i>Amending Act No. 30 of 2021</i>)
<p>83A. Underpayment of employee</p> <p>(1) Where in any proceedings brought under section 83(1) against <u>an employer</u> it appears to the industrial magistrate's court that an employee <u>of that employer has not been paid by that employer</u> the amount which the employee was entitled to be paid under an <u>instrument to which that section applies</u> the industrial magistrate's court <u>shall</u>, subject to subsection (2), order that <u>employer to</u> pay to that employee the amount by which the employee has been underpaid.</p> <p>(2) An order may only be made under subsection (1) –</p> <p>(a) in respect of any amount relating to a period not being more than 6 years prior to the commencement of the proceedings; or</p> <p>(b) if the <u>employer</u> concerned appears to the industrial magistrate's court, or has been found under section 83E, to have contravened section 102(1)(a) or (b) by reason of having failed –</p> <p>(i) to produce or exhibit a record relevant to the proceedings;</p> <p>(ii) to allow such a record to be examined; or</p> <p>(iii) to answer a question relevant to the proceedings truthfully to the best of the <u>employer's</u> knowledge, information and belief, as the case requires,</p> <p>in respect of any amount relating to a period not being more than 6 years prior to that failure.</p> <p>(3) When an order is made under subsection (1), the amount stated in the order <u>shall be</u> taken to be a penalty imposed under this Act and may be recovered accordingly, but on recovery <u>shall</u> be paid as stated in the order under section 83F.</p> <p>(4) Nothing in this section limits the operation of section 83.</p>	<p>83A. Underpayment of employee, orders to remedy</p> <p>(1) Where in any proceedings brought under section 83(1) against <u>a person</u> it appears to the industrial magistrate's court that an employee <u>has not been paid</u> the amount which the employee was entitled to be paid under an <u>entitlement provision</u> the industrial magistrate's court <u>must</u>, subject to subsection (2), order that <u>person to</u> pay to that employee the amount by which the employee has been underpaid.</p> <p>(2) An order may only be made under subsection (1) –</p> <p>(a) in respect of any amount relating to a period not being more than 6 years prior to the commencement of the proceedings; or</p> <p>(b) if the <u>person</u> concerned appears to the industrial magistrate's court, or has been found under section 83E, to have contravened section 102(1)(a) or (b) by reason of having failed –</p> <p>(i) to produce or exhibit a record relevant to the proceedings;</p> <p>(ii) to allow such a record to be examined; or</p> <p>(iii) to answer a question relevant to the proceedings truthfully to the best of the <u>person's</u> knowledge, information and belief, as the case requires,</p> <p>in respect of any amount relating to a period not being more than 6 years prior to that failure.</p> <p>(3) When an order is made under subsection (1), the amount stated in the order <u>is</u> taken to be a penalty imposed under this Act and may be recovered accordingly, but on recovery <u>must</u> be paid as stated in the order under section 83F.</p> <p>(4) Nothing in this section limits the operation of section 83.</p>
<p>83F. Payment of costs and penalties</p> <p>(1) Where the industrial magistrate's court, by an order made under section 83, 83A, 83B or 83E, imposes a penalty or costs the industrial magistrate's court <u>shall</u></p>	<p>83F. Costs and penalties, payment of</p> <p>(1) Where the industrial magistrate's court, by an order made under section 83, 83A, 83B or 83E, imposes a penalty or costs the industrial magistrate's court <u>must</u></p>

<p>state in the order –</p> <p>(a) the name of the person liable to pay the penalty or costs; and</p> <p>(b) the name of the person to whom the penalty is, or costs are, payable.</p> <p>(2) An industrial magistrate’s court imposing a penalty by order under section 83, 83A, 83B or 83E may order that the amount of the penalty, or part of that amount, be paid to –</p> <p>(a) a person directly affected by the conduct to which the contravention relates;</p> <p>(b) the applicant; or</p> <p>(c) the Treasurer.</p> <p>(3) In making an order for payment to a person referred to in subsection (2)(a) the court must take into account any other compensation that the person has received or is likely to receive in respect of the conduct concerned.</p>	<p>state in the order –</p> <p>(a) the name of the person liable to pay the penalty or costs; and</p> <p>(b) the name of the person to whom the penalty is, or costs are, payable.</p> <p>(2) An industrial magistrate’s court imposing a penalty by order under section 83, 83A, 83B or 83E may order that the amount of the penalty, or part of that amount, be paid to –</p> <p>(a) a person directly affected by the conduct to which the contravention relates;</p> <p>(b) the applicant; or</p> <p>(c) the Treasurer.</p> <p>(3) In making an order for payment to a person referred to in subsection (2)(a) the court must take into account any other compensation that the person has received or is likely to receive in respect of the conduct concerned.</p>
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18 The table above indicates that the *Amending Act No. 30 of 2021* amended ss 83A and 83F by:

- (a) Replacing the references to ‘employer’ with ‘person’;
- (b) Replacing the references to ‘shall’ with ‘must’;
- (c) Replacing the reference to ‘shall be’ with ‘is’;
- (d) Replacing the reference to ‘of that employer has not been paid by that employer’ with ‘has not been paid’; and
- (e) Replacing the reference to ‘instrument to which that section applies’ with ‘entitlement provision’, upon the insertion of the definition of ‘entitlement provision’ in s 7(1) of the *Act*, by s 5(2) of the *Amending Act No. 30 of 2021*:

entitlement provision means –

- (a) a provision of any of the following –
 - (i) an award;
 - (ii) an industrial agreement;
 - (iii) an employer-employee agreement;
 - (iv) an order made by the Commission, other than an order made under section 23A, 32(8), 44(6) or 66;

or
- (b) a provision of the LSL Act Part III; or
- (c) a minimum condition of employment; or
- (d) a local government long service leave provision;

19 It appears from [17]–[18] above, that the more material amendments are at [18(a) and (e)] above.

20 The amendment at [18(a)] above, is explained by the Explanatory Memorandum, Industrial Relations Amendment Bill 2021 (WA) (**Explanatory Memorandum to the 2021 Bill**) [392]–[393]:

392. Clause 48 amends existing s 83A, consequential to amendments made to s 83.

393. The references to ‘employer’ in s 83A have been replaced with ‘person’, to reflect that a person who is not the employer may be held accessorially liable under s 83(2) and may be jointly and severally liable for any underpayment. For example, if a director of a company is held accessorially liable for a contravention of the LSL Act by the company, they may be ordered to rectify any underpayment of long service leave.

21 Given the differences in ss 83A and 83F between their introduction by the *Amending Act No. 20 of 2002* and amendment by the *Amending Act No. 30 of 2021* appear limited to the matters outlined at [18] above, ss 19(1) and (2) of the *Interpretation Act* (at [14] above) provide that the following extrinsic material may be considered in the interpretation of ss 83A and 83F of the *Act*:

- (a) Section 155 of the Labour Relations Reform Bill 2002 [**Bill**] as introduced to the Assembly on 19 February 2002:

155. Sections 83E and 83F inserted

Before section 84 the following sections are inserted –

...

83F. Payment of costs and penalties

- (1) Where the industrial magistrate’s court, by an order made under section 83, 83A, 83B or 83E, imposes a penalty or costs the industrial magistrate’s court shall state in the order –
 - (a) the name of the person liable to pay the penalty or costs; and

- (b) the name of the person to whom the penalty is, or costs are, payable.
- (2) An industrial magistrate's court imposing a penalty under section 83, 83A, 83B or 83E may order that the amount of the penalty, or part of that amount, be paid to –
- (a) a person directly affected by the conduct to which the contravention relates;
- (b) the applicant; or
- (c) the Treasurer.
- (3) In making an order for payment to a person referred to in subsection (2)(a) the court must take into account any other compensation that the person has received or is likely to receive in respect of the conduct concerned.
- (b) Outline of the Labour Relations Reform Bill 2002 (WA) dated 18 January 2002 (**Ministerial Outline of the Bill**) [57]: (emphasis added)
57. Where the Industrial Magistrate fines the employer for failure to comply with the re-instatement order, **the Magistrate can determine to whom ever the fine is paid including the affected party.**
- (c) Explanatory Memorandum, Labour Relations Reform Bill 2002 (WA) (**Explanatory Memorandum to the Bill**), introduced to the Assembly on 19 February 2002, [49] and [174]–[176]: (emphasis added)

PART 2 - AMENDMENTS TO PROVIDE FOR EMPLOYER-EMPLOYEE AGREEMENTS

...

Certain Conduct Prohibited

...

49. Contravention of civil penalty provisions may attract pecuniary penalties, which may in turn be payable to the aggrieved party. The Court is additionally empowered to make compliance orders, including interim orders. Contravention of compliance orders is punishable as an offence.

...

PART 9 - AMENDMENTS ABOUT PROCEDURE AND ENFORCEMENT

...

Penalties

174. The new enforcement regime increases the penalties that can be applied in relation to breach of industrial instruments, breach of unfair dismissal orders of the Commission and civil penalty provisions.
175. Breach of compliance orders and orders for specific performance in respect to unfair dismissal constitutes an offence. The penalty able to be imposed for offences is up to \$25,000 and \$2500 per day in respect of a body corporate and \$5000 and \$500 per day in the case of an individual.
176. **Where penalties are imposed by order, the penalties may be made payable to the affected party.**

- (d) Second Reading speech of the Bill in the Assembly on 19 February 2002, 7514, 7520: (emphasis added)

The Bill establishes civil penalty provisions to deal with unlawful conduct that may affect employees, prospective employees and employers. ... [I]ndustrial inspectors from [the Department of Consumer and Employment Protection] will be empowered as a matter of right to investigate alleged contravention of civil penalty provisions and **commence proceedings in the Industrial Magistrates Court.**

The Bill provides meaningful remedies when unlawful conduct is proven. The Bill does not focus solely on punishing the party found guilty of unlawful conduct. **Importantly, it seeks to undo the wrong so that the innocent party is meaningfully redressed.** Contravention of civil penalty provisions **may attract pecuniary penalties, which may in turn be payable to the aggrieved party.** The court will be additionally empowered to make orders to prevent the continuation of any unlawful conduct.

...

Penalties

When penalties are imposed, they may be made payable to the affected party. The Government believes this will ensure greater fairness as those affected can be compensated. The improved enforcement regime will provide the mechanism necessary to ensure the rights of all parties in the system are adequately protected. The proposed enforcement provisions aim to provide an increased deterrent to non-compliance and significant penalties for those parties who consistently contravene industrial laws.

- (e) Consideration of the Bill in detail before the Assembly on 28 March 2002, 9127, 9129: (emphasis added)

Mr KOBELKE: ... However, by moving to the civil penalty provisions we are ensuring not only that there is a penalty but also that it is easier to obtain a conviction and get the penalty paid.

The other issue is that if someone continued to contravene, the person would face even higher penalties under the enforcement provisions. We are ensuring that the Act has real teeth.

...

Mr KOBELKE: I move –

Page 179, line 28 – To insert after ‘penalty’ the words ‘by order’.

This amendment has been introduced to clarify that penalties imposed for orders under proposed **sections 83A, 83B(10) and 83E(9) are not payable to an affected party**. This amendment clarifies that **only penalties imposed by order will be subject to proposed section 83F(2)**, allowing the magistrate the discretion to award the penalties to the affected parties.

(f) Explanatory Memorandum to the 2021 Bill [730], [734]: (emphasis added)

PART 5 – MINIMUM CONDITIONS OF EMPLOYMENT ACT 1993 AMENDED

...

730. Section 17BA(2) provides that a prospective employer must not directly or indirectly require another person (the prospective employee) to spend, or pay to the prospective employer or any other person, an amount of the prospective employee’s money if:

- a) the requirement is in connection with employment or potential employment of the prospective employee by the prospective employer; and
- b) the requirement is unreasonable in the circumstances; and
- c) in the case of a payment, the payment is directly or indirectly for the benefit of the prospective employer or a party related to the prospective employer.

734. ... In proceedings under s 83E for a contravention of s 17BA(2), the IMC may instead determine that there has been a contravention of an entitlement provision (the award) for the purposes of s 83. The IMC may then, **under s 83A, also order that the employer pay the employee the amount that has been underpaid**.

Meaning of s 83A of the Act

22 For the reasons to follow, I find that s 83A has an ordinary meaning, and requires the court to issue orders requiring the respondent to remedy the underpayments by paying the underpaid amounts to the employees. Furthermore, that this ordinary meaning is confirmed by the extrinsic material at [21] above.

23 The section heading to s 83A is ‘**Underpayment of employee, orders to remedy**’. While s 32(2) of the *Interpretation Act* states that section headings do not form part of the written law, they may be extrinsic material which may be taken into account of pursuant to s 19(1) of the *Interpretation Act* by virtue of s 19(2)(a) of the *Interpretation Act* (see [14] above).

24 That section headings are ‘extrinsic material’ which may be taken into account of pursuant to s 19(1) of the *Interpretation Act* was confirmed in *Re Minister for Heritage; Ex Parte City of Fremantle* [2000] WASCA 156 (*City of Fremantle*) [62]–[63] (Wheeler J, Wallwork J agreeing at [19]): (emphasis added)

62 ... The heading to a section of a statute does not form part of the statute (*Interpretation Act*, s 32(2)). ... if a heading is not part of the written law, it may nevertheless be ‘extrinsic material’ which may be taken account of pursuant to s 19(1) of the *Interpretation Act*.

63 In the case of this legislation, the heading in question is to be found in the report of the Standing Committee on Legislation presented in relation to the Bill, and therefore would appear to fall under the *Interpretation Act*, s 19(2)(h). In those circumstances, it appears to me that it is proper to refer to the heading **so as to ascertain the ‘drift’ or main idea of the section**. ...

25 The section heading to s 83A (at [23] above) provides that the “‘drift’ or main idea’ (*City of Fremantle* [63] at [24] above) of s 83A is to provide for the court to make an order to remedy the underpayment of an employee.

26 Section 83A(1) provides that where, in proceedings brought under s 83(1) against a person, it appears to the court that an employee has been underpaid, the court ‘must’ order ‘that person’ to pay ‘to that employee’ the amount of the underpayment.

27 As outlined at [13] above, the *Interpretation Act* applies to every written law. Section 56 of the *Interpretation Act* states: (original emphasis)

56. ‘May’ imports a discretion, ‘shall’ is imperative

- (1) Where in a written law the word **may** is used in conferring a power, such word shall be interpreted to imply that the power so conferred may be exercised or not, at discretion.
- (2) Where in a written law the word **shall** is used in conferring a function, such word shall be interpreted to mean that the function so conferred must be performed.

28 Therefore, the word ‘must’ in s 83A(1) (which replaced ‘shall’), means the function to be performed under s 83A(1) is unequivocal and mandatory – in making an order, the court must order **that person to pay to that employee** the amount by which **the employee** has been underpaid. There is no room for discretion in either the payor (namely, **that person** against whom the s 83(1) proceedings have been brought) or the recipient (namely, **that employee** who has been underpaid).

29 Section 83A(3) states that when the court makes an order under s 83A(1), ‘the amount stated in the order is taken to be a penalty imposed under this Act and may be recovered accordingly, but on recovery must be paid as stated in the order under section 83F.’

30 The claimant argues that s 83A(3) integrates s 83F fully. For the reasons to follow, I find s 83A(3)’s reference to ‘but on recovery must be paid as stated in the order under section 83F’ does not integrate s 83F fully. Rather, the reference to s 83F in s 83A(3) refers to s 83F(1), but not to s 83F(2).

Analysis of ss 83A and 83F of the Act

- 31 Section 83F contains three sub-sections. While s 83F(3) follows s 83F(2)(a); ss 83F(1) and (2) operate independently.
- 32 Section 83F(1) operates where the court 'by an order made under section 83, 83A, 83B or 83E, imposes a penalty or costs'. In this situation, the court **must** state in the order: the name of the person liable to pay the penalty or costs (the payor); and the name of the person to whom the penalty is, or costs are, payable (the recipient).
- 33 Section s 83F(2) operates when the court is 'imposing a penalty by order under section 83, 83A, 83B or 83E'. In this situation, ss 83F(2)(a)–(c) state that the court **may** order that all or part of the amount of the penalty be paid to:
- (a) a person directly affected by the conduct to which the contravention relates; or
 - (b) the applicant; or
 - (c) the Treasurer.
- 34 Both of ss 83F(1) and (2) purport to apply where proceedings have been brought under ss 83, 83B and 83E. Relevantly, while ss 83F(1) and (2) refer to s 83A, proceedings cannot be brought under s 83A. Orders under s 83A(1) can only be made if proceedings are brought under s 83(1).
- 35 Section 83(1) provides that any of the following may apply to the court for the enforcement of an entitlement provision: (emphasis added)
- (a) the Registrar or a deputy registrar;
 - (b) **an industrial inspector**;
 - (c) in the case of an award or industrial agreement, any organisation or association named as a party to it;
 - (d) in the case of an award, industrial agreement or order, an employer bound by it;
 - (e) **a person** –
 - (i) who is a party to the award, agreement or order or to whom the award, agreement or order applies; or
 - (ii) to whom the entitlement provision applies under the LSL Act, the MCE Act or a local government long service leave provision;
 - (f) if an employee under an employer-employee agreement is a represented person, a representative acting on the employee's behalf.
- 36 Section 83(4)(a) provides that on a hearing of an application brought under s 83(1), if the contravention is proved, the court **may, by order**, impose a pecuniary penalty under s 83(4A). Section 83(4A) outlines the amounts of the pecuniary penalty in the case of a body corporate and in the case of an individual, and when the contravention is a serious contravention and when it is not a serious contravention.
- 37 Section 83(5) provides that, if a contravention of an entitlement provision is proved, the court **may**, in addition to imposing a penalty under s 83(4)(a), make an order for the purpose of preventing any further contravention of the entitlement provision, which order may be made subject to any terms and conditions the court thinks appropriate (s 83(6)(a)), and may be revoked at any time (s 83(6)(b)). Furthermore, the s 83(5) order may be an interim order, made pending final determination of the s 83(1) application: s 83(7).
- 38 Section 83(8) provides that a person **must** comply with a s 83(5) order. The penalty for non-compliance is a fine of \$13,000, and a daily penalty of a fine of \$1,000 for each day or part of a day during which the offence continues.
- 39 Section 83B(1) provides that any of the following may apply to the court for the enforcement of a s 23A unfair dismissal order: (emphasis added)
- (a) the Registrar or a deputy registrar; and
 - (b) **an industrial inspector**; and
 - (c) an organisation of employees in which the employee in relation to whom the order is made is eligible to be enrolled as a member or an association that represents such an organisation; and
 - (d) **the employee** in relation to whom the order is made.
- 40 Sections 83B(3)(a) and (4)(a) provide that on an application brought under s 83B(1), if the contravention is proved, the court **may**:
- (a) Pursuant to s 83B(3)(a)(ii): revoke the s 23A order, and order the **employer to pay the employee** an amount to be decided by the court in accordance with s 83B(7), which requires the amount to not be less than six months' remuneration and not to exceed 12 months' remuneration.
 - (b) Pursuant to s 83B(4)(a): order the person to do any specified thing, or to cease any specified activity, for the purpose of preventing any further contravention of the s 23A order.
- 41 Section 83B(5) provides that, in addition to any ss 83B(3)(a) or (4)(a) order, the court **may** impose such penalty as the court thinks just not exceeding \$13,000; and in the case of a s 83B(3)(a) order, order the **employer to pay to the employee** the remuneration lost, or likely to have been lost, by the employee because of the contravention of the s 23A order.
- 42 Section 83B(10) provides that a person **must** comply with a ss 83B(3)(a) or (4)(a) order. The penalty for non-compliance is a fine of \$13,000, and a daily penalty of a fine of \$1,000 for each day or part of a day during which the offence continues.
- 43 Sections 83E(1) and (6) provide that any of the following may apply to the court for the enforcement of a civil penalty

provision: (emphasis added)

- (a) **a person** directly affected by the contravention or, if that person is a represented person, the person's representative; or
- (b) an organisation or association of which a person who comes within paragraph (a) is a member; or
- (ba) in the case of a contravention of section 100(1) – any organisation or association; or
- (c) the Registrar or a deputy registrar; or
- (d) **an industrial inspector.**

- 44 Section 83E(2) provides that, if a person contravenes a civil penalty provision, the court **may**, instead of or in addition to imposing a pecuniary penalty under s 83E(1), make an order for the purpose of preventing any further contravention of the civil penalty provision, which order may be made subject to any terms and conditions the court thinks appropriate (s 83E(4)(a)), and may be revoked at any time (s 83E(4)(b)). Furthermore, the s 83E(2) order may be an interim order, made pending final determination of the s 83E(1) application: s 83E(5).
- 45 Section 83E(9) provides that a person **must** comply with a s 83E(2) order. The penalty for non-compliance is a fine of \$13,000, and a daily penalty of a fine of \$1,000 for each day or part of a day during which the offence continues.
- 46 Section 83E(11) provides that the court **may** make orders under ss 83E(1), (2) or (10) (which provides that the court may dismiss the application) with or without costs, but in no case can any costs be given against the Registrar, a deputy registrar or an industrial inspector.
- 47 Section 83C(1) provides that the court **may** make orders under ss 83, 83A and 83B with or without costs, but in no case can any costs be given against the Registrar, a deputy registrar or an industrial inspector.
- 48 The upshot of [35]–[47] above, is that s 83F(1) operates where the court imposes penalty or costs by an order made under ss 83, 83A, 83B or 83E; specifically, by an order:
- (a) Imposing penalties under ss 83, 83B or 83E.
 - (b) Remedying an underpayment under s 83A(1), by virtue of s 83A(3) deeming the underpaid amount a penalty imposed under the *Act*.
 - (c) Imposing costs under ss 83C(1) or 83E(11).
- 49 Contrary to s 83F(1), s 83F(2) only operates when the court imposes 'a penalty **by order**'. The court may impose a 'penalty by order' under ss 83, 83B or 83E. While s 83A(3) **deems** the underpaid amount under a s 83A(1) order to be a penalty imposed under the *Act*, the court does not impose 'a penalty by order' in issuing a s 83A(1) order.
- 50 Accordingly, s 83F(1) has wider operation than s 83F(2). Section 83F(1) operates where the court imposes penalty or costs orders, however, s 83F(2) only operates when the court imposes 'a penalty by order'. Therefore, ss 83F(1) and (2) operate independently, with s 83F(2) operating in a narrower set of circumstances than s 83F(1).
- 51 Under s 83A(1), the court **must** order the person (against whom s 83(1) proceedings have been brought) to pay the employee the amount that the employee has been underpaid under an entitlement provision. When the court makes a s 83A(1) order, s 83A(3) operates to deem the amount stated in the s 83A(1) order to be a penalty to which s 83F applies. As outlined at [48]–[50] above, only s 83F(1) applies, which requires the court to state the name of the person liable to pay the penalty, and to state the name of the employee to whom the penalty is payable.
- 52 Contrary to the claimant's submissions at [11] above, I find that properly construed, s 83A operates only with s 83F(1) and not s 83F(2).
- 53 This construction is consistent with the language and purpose of s 83A, which is to remedy the underpayment of an employee, by requiring the underpaid amount to be paid to the employee.
- 54 This construction gives meaning to every word in s 83A(1) that the 'court must, subject to subsection (2), order that person to pay to that employee the amount by which the employee has been underpaid.'
- 55 If s 83F(2) applies to a s 83A(1) order, to provide a discretion to the court to order the underpaid amount to be paid to either the applicant or the Treasurer, this would result in all of the words that the 'court must, subject to subsection (2), order that person to pay to that employee the amount by which the employee has been underpaid' in s 83A(1) being superfluous, void, or insignificant: *Project Blue Sky* [71] at [12(c)] above.
- 56 Furthermore, this construction gives meaning to each word in the phrase, '[a]n industrial magistrate's court imposing a penalty by order' in s 83F(2): *Project Blue Sky* [71] at [12(c)] above.
- 57 This construction is also consistent with the maxim of *generalia specialibus non derogant* requiring the discretion in s 83F(2) to give priority to the specific and mandatory requirement in s 83F(1). This construction is consistent with s 83F(1) being the leading provision, to which s 83F(2) must 'give way': *Project Blue Sky* [70] at [12(c)] above.
- 58 Contrary to the claimant's submission at [11(m)(ii)] above, this construction does not result in s 83F(1)(b) having no work to do. In this matter, s 83F(1)(b) would operate to require the court to state in the s 83A(1) orders that:
- (a) The amount that Mitchell Hosking was underpaid under an entitlement provision, is to be paid to Mitchell Hosking; and
 - (b) The amount that Justin Hosking was underpaid under an entitlement provision, is to be paid to Justin Hosking.
- 59 As outlined at [23]–[58] above, this construction is consistent with the language and purpose of the provisions of ss 83, 83A, 83B, 83C, 83E and 83F, and gives effect to these provisions operating harmoniously: *Project Blue Sky* [70] at [12(c)] above.

- 60 This construction does, however, mean the reference to ‘83A’ in s 83F(2) has no work to do. This is addressed in the section ‘Extrinsic material’ below.
- 61 There are likely sound policy reasons to allow an industrial inspector, union, the Registrar and deputy registrar to institute proceedings under ss 83, 83B and 83E, but that only grant the court a discretion to order the amount of the penalty, or part of that amount, be paid to them under s 83F(2) where the court is imposing a penalty by order under ss 83, 83B or 83E. An order under s 83A(1) is intended to be remedial. However, if s 83F(2) operates with s 83A(1) to allow the amount that an employee has been underpaid under an entitlement provision to be paid to a non-employee applicant, there is a risk that the remedial intention of s 83A(1) is defeated by either the non-employee applicant not transferring the underpaid amount in full to the underpaid employee, or by any delays in the transfer of the underpaid amount to the employee.
- 62 A construction of s 83A(1) that defeats its remedial intention, of remedying the underpayment of an employee under an entitlement provision by requiring the underpaid amount to be paid to the employee, would be inconsistent with the objects of the *Act* (see s 6(d) at [11(g)] above).
- 63 On the claimant’s construction, not only could s 83F(2)(b) operate, but s 83F(2)(c) could operate to provide the court with a discretion to order the amount of the underpayment to be paid to the Treasurer. Furthermore, on the claimant’s construction, the payment could be payable to the Treasurer even if the employee has brought the s 83(1) proceedings, or if an applicant has brought the s 83(1) proceedings on an employee’s behalf. In my view, this would be wholly inconsistent with the remedial purpose of a s 83A(1) order of ensuring the underpaid employee receives the amount they are entitled to under an entitlement provision. This speaks against s 83F(2) applying to a s 83A(1) order.
- 64 The construction that only s 83F(1) and not s 83F(2) operates with s 83A, aligns with the objects in s 6(d) of the *Act*, prioritising direct payment of entitlements to employees, while allowing industrial inspectors to assist with enforcement proceedings.

Enforcement of a s 83A order

- 65 As outlined at [36] above, s 83(4) provides that the court may impose a pecuniary penalty if the contravention of an entitlement provision under s 83(1) is proved.
- 66 As outlined at [37] above, ss 83(5) and (6) operate to provide the court with a broad power, where a contravention of an entitlement provision is proved, to make any order for the purpose of preventing any further contravention of the entitlement provision, which order may be made subject to any terms and conditions the court thinks appropriate.
- 67 It does not appear on the face of ss 83(5) and (6) that the court would be prevented from making separate orders: one set of orders under s 83A(1) requiring the respondent to remedy the underpayments by making payment of the underpaid amounts to the employees, and another set of orders under s 83(5) providing for the respondent to provide proof of compliance with the s 83A(1) orders to the claimant. Such orders could require the respondent to confirm proof of compliance to the claimant via affidavit; facilitating the claimant’s oversight with compliance without altering s 83A(1)’s remedial focus. This would be consistent with s 83A(4), which states that nothing in s 83A limits the operation of s 83.
- 68 I am not persuaded by the claimant’s argument that s 83A(1) orders requiring the respondent to pay the underpaid amounts directly to the employees, defeats the claimant’s ability to enforce the s 83A(1) orders under s 81CB.
- 69 Penalty or costs orders are orders requiring the payment of money. Therefore, they are orders that may be enforced, in a court of competent jurisdiction, under s 81CB: (emphasis added)

81CB. Industrial magistrate’s court judgments, enforcement of

- (1) In this section –
judgment includes an order, direction or decision.
- (2) **A person to whom money is to be paid under a judgment** of an industrial magistrate’s court made in the exercise of general jurisdiction may enforce it by lodging a copy of it, certified by a clerk of the court, and an affidavit stating to what extent it has not been complied with, with a court of competent jurisdiction.
- (3) If, or to the extent that, a judgment of an industrial magistrate’s court made in the exercise of general jurisdiction does not require the payment of money, a person entitled to the benefit of the judgment may enforce it by lodging a copy of it, certified by a clerk of the court, and an affidavit stating to what extent it has not been complied with, with the Magistrates Court.
- (4) A judgment that is lodged with a court under subsection (2) or (3) is to be taken to be a judgment of that court and may be enforced accordingly.

[Section 81CB inserted: No. 5 of 2008 s. 62; No. 43 of 2024 s. 62.]

- 70 Section 81CB provides that the employees named under s 83F(1) as the recipients to the s 83A(1) orders requiring the respondent to remedy the underpayments by paying the underpaid amounts to them, may directly enforce the s 83A(1) orders in a court of competent jurisdiction. I am not persuaded that there is any prohibition on the claimant assisting the employees in enforcing the s 83A(1) orders.
- 71 Furthermore, and as outlined at [67] above, I am not persuaded that there is any prohibition on the claimant applying for orders under s 83(5) of the *Act*. As outlined at [38] above, a person must comply with a s 38(5) order; failure to comply would constitute an offence under the *Act*, which would be enforceable under s 83D of the *Act*.

Extrinsic material

- 72 Sections 83, 83A, 83B, 83C, 83E and 83F were introduced by the *Amending Act No. 20 of 2002* and, as outlined at [59] above, the construction that s 83F(2) does not apply to s 83A(1), gives effect to harmonious goals.

- 73 As outlined at [22] above, the following extrinsic material confirms the construction of s 83F(2) as not applying to s 83A(1).
- 74 As outlined at [21(b)] above, the Ministerial Outline of the Bill notes that where the court fines an employer for failing to comply with a s 23A(3) reinstatement order, the court can determine to whomever the fine is paid, including the affected party. This confirms the intention for s 83F(2) to operate when the court imposes a penalty under s 83B.
- 75 The following confirms the intention for s 83F(2) to operate when the court imposes a penalty under s 83E:
- (a) The Explanatory Memorandum to the Bill [49] (at [21(c)] above), which states that pecuniary penalties for contravention of civil penalty provisions ‘may in turn be payable to the aggrieved party’.
 - (b) The Second Reading speech of the Bill (at [21(d)] above), which states that industrial inspectors can institute proceedings for contravention of civil penalty provisions, which if proved, attract pecuniary penalties, ‘which may in turn be payable to the aggrieved party.’
- 76 As outlined at [21(c)] above, the Explanatory Memorandum to the Bill [174]–[176] refers to the new enforcement regime and the penalties that can be applied in relation to breaches under ss 83, 83B and 83E, and states that ‘[w]here penalties are imposed by order, the penalties may be made payable to the affected party.’ This confirms the intention for s 83F(2) to operate when the court imposes a penalty by order under ss 83, 83B and 83E.
- 77 As outlined at [21(a) and (e)] above:
- (a) Section 83F(2) of the Bill as at 19 February 2002, stated:
 - (2) An industrial magistrate’s court imposing a penalty under section 83, 83A, 83B or 83E may order that the amount of the penalty, or part of that amount, be paid to –
 - (a) a person directly affected by the conduct to which the contravention relates;
 - (b) the applicant; or
 - (c) the Treasurer.
 - (b) During the parliamentary debate of the Bill in the Assembly on 28 March 2002 (at [21(e)] above), the Minister moved a motion for s 83F(2) to be amended by the addition of the words ‘by order’: (emphasis added)
 - (2) An industrial magistrate’s court imposing a penalty **by order** under section 83, 83A, 83B or 83E may order that the amount of the penalty, or part of that amount, be paid to –
 - (a) a person directly affected by the conduct to which the contravention relates; or
 - (b) the applicant; or
 - (c) the Treasurer.
 - (c) The addition of the words ‘by order’ to s 83F(2) was to clarify that penalties imposed for orders under proposed ss 83A, 83B(10) and 83E(9) are **not** payable to an affected party; and to clarify that **only penalties imposed by order** will be subject to proposed s 83F(2), allowing the magistrate the discretion to award the penalties to the affected parties.
- 78 Sections 83B(10) and 83E(9) of the *Act*, as introduced by the *Amending Act No. 20 of 2002* and amended by the *Amending Act No. 30 of 2021*, state:²

Sections 83B(10) and 83E(9) of the <i>Act</i> (as introduced by the <i>Amending Act No. 20 of 2002</i>)	Sections 83B(10) and 83E(9) of the <i>Act</i> (as amended by the <i>Amending Act No. 30 of 2021</i>)
<p>83B. Enforcement of unfair dismissal order</p> <p>...</p> <p>(10) A person shall comply with an order made against that person under subsection (3)(a) or (4)(a). Penalty: \$5 000 and a daily penalty of \$500.</p>	<p>83B. Unfair dismissal, enforcing s.23A order as to</p> <p>...</p> <p>(10) A person must comply with an order made against that person under subsection (3)(a) or (4)(a). Penalty for this subsection: (a) a fine of \$13 000; (b) a daily penalty of a fine of \$1 000 for each day or part of a day during which the offence continues.</p>
<p>83E. Contravention of a civil penalty provision</p> <p>...</p> <p>(9) A person must comply with an order made against him or her under subsection (2). Penalty: \$5 000 and a daily penalty of \$500.</p>	<p>83E. Proceedings for contravening civil penalty provisions</p> <p>...</p> <p>(9) A person must comply with an order made against the person under subsection (2). Penalty for this subsection: (a) a fine of \$13 000; (b) a daily penalty of a fine of \$1 000 for each day or part of a day during which the offence continues.</p>

- 79 The matters at [77]–[78] above, confirms the intention for s 83F(2), allowing the court the discretion to award penalties to the

affected parties, to **only** apply to ‘penalties imposed by order’. Penalties imposed under ss 83A, 83B(10) and 83E(9) are **not** ‘penalties imposed by order’, such that s 83F(2) does not apply to orders under ss 83A, 83B(10) and 83E(9).

- 80 As outlined at [77]–[79] above, the words ‘by order’ were inserted into s 83F(2) to clarify that s 83F(2) only applies to ‘penalties imposed by order’; s 83F(2) does **not** apply to offence provisions (specifically, ss 83B(10) and 83E(9)),³ nor to provisions deemed to be penalty provisions (specifically, s 83A(1)).
- 81 Having clarified the intention of s 83F(2) by moving for the insertion of the words ‘by order’, the concurrent non-removal of the reference to s 83A means the reference to s 83A in s 83F(2) has no work to do. This may indicate a drafting oversight, as the amendment clarified the intent of s 83F(2) as not applying to s 83A.
- 82 Alternatively, and applying the *generalia specialibus non derogant* principle, s 83A is the specific provision, which may operate with the general provisions of s 83F where applicable, but if inapplicable, or conflicting, s 83F(2) ‘must give way to’ s 83A(1): *Project Blue Sky* [70] at [12(c)] above.
- 83 As outlined at [21(f)] above, the Explanatory Memorandum to the 2021 Bill [734] states that where there is a contravention of an entitlement provision under s 83, the court ‘may then, under s 83A, also order that the employer pay the employee the amount that has been underpaid.’ This confirms the construction that s 83A orders are for the employer to pay the employee the amount that has been underpaid.

Conclusion

- 84 For the preceding reasons, I find that on a proper construction of ss 83A(1), 83A(3) and 83F(2) of the *Act*, that s 83A(1) has an ordinary meaning, requiring the court to issue orders for the respondent to remedy the underpayment of the employees by paying the underpaid amounts to the employees.
- 85 I find the court is not permitted to issue orders under s 83A(1) for the respondent to remedy the underpayment of the employees by paying the underpaid amounts to the claimant.
- 86 While the parties consented to the court issuing orders for the underpaid amounts to be paid to the claimant, the court’s jurisdiction under s 83A(1) mandates payment to the employees, which overrides the parties’ consent.
- 87 Given the mandatory nature of s 83A(1) and the matters at [8] above, the following orders should be issued:
- (a) An order pursuant to s 83A(1) of the *Act* that the respondent pay to Mitchell Hosking \$6,501.38 for outstanding annual leave and annual leave loading entitlements under the Award; and
 - (b) An order pursuant to s 83A(1) of the *Act* that the respondent pay to Justin Hosking \$4,837.63 for outstanding annual leave and annual leave loading entitlements under the Award.
- 88 I will list this matter for a Directions Hearing to hear from the parties on these and any other orders to be issued to give effect to these reasons.

C. TSANG INDUSTRIAL MAGISTRATE

¹ The section headings were changed with the fourteenth reprint of the *Act* on 24 August 2012, as an editorial amendment made under the *Reprints Act 1984* (WA) (since repealed and replaced with the *Legislation Act 2021* (WA)).

² *Ibid.*

³ As outlined at [42], [45] and in the table at [78] above, ss 83B(10) and 83E(9) were amended by the *Amending Act No. 30 of 2021* to refer to the penalty as a fine and to provide for a daily penalty of a fine for ‘each day or part of a day during which the offence continues.’

2025 WAIRC 00785

INDUSTRIAL MAGISTRATES COURT OF WESTERN AUSTRALIA

CITATION : 2025 WAIRC 00785
CORAM : INDUSTRIAL MAGISTRATE R. COSENTINO
HEARD : WEDNESDAY, 27 AUGUST 2025
DELIVERED : WEDNESDAY, 27 AUGUST 2025
FILE NO. : M 9 OF 2025
BETWEEN : CONSTRUCTION, FORESTRY AND MARITIME EMPLOYEES UNION

CLAIMANT

AND

QUBE PORTS PTY LTD (ABN: 46 123 021 492)

RESPONDENT

CatchWords : INDUSTRIAL LAW – Assessment of pecuniary penalties for contraventions of *Fair Work Act 2009* (Cth) – s 50 – s 323- single contravention of an enterprise agreement –

		contraventions admitted - failure to pay North West Allowance during single pay period – penalty determined
Legislation	:	<i>Fair Work Act 2009</i> (Cth) <i>Crimes Act 1914</i> (Cth)
Instrument	:	<i>Qube Ports Pty Ltd Port of Port Hedland Enterprise Agreement 2020</i>
Case(s) referred to in reasons:	:	<i>Fair Work Ombudsman v NSH North Pty Ltd trading as New Shanghai Charlestown</i> [2017] FCA 1301; (2017) 275 IR 148 <i>Commonwealth v Director, Fair Work Building Inspectorate</i> [2015] HCA 46; (2015) 258 CLR 482 <i>Australian Building and Construction Commissioner v Pattinson</i> [2022] HCA 13; (2022) 274 CLR 450 <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>Australian Ophthalmic Supplies Pty Ltd v McAlary-Smith</i> [2008] FCAFC 8; (2008) 165 FCR 560 <i>Construction, Forestry and Maritime Employees Union v Qube Ports Pty Ltd</i> [2025] FCA 208 <i>Transport Workers' Union of Australia v Qantas Airways Limited (Penalty)</i> [2025] FCA 971
Result	:	Penalty imposed
Representation:		
Claimant	:	Mr K. Sneddon (of counsel)
Respondent	:	Mr J. McLean (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 felicity of expression and to include headings, complete references and citations)

- I am required to determine the penalty that should be imposed on the respondent, **Qube Ports Pty Ltd**, for its admitted contraventions of s 50 and s 323 of the *Fair Work Act 2009* (Cth) (**FWA**). Although there are two provisions of the FWA Qube has contravened, both contraventions arise from a single instance of an underpayment to Qube's employee, Leah Costa (the **Affected Employee**).
- Under the *Qube Ports Pty Ltd Port of Port Hedland Enterprise Agreement 2020*, the Affected Employee was entitled to be paid the North West allowance for the pay period 5 August 2024 to 18 August 2024, in the sum of \$1,165.22. Qube did not pay her the North West allowance, and its failure constitutes the contraventions of s 50 and s 323 of the FWA.

Relevant facts

- For the purposes of this penalty hearing, the parties jointly provided a Statement of Agreed Facts dated 16 June 2025.
- Evidence was given by Joel O'Brien (**Mr O'Brien**), one of the claimant's organisers, who has had dealings with Qube in that capacity. His evidence was relied on to establish that the claimant had raised issues about the North West allowance with Qube on several occasions. His evidence also went to Qube's asserted lack of contrition.
- Qube relied on a witness statement of Daniel Ortiz (**Mr Ortiz**), who is Qube's General Manager of Industrial Relations. His evidence was intended to contextualise the contravening conduct.
- The following uncontested facts are taken from the Statement of Agreed Facts, the Originating Claim, the Response, the Amended Response and the witness statements.
 - Qube is a national system employer.
 - Qube employed the Affected Employee at relevant times.
 - The Affected Employee was a national system employee.
 - The Affected Employee was a member of the claimant.
 - The claimant is a registered organisation as defined in the FWA.
 - The Enterprise Agreement is an enterprise agreement made under the FWA. It covered the claimant and applied to Qube and the Affected Employee.
 - Clause 15.4 of the Enterprise Agreement provides for payment of a North West allowance to employees for all 'Worked Hours,' and for each pay period, up to a maximum amount of \$23.78 per hour.
 - Clause 2.1(X) of the Enterprise Agreement defines 'Worked Hours' to include any period of paid leave.
 - On 10 August 2024, the Affected Employee commenced a period of paid parental leave.

- (10) On 22 August 2024, the Affected Employee was paid 49 hours of paid parental leave for the pay period 5 August to 18 August 2024.
- (11) Qube did not pay the Affected Employee the North West allowance for the 49 hours of paid parental leave that she took in that pay period, resulting in an underpayment of \$1,165.22 gross.
- (12) On 22 January 2025, these proceedings were commenced.
- (13) On 20 February 2025 Qube received the Originating Claim in these proceedings.
- (14) On 6 March 2025, Qube paid the Affected Employee the amount of \$1,165.22 gross, which is the amount the subject of this claim.
- (15) On 20 March 2025, Qube filed a Response in these proceedings, denying the contraventions.
- (16) On 29 May 2025, Qube filed an Amended Response, admitting the contraventions.

Mr O'Brien's evidence about raising the North West allowance with Qube

- 7 In his witness statements, Mr O'Brien says that between 20 October 2023 and 17 April 2025, he had, on several separate occasions, raised the issue of non-payment or incorrect payment of the North West allowance concerning five separate individual Union members, with three different employees or officers of Qube.
- 8 Counsel for the claimant properly conceded that Mr O'Brien's evidence did not establish that Qube had contravened an industrial instrument on any of those occasions by failing to pay the North West allowance to any employee. Rather, the claimant says Mr O'Brien's evidence shows that the payment of the North West allowance was controversial or problematic, and so the evidence is relevant to the circumstances of the particular contravention that these proceedings are concerned with.
- 9 I have difficulty with this submission. I do not accept that the mere fact that the claimant disputed Qube's application of the North West allowance on a number of occasions reveals anything of particular relevance to the determination of penalty in this matter.
- 10 The unchallenged evidence concerning the circumstances of the contraventions the subject of these proceedings is to the effect that they were due to an administrative error and were unintentional. None of Mr O'Brien's evidence related to disputes arising because of administrative errors resulting in non-payment of the North West allowance akin to the circumstances arising in these proceedings.
- 11 In cross-examination, Mr O'Brien conceded that in each instance where the issue about the North West allowance was raised, Qube had either disputed the employee's entitlement, and no further action had since been taken by the claimant, or Qube had made a back payment, without admitting a contravention, and the dispute was resolved. Qube says, therefore, that if anything, the evidence demonstrates that specific deterrence is unnecessary. The fact that Qube has made payments, even when it disputed its liability to do so, shows Qube does not have a culture or goal of avoiding its industrial obligations or short-changing employees. I accept that is ultimately all Mr O'Brien's evidence amounts to.
- 12 Mr O'Brien also says that from his conversations with the Affected Employee, he is aware that Qube has not given her an apology or an explanation. His evidence does not deal with when his conversations took place or the substance of those conversations. The evidence was not objected to, but it was purportedly substantiated by an auto-generated or pro-forma payroll advice which set out the date and amount of the payment, without any apology.
- 13 To the extent that Mr O'Brien's evidence is relied on to demonstrate a lack of contrition, I do not give it much weight.

Relevant statutory provisions and principles

- 14 The FWA provides that the Industrial Magistrates Court (IMC) may order a person to pay an appropriate pecuniary penalty if the IMC is satisfied that the person has contravened a civil remedy provision¹.
- 15 The maximum penalty for each contravention by a natural person, expressed as a number of penalty units, is set out in the table in s 539(2) of the FWA².
- 16 If the contravener is a body corporate, the maximum penalty is five times the maximum number of penalty units prescribed for a natural person³.
- 17 The rate of a penalty unit is set by s 4AA of the *Crimes Act 1914* (Cth)⁴. The relevant rate is that applicable at the date of the contravening conduct.
- 18 The contravention occurred on 22 August 2024 when a penalty unit was \$313. The maximum penalty in respect of each contravention by an individual is 60 penalty units and so the maximum in respect of a corporation is \$93,900.
- 19 The way the Court is to approach penalty has been helpfully summarised in the parties' written submissions filed in advance of this penalty hearing and is not in dispute.
- 20 Borrowing from the decision in *Fair Work Ombudsman v NSH North Pty Ltd trading as New Shanghai Charlestown* [2017] FCA 1301; (2017) 275 IR 148 at [36], as to the steps involved, I must:

¹ s 546(1) of the FWA.

² s 546(2) of the FWA.

³ s 546(2) of the FWA.

⁴ s 12 of the FWA.

- (1) First, identify the separate contraventions, with each breach of each obligation being a separate contravention. Here there is one contravention of the Enterprise Agreement, and accordingly, one contravention of s 50 and a secondary contravention of s 323.
- (2) Second, consider the application of s 557 of the FWA. Because I am dealing with a single contravention of the Enterprise Agreement, s 557 does not apply.
- (3) Third, consider the appropriate penalty in respect of each individual group contravention, taken in isolation.
- (4) Finally, consider the overall penalties arrived at, and apply the totality principle, to ensure that the penalties for each separate contravention when combined are appropriate and proportionate to the conduct viewed as a whole, making such adjustments as are necessary.

- 21 The purpose of a civil penalty is primarily, if not wholly, that of promoting the public interest in compliance with the laws that have been contravened. The focus of a civil penalty determination will therefore be upon issues of specific and general deterrence⁵. However, ‘insistence upon the deterrent quality of a penalty should be balanced by insistence that it “not be so high as to be oppressive”’⁶.
- 22 The maximum penalty is a relevant consideration but “does not constrain the exercise of discretion ... beyond requiring “*some reasonable relationship between the theoretical maximum and the final penalty imposed*”⁷. The “reasonable relationship” should be considered by reference to the need for deterrence⁸.
- 23 The parties submissions each set out the commonly referred to ‘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 it does, the amount of the penalty.
- 24 The range of considerations is not ‘a rigid catalogue of matters for attention.’ At the end of the day the task of the Court 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.⁹
- 25 Although the range of considerations provides useful guidance, the task of assessing the appropriate penalty is not an exact science¹⁰. The Court must ultimately fix a penalty that pays appropriate regard to the contraventions that have occurred¹¹. ‘[A] court empowered by s 546 to impose an “appropriate” penalty must act fairly and reasonably for the purpose of protecting the public interest by deterring future contraventions of the Act.’¹²

The nature and extent of the conduct which led to the contraventions

- 26 The breach relates to one employee, one payment, and one payroll period. The underpayment was to the extent of \$1,165.22. While this might be characterised as a relatively anodyne or minor amount, this is not, on its own, indicative of the appropriate penalty relative to the maximum. The maximum is not reserved for the objectively gravest contravention in terms of quantum.
- 27 What is relevant is that the breach was a one-off anomaly. The Affected Employee was paid the North West allowance while on parental leave except for this single payroll period. This is strongly indicative of the lack of a need for specific deterrence, because there was no inclination towards further contraventions.

The circumstances in which the conduct took place

- 28 According to Mr Ortiz, he made enquiries of Qube’s payroll team in order to understand how the underpayment occurred. He explained that Qube’s payroll system (Chris21) was separate to the rostering and time attendance system (Microster). For the payroll team to process payment of the North West allowance, the payroll team would conduct a manual review each fortnight to determine an employee’s eligibility for, and the amount of, the North West allowance. That manual process involved review of the time and attendance records to determine the employee’s ‘Worked Hours.’
- 29 The system was such that paid parental leave had to be manually entered and processed through Microster, before it would flow through to the payroll system.
- 30 The reason why the Affected Employee did not receive the North West Allowance in the first week of her parental leave was because the parental leave was entered into Microster after the payroll team had undertaken the manual processing of the North West Allowance for that pay period.

⁵ *Commonwealth v Director, Fair Work Building Inspectorate* [2015] HCA 46; (2015) 258 CLR 482 at [55], citing *Trade Practices Commission v CSR Ltd* [1990] FCA 521 at [40]; see also *Australian Building and Construction Commissioner v Pattinson* [2022] HCA 13; (2022) 274 CLR 450 (*Pattinson*), *Fair Work Ombudsman v NoBrace Centre Pty Ltd (in liq) (No 2)* [2019] FCCA 2970 at [66] and Katzmann J in *Fair Work Ombudsman v Grouped Property Services Pty Ltd (No 2)* [2017] FCA 557 at [388].

⁶ *Pattinson* at [40] citing *NW Frozen Foods Pty Ltd v Australian Competition and Consumer Commission* [1996] FCA 1134; 71 FCR 285.

⁷ *Pattinson* at [10], citing *Australian Competition and Consumer Commission v Reckitt Benckiser (Australia) Pty Ltd* (2016) 340 ALR 25 at [156].

⁸ *Pattinson* at [55].

⁹ Buchanan J in *Australian Ophthalmic Supplies Pty Ltd v McAlary-Smith* [2008] FCAFC 8; (2008) 165 FCR 560 at [91]

¹⁰ *Commonwealth v Director, Fair Work Building Inspectorate* [2015] HCA 46; (2015) 258 CLR 482 at [47].

¹¹ *Pattinson* at [19].

¹² *Pattinson* at [48].

- 31 Accordingly, the error was completely inadvertent and was the product of a previously unanticipated shortcoming in the system.
- 32 This evidence was unchallenged.
- 33 The circumstances here involve genuine and unintended error in the manual steps involved in payroll processing, as described by Mr Ortiz. The payroll processing system had a shortcoming, which would not have manifested, except that the payment straddled a period of hours actually worked and a period of paid leave, combined with the timing of the manual assessment of the North West allowance entitlement and the timing of the entry of leave into the rostering system.

The nature and extent of any loss or damage sustained

- 34 The loss is limited to the delay of several months in the payment to the Affected Employee of the after-tax amount, which was due in August 2024.

Whether there has been similar previous conduct by Qube

- 35 There is no evidence before me of similar previous conduct by Qube. The highest the evidence goes is that the NorthWest allowance had been controversial, or the subject of dispute. This is not an aggravating factor.

The size of the business enterprise involved

- 36 Mr Ortiz's evidence was that Qube employs over 2,200 employees and over 8,400 people across the broader corporate group. Part of Mr Ortiz's role is to oversee compliance with the multiplicity of industrial instruments that apply to Qube. Qube, in its written submissions, submitted that the complex industrial environment and scale of operations do not mean that non-compliance is excusable, but that inadvertent, and one-off underpayments are at least understandable.
- 37 His Honour Justice Feutrill rejected a similar argument, although in a slightly different context, in *Construction, Forestry and Maritime Employees Union v Qube Ports Pty Ltd* [2025] FCA 208 at [94], observing that a calculus based on the number of previous contraventions, compared against the number of employees and locations, does not offer a compelling reason to reduce the weight that would otherwise be afforded to previous contraventions. His Honour said the size and spread of an employer's operation is not a reason for diminishing corporate responsibility for contraventions that may be indicative of systemic or underlying failings in corporate systems, policies, procedures and culture. With respect, I agree with his Honour's reasoning.
- 38 The claimant submitted that Qube's size was such that a substantial penalty was required to provide a deterrent effect. It submitted, in its written submissions, that anything less than the maximum will go unnoticed. In oral submissions, Counsel relied on Justice Lee's observations in *Transport Workers' Union of Australia v Qantas Airways Limited (Penalty)* [2025] FCA 971 at [26]-[28] as to the core role of penalties in promoting compliance with industrial instruments and the FWA.
- 39 Qube's size is a relevant factor and is indicative of the need for a substantial penalty. But I reject the submission that 'anything less than the maximum will go unnoticed'.

Whether or not the breaches were deliberate

- 40 The contraventions occurred due to a shortcoming in Qube's payroll processing system, which required a manual assessment of an employee's 'Worked Hours' per pay cycle for eligibility for the North West allowance. The system failed because, for the particular pay cycle, the Affected Employee's paid leave was entered into the rostering system after the 'Worked Hours' were manually extracted from the rostering system and entered into the payroll system, so that the leave was not calculated as 'Worked Hours.'
- 41 It is clear that the contraventions were not deliberate. Had they been deliberate, the non-payment would have continued beyond the relevant pay period. It is appropriate to treat this contravention as the result of inadvertence and human error. This is a telling factor when it comes to assessing the need for specific deterrence.

Involvement of senior management

- 42 There is no evidence that senior management was involved in or contributed to the occurrence of the contraventions. Senior management became involved to rectify the contraventions, understand how they occurred, and to put in place steps to minimise the risk of future contraventions.

Whether Qube has shown contrition

- 43 Mr Ortiz stated in his evidence that Qube regrets the inconvenience and stress the matter may have caused to the Affected Employee. The claimant submits that it is questionable whether Qube has shown remorse and suggested that Mr Ortiz's evidence amounted to mere lip service.
- 44 Mr Ortiz was not cross-examined on this issue but the claimant says the lack of contrition is demonstrated:
- (a) by the fact that Qube originally denied the contravention; and
 - (b) because Qube's evidence about the Enterprise Agreement's Dispute Resolution Procedure and the lack of its utilisation to resolve this matter implicitly amounts to a criticism of the claimant for instituting these proceedings.
- 45 It is clear from Mr Ortiz's unchallenged evidence that Qube was unaware of the contravention until these proceedings were commenced. It is also clear that Qube acted very promptly as soon as it became aware of these proceedings. It investigated, accepted that there was an underpayment, and remedied it by making a payment without any undue delay. It has invested in improvements to its payroll processing systems. It has cooperated in ensuring that these proceedings could be progressed efficiently and without delay. These are contrite actions.
- 46 Qube initially denied there was a contravention in these proceedings. That position was:

- (a) contained in a Response which also admitted that the Affected Employee was entitled to be paid but was not paid due to an administrative error;
- (b) informed by the erroneous view that, having remedied the underpayment, there was a defence to the claim¹³; and
- (c) changed by the Amended Response, which admitted the contraventions relatively early in the proceedings. The only substantive steps that had been taken to that point was the conduct of a pre-trial conference and the filing of consent to orders dealing with the Amended Response.

- 47 Mr Ortiz's unchallenged evidence was that since late 2024, Qube has taken steps to implement automated payment processes for payment of the North West Allowance, to reduce reliance on manual assessments. The integration of the North West Allowance into Microster went live from 1 July 2025.
- 48 Mr Ortiz's statement of regret is consistent with the actions that Qube has taken since the underpayment was brought to its attention, including its review and improvement of payroll processing systems.
- 49 Mr Ortiz's evidence refers to and summarises the dispute resolution procedure contained in the Enterprise Agreement, and he says that it is Qube's expectation that payroll issues be resolved through the dispute resolution process, unless it is uncontroversial¹⁴. I understand that this particular underpayment is an uncontroversial one. In that case, according to Mr Ortiz, he would expect it to be resolved between an employee and their manager, without there even being recourse to the dispute resolution procedure.
- 50 At paragraph 16, Mr Ortiz says that the underpayment was not brought to Qube's attention, much less was there any attempt by the Affected Employee or the claimant to progress the matter under the dispute resolution procedure. Nothing is said in the claimant's written submissions in reliance upon the absence of utilisation of the dispute resolution procedure. And nothing was said that was critical of the non-utilisation of the dispute resolution procedure in submissions during the hearing.
- 51 Qube has not expressly criticised the claimant, for either commencing the proceedings, or for not bringing the matter to the attention of Qube via the dispute resolution procedure.
- 52 Put in context, Mr Ortiz's reference to the dispute resolution procedure and Qube's expectations about how such matters might be dealt with and resolved, appears to be for the purpose of demonstrating Qube's lack of prior knowledge of the underpayment. Accordingly, I do not consider that the evidence undermines the contrition that Qube has shown. Qube's corrective actions, cooperation and contrition are therefore mitigating factors.

Corrective action

- 53 Corrective action was taken in the form of payment of the underpaid amount to the Affected Employee, as well as, from 1 July 2025, integrating the North West allowance into the Microster rostering system.

The need for specific and general deterrence

- 54 Qube relied on evidence of its contributions to the communities in which it operates as evidence that it strives to be a respected and good corporate citizen. It says that it is not an employer that is attempting to exploit or otherwise deprive employees of their legal entitlements. This position is also, on Qube's submissions, supported by the evidence that matters raised by Mr O'Brien in his evidence were resolved, most frequently, by Qube making relatively prompt payments of the North West allowance, where it was alleged that it was due.
- 55 The claimant, on the other hand, points to Qube's history of contraventions and penalty proceedings in this Court. From 2022, there are seven instances of Qube being found to have contravened section 50 of the FWA, and seven occasions when a pecuniary penalty has been imposed. I was also told that there are four further proceedings currently on foot, in which there has been admitted contraventions, but where penalties have not yet been imposed.
- 56 The fact that Qube does not have a clean compliance record deprives it of reliance on its record as a mitigating factor. There is a not insignificant number of contraventions over the period since about 2022. This is indicative of the need for specific deterrence.
- 57 There is, of course, also a need for general deterrence.

Conclusion on penalties

- 58 Balancing all of these considerations I consider a penalty of 12% of the maximum penalty is appropriate in respect of the contravention of section 50. Because the contravention of section 323 is an incidental consequence of the contravention of section 50, I do not propose to impose a separate penalty in respect of that contravention.
- 59 The total penalty for both breaches will be \$11,268, which I consider serves the purpose of both specific and general deterrence, having regard to the size of Qube's operations and its prior history of contraventions.
- 60 The penalty ought to be paid to the claimant, consistent with the standard practice and the principles as set out in *Milardovic v Vemco Services Pty Ltd (No 2)* [2016] FCA 244; 242 FCR 492.

R. COSENTINO

INDUSTRIAL MAGISTRATE

¹³ Exhibit 4 - Witness Statement of Daniel Raul Ortiz dated 23 July 2025.

¹⁴ Exhibit 4 at [10] to [11].

2025 WAIRC 00808

INDUSTRIAL MAGISTRATES COURT OF WESTERN AUSTRALIA

CITATION : 2025 WAIRC 00808
CORAM : INDUSTRIAL MAGISTRATE B. COLEMAN
HEARD : FRIDAY, 5 SEPTEMBER 2025
DELIVERED : FRIDAY, 5 SEPTEMBER 2025
FILE NO. : M 26 OF 2025
BETWEEN : PAUL DAVID CALLAGHAN, DEPARTMENT OF ENERGY, MINES, INDUSTRY
REGULATION AND SAFETY

CLAIMANT

AND

AHMED EL SAYED IMAM

FIRST RESPONDENT

AND

YAN WOON DESIREE HUI

SECOND RESPONDENT

CatchWords : INDUSTRIAL LAW – Assessment of appropriate civil penalties for the enforcement of an entitlement provision - multiple contraventions of an Award - complete lack of remorse, contrition of corrective action - lack of cooperation with enforcement authorities - blatant disregard for the compliance regime and authority of the Court – penalties determined

Legislation : *Industrial Relations Act 1979* (WA)

Instrument : *Restaurant, Tea Room and Catering Workers Award*

Case(s) referred to in reasons : *Fair Work Ombudsman v Grouped Property Services Proprietary Limited (No 2)* [2017] FCA 557
Australian Building and Construction Commissioner v Pattinson [2022] HCA 13; 274 CLR 450
Callan v Smith [2021] WAIRC 216; 101 WAIG 1155
Kelly v Fitzpatrick [2007] FCA 1080; 166 IR 14
Australian Ophthalmic Supplies Pty Ltd v McAlary-Smith [2008] FCAFC 8; 165 FCR 560
Fair Work Ombudsman v NSH North Pty Ltd trading as New Shanghai Charlestown [2017] FCA 1301; (2017) 275 IR 148
Wong v The Queen [2001] HCA 64; (2001) 207 CLR 584
Australian Competition and Consumer Commission v Australia and New Zealand Banking Group Limited [2016] FCA 1516
SKL v The State of Western Australia [2024] WASCA 32 [24]
Markarian v The Queen [2005] HCA 25, (2005) 228 CLR 357
Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union [2017] FCAFC 113
Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union (The BKH Contractors Case) (No 2) [2018] FCA 1563
Jillian Dixon, Department of Mines, Industry Regulations and Safety v Karakuyu & Anor [2025] WAIRC 00451; 105 WAIG 2074
Commissioner of Taxation v Arnold (No 2) [2015] FCA 34

Result : Penalty issued

Representation:

Claimant : Ms I. Inkster (of counsel)

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 for clarity of expression, to insert headings and to include complete citations).

Background

- 1 The claimant, Mr Paul David Callaghan, an industrial inspector with the Department of Energy, Mines, Industry Regulation and Safety (**the Department**), commenced proceedings against the respondents, Ahmed El Sayed Imam and Yan Woon Disiree Hui, on 28 February 2025, seeking enforcement of entitlement provisions pursuant to the *Restaurant, Tea Room and Catering Workers Award (the award)*.
- 2 The respondents were served the claim and failed to lodge a response within the required time frame.
- 3 The claimant filed an application for default judgment on 23 May 2025, and the Industrial Magistrates Court of Western Australia (**Court**) made orders on 28 May 2025 that the respondents were to file a response by no later than 16 June 2025.
- 4 The respondents failed to comply with the Court's orders, though through their lawyer, they filed the response out of time on 18 June 2025.
- 5 On 19 June 2025, the Court entered default judgment against the respondents in favour of the employee, Ms Agostino, in the amount of \$2,739.33 for unpaid wages, \$931.47 for unpaid superannuation and also ordered that the respondents pay pre-judgment interest of \$1,240.03.
- 6 By failing to respond to the claim, the respondents are taken to have admitted the allegations contained in the claimant's originating claim. By his claim, the industrial inspector has also sought payment of civil penalties relating to the contraventions alleged against the respondents.
- 7 The power of the Court to order such penalties is set out in s 83(4) of the *Industrial Relations Act 1979 (WA) (Act)*.
- 8 On 19 June 2025, Industrial Magistrate Scaddan made programming orders related to the penalty hearing, requiring the parties to file witness statements and written submissions.

The Penalty Hearing

- 9 The claimant lodged and served witness statements and submissions in compliance with the Court orders, and on 24 July 2025, the registry confirmed with the parties my direction that the claimant's witnesses were only required to attend the hearing if the respondents intended to challenge the evidence. The registry instructed the respondents to inform the Court whether they intended to do so by 4 August 2025.
- 10 The Court received no correspondence from the respondents related to the penalty hearing, nor were any witness statements or written submissions filed. The respondents did not place the claimant on notice that any of the claimant's evidence would be challenged, and on 29 August 2025, the Court received formal notification that the respondent's lawyer had ceased to act.
- 11 Subsequently, the Court registry attempted to correspond with the respondents via the email address provided by their former legal representative, however, the registry received an automated response – it appears that the respondents had created a custom rule to block all emails sent by the Court registry. The email response appears at Annexure 1 of these reasons.
- 12 The respondents failed to attend the penalty hearing. Consequently, the respondents clearly demonstrated that they did not intend to participate in the penalty hearing, nor did they seek to be heard on the appropriate penalty.
- 13 I have therefore relied upon the originating claim and the affidavits filed by the claimant to determine the appropriate penalties in this matter.

Principles relevant to determine the appropriate penalty

- 14 As at November 2019, being the final month of the contraventions, s 83(4)(a)(ii) of the Act provided that the Court may impose a maximum penalty on an employer of \$2,000 for each breach if the Court is satisfied that the employer has contravened a civil penalty.¹
- 15 The procedure of the Industrial Magistrates Court relevant to penalties is contained in the *Industrial Magistrate's Court (General Jurisdiction) Regulations 2005 (WA)*.
- 16 Notably, regulation 35(4) states that 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.
- 17 The Act allows the Court to order a penalty paid directly to a person directly affected by the conduct to which the contravention relates, or to the applicant, or the treasurer.²
- 18 The purpose served by penalties was described by Katzmann J in *Fair Work Ombudsman v Grouped Property Services Proprietary Limited* (No 2) [2017] FCA 557. At [388] Katzmann J said:

In contrast to the criminal law, however, where, in sentencing, retribution and rehabilitation are also relevant, the primary, if not only, purpose of a civil penalty is to promote the public interest in compliance with the law. This is achieved by imposing penalties that are sufficiently high to deter the wrongdoer from engaging in similar conduct in the future (specific deterrence) and to deter others who might be tempted to contravene (general deterrence). The penalty for each contravention or course of conduct is to be no more and no less than is necessary for that purpose. (citations omitted)
- 19 This approach was endorsed by the High Court in *Australian Building and Construction Commissioner v Pattinson* [2022] HCA 13; 274 CLR 450 (*Pattinson*). The High Court in *Pattinson* reiterated that the objective when imposing a penalty is to attempt to put a price on a contravention that is sufficiently high to deter repetition by the contravener and by others who might be tempted to contravene a statute.³

- 20 Therefore, I must decide the appropriate penalty such that it does not exceed what is reasonably necessary to achieve deterrence by the respondents, and other employers, within their industry.
- 21 The appellate Courts have adopted a 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 it does, the amount of that penalty.⁴
- 22 The considerations are summarised as follows:
- 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 or damage sustained as a result of the breaches;
 - d. whether there had been any similar previous conduct by the respondents;
 - e. whether the breaches were distinct or arose out of the 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 breach had exhibited contrition;
 - j. whether the party committing the breach had taken corrective action;
 - k. whether the party committing the breach had cooperated with the enforcement authorities;
 - l. the need to ensure compliance with minimum standards by provision of an effective means for investigation and enforcement of employee entitlements; and
 - m. the need for specific and general deterrence.
- 23 The list is not a rigid catalogue of matters for attention. The Court is required 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.
- 24 Section 83(4) of the Act prescribes the maximum penalty that is to be applied to any ‘single’ contravention of a civil penalty provision.
- 25 Multiple contraventions may occur because the contravening conduct of an employer either:
- a. resulted in multiple contraventions of a single penalty provision, or resulted in the contravention of multiple civil penalty provisions; or
 - b. was repeated; or
 - c. related to multiple employees.
- 26 Where multiple contraventions occur, I need to consider the legal principles in relation to the contravener’s course of conduct, and the one transaction rule, and consider whether it is appropriate to make an adjustment by way of a reduction for each contravention.⁵
- 27 The totality of the penalty must be reassessed considering the totality of the offending behaviour. If the resulting penalty is disproportionately harsh, it may be necessary to reduce the penalty for individual contraventions.⁶
- 28 The task of fixing the penalty is a process of what is often referred to by the Courts as ‘instinctive synthesis’, having regard to the circumstances of the particular case and the need to maintain public confidence in the statutory regime.⁷
- 29 Determining penalties is not a matter of precedent. There is no tariff. Regard must be had to the individual circumstances of the case and should not be determined by any comparison with another case.
- 30 The maximum penalty serves as a benchmark or a yardstick,⁸ and it is also necessary to identify any separate contraventions to arrive ultimately at the appropriate penalty.⁹
- 31 I consider the relevant considerations in this claim to be as follows:
- The nature and extent of the conduct and the circumstances in which it occurred**
- 32 The respondent operated the business trading as Sinamon in Mount Lawley as a partnership and employed Ms Agostino for approximately seven and a half months, from 15 March 2019 to 3 November 2019. During that time, the respondent contravened on 62 occasions.
- 33 Sinamon was a dine-in and takeaway café and bakery, selling cinnamon scrolls, coffees and other drinks for consumption on the premises and elsewhere. Ms Agostino was employed as a casual employee, and she took customer orders and payments. She served food and coffee. She undertook barista duties and also general cleaning duties, and at the time of her casual employment with Sinamon, she worked multiple jobs to support herself while living out of home and studying nursing full-time. She was required (as part of her studies) to participate in a significant amount of unpaid hours per week in her nursing placements.
- 34 The respondents paid Ms Agostino a flat rate of pay of \$18 per hour, irrespective of when she worked, including on weekends and public holidays. At all times, the respondents paid Ms Agostino less than the minimum hourly base rate and never paid any loadings as required.
- 35 They also failed to pay her superannuation as required, failed to provide her with payslips, and failed to maintain a record of her hours worked and wages paid.

- 36 When she queried her rate of pay, as she had a right to do, the respondents accused her of blackmail and suggested that if she was unhappy with the pay, she ought to find another job. They ultimately terminated her employment.
- 37 The respondents did not provide appropriate employment records to the Department when served notice to do so and subsequently failed to comply with Court orders pursuant to s 83E(9) of the Act, resulting in their convictions pursuant to the criminal provisions of the Act.
- 38 The respondents have operated their business and continue to operate their business, albeit currently as a proprietary limited company, in complete contempt for the regulatory regime.
- 39 Given these factors, the penalty for each of the 62 contraventions lies in the mid to high range.

The nature and extent of any loss or damage sustained

- 40 The total underpayment of \$3,670.80 may not in itself be considered significant. However, Ms Agostino was a young university student, clearly vulnerable to exploitation.
- 41 She was working several part-time jobs to support herself while studying. The underpayment and the failure to pay superannuation was subjectively significant to her at the time.
- 42 It is clear from her affidavit that the underpayment of her wages and then her subsequent termination (after she queried her rate of pay) caused her both financial and emotional distress.
- 43 This consideration indicates a penalty for each contravention in the mid to high range.

Similar previous conduct

- 44 Neither respondent has previously been found to have engaged in contraventions of this type, though at the time that Ms Agostino was employed, the business was newly established. The respondents were also both working within the business on a day-to-day basis, and there was only one cafe operating.
- 45 I do not consider that the lack of any other contraventions can be viewed as evidence that future contraventions are unlikely, since the respondents have blatantly failed to comply with the regulatory regime in other ways.

The size of the business

- 46 At the time that Ms Agostino was employed, the Sinamon business was relatively new and only operated from the Mount Lawley location. Since that time, the business has grown.
- 47 Currently, the respondents operate from four locations and also online. The company, Sinamon Proprietary Limited, was registered on 30 March 2021, and the respondents are the co-directors.
- 48 The business announced on social media that its total coffee sales exceeded 1 million dollars in 2024, though the Court has no tangible information or evidence before it to conclude whether this is correct.
- 49 The full bench in *Callan v Smith* [2021] WAIRC 216; 101 WAIG 1155 found that the size of the business should not weigh in favour of diminishing a penalty that should otherwise be assessed.¹⁰
- 50 Consequently, even though the size of the business was relatively small at the time of the contraventions, it does not weigh in on this factor. Certainly, it could be concluded that at the time of the contraventions, the respondents were operating a fledgling café business and may not have been cognisant of their obligations as employers, but this, however, does not warrant any reduction in penalty.

Course of Conduct

- 51 Turning to whether the breaches are distinct or arose from the course of conduct, the 62 breaches can properly be grouped into three groups being:
- a. the underpayment contraventions;
 - b. the superannuation contraventions; and
 - c. the records contraventions.
- 52 Applying the principles in relation to course of conduct, the contraventions arose essentially out of the same course of conduct, in that the respondents failed to adequately pay Ms Agostino her wages (and on four occasions her required superannuation payment), failed to keep the required employment records and failed to provide her with a payslip.
- 53 Consequently, this should result in an adjustment when aggregating the individually assessed penalties.

Deliberateness of the Contraventions

- 54 This is not a neutral factor. The respondents underpaid Ms Agostino for her entire employment period and operated their business with disregard for the regulatory regime.
- 55 At best, the respondents turned a blind eye to their obligations as employers, though their subsequent behaviour and interactions with the industrial inspector alludes to the fact that they highly likely deliberately did so.
- 56 I will give each of them the benefit of the doubt and will infer that at the time of these particular contraventions, the respondents had only recently commenced operating a café business and were perhaps unaware of their employer obligations with respect to the award and the regime. It could not be said to be so now.
- 57 This, however, should not result in any reduction of the penalty since ignorance of the law affords no excuse.

Involvement of senior management

- 58 The respondents are co-directors in the Sinamon company, and, at the time of Ms Agostino's employment, were co-partners working in the cafe business at a sole location. They each played a role in the employment and payment of the employee and could not be said to have been unaware of the contraventions.

Corrective action, contrition, and cooperation

- 59 The respondents did not admit the contraventions and did not rectify the underpayment of Ms Agostino. They wholly denied the claim and made attempts to denigrate the character of the employee in their response (filed out of time).
- 60 The documentation filed by the respondents demonstrates their fundamental misunderstanding of the regulatory regime and their continued disregard of their obligations as employers.
- 61 They should not be afforded any discount for corrective action, contrition, or cooperation since there has been none.

Cooperation with enforcement authorities

- 62 Both respondents have actively resisted and flagrantly disregarded the authority of this Court and the provisions of the Act in other matters that have been before the Court.
- 63 In the matter of M 178 of 2021, default judgment was entered against the respondents for several failures to produce records, and, in relation to Mr Imam, for resisting or obstructing industrial officers. \$14,858 in civil penalties was ordered to be paid. It is notable that the failure to produce records included a requirement to produce records for the employment period relating to Ms Agostino.
- 64 Subsequently, in CP 1 of 2023 and CP 2 of 2023, the respondents entered pleas of guilty to charges in this Court's criminal jurisdiction for failing to comply with the Court's orders to produce records in the matter of M 178 of 2021.
- 65 I was the sentencing Magistrate. I concluded that the respondents had deliberately chosen to ignore the Court order, that Mr Imam had behaved abhorrently towards the Department's representatives throughout their investigative process, then subsequently, towards the prosecuting authority and to a judicial officer of this Court.
- 66 I found that Mr Imam possessed an unwavering determination to refuse to comply with the Court's orders. I also found that Ms Hui had failed to take responsibility for her actions.
- 67 The respondents continue to operate their business, which has now been expanded to further stores. They therefore continue to employ vulnerable workers.
- 68 Since the sentencing hearing, the social media accounts of the Sinamon business have been utilised to overtly threaten both a judicial officer and an industrial officer, to denigrate the Department and its employees, and to demonstrate contempt for the regulatory regime and the authority of this Court.
- 69 The respondents have continued these offensive social media posts unabated, most recently reposting on 1 September 2025 a photograph of the industrial inspector that is listed as the claimant, referring to him by name and highlighting a ninja type character that appears to be playing with a knife.
- 70 The 'pointed' online posts, along with the continued lack of compliance with Court imposed orders demonstrates that the respondents are unlikely to cooperate with enforcement authorities into the future and further informs the Court of the need for specific deterrence.

Specific and general deterrence

- 71 The respondents operated and continue to operate (currently as a proprietary limited company), a business in the hospitality sector, which has been identified as particularly susceptible to wage theft. Often the industry attracts young, low paid and vulnerable workers.¹¹
- 72 The Act requires employers to comply with the relevant award, to keep accurate records and to make those available to employees by way of time sheets or other daily records to ensure that employees are paid their correct entitlements.
- 73 The failure to provide payslips or records makes it difficult, and sometimes impossible, for an employee to determine whether an employer has complied with their obligations.
- 74 In addition, the failure to pay superannuation, no matter how small the amount, can (and often does) adversely impact the retirement incomes of employees, particularly those who work in lower paying jobs such as within the hospitality industry.
- 75 This in turn, of course, affects the wider society, placing increased financial pressure upon the social security system that must fund those who cannot fund their own retirement.
- 76 The documents filed with the Court establish that the Department first contacted the respondents in November 2019 about Ms Agostino's wage complaint. From that period onwards, the respondents have been continuously uncooperative with the claimant, resulting ultimately in the filing of the claim in February 2025.
- 77 At all times, the respondents have demonstrated blatant disregard for the compliance regime, the regulatory processes and their obligations in relation to the legislation and the award. Specific deterrence is a paramount factor.
- 78 General deterrence is also an important factor. A civil penalty promotes the public interest in compliance with the law.¹² A penalty should include a significant component for general deterrence and general deterrence must be considered in assessing the penalty to deter other employers from similar conduct.
- 79 These considerations lie in the high range.

Financial position of the respondent

- 80 The financial position of a person against whom an order is made may be relevant, and of course it is in this case, because the respondents are jointly and severally liable for the penalty, having operated a partnership at the time of the contraventions.
- 81 I have no information before me to determine the financial positions of the respondents, given that they have not provided me with any materials. However, as pointed out in the *Commissioner of Taxation v Arnold (No 2)* [2015] FCA 34 at [200]-[204], in most cases, this factor will not carry great weight in the assessment of penalty, most particularly because the parties have the option to negotiate a payment arrangement with the claimant.

Assessment of Penalty

- 82 Weighing the above matters, and focusing primarily on specific and general deterrence, along with the other relevant considerations, I consider the appropriate penalty for each contravention to be as follows:
- a. for each of the 29 underpayment contraventions, the amount of \$1,000;
 - b. for each of the four superannuation contraventions, the amount of \$500, and
 - c. for each of the 29 records contraventions, the amount of \$1,000.
- 83 I am satisfied that the separate contraventions related to underpayment and the failure to keep records can be considered as a single course of conduct. I must determine if an adjustment be made so that if there is an overlap between the contraventions, a double penalty is not imposed.
- 84 Having reviewed the facts of the claim, it is appropriate to make an adjustment which calls for a reduction of 50% on each of the underpayment and records contraventions, being an amount of \$500 for each contravention. I make no adjustment for the four superannuation contraventions.
- 85 Applying the totality principle and considering the conduct as a whole, I am satisfied that the appropriate aggregate penalty is \$31,000.
- 86 The respondents will be required to pay:
- a. a total of \$14,500 for the underpayment contraventions;
 - b. a total of \$14,500 for the records contraventions;
 - c. a total of \$2,000 for the superannuation contraventions; and
 - d. \$343.20 for disbursements.
- 87 It is appropriate that the penalties be paid to the claimant.

B. COLEMAN

INDUSTRIAL MAGISTRATE

¹ The Act was amended in July 2025: the maximum penalty for an individual employer has increased to \$18,000 per breach: s 83(4A)(b)(ii) *Industrial Relations Act 1979* (WA).

² Section 83F(2) *Industrial Relations Act 1979* (WA).

³ *Australian Building and Construction Commissioner v Pattinson* [2022] HCA 13; 274 CLR 450 (*Pattinson*), [15].

⁴ *Callan v Smith* [2021] WAIRC 216; 101 WAIG 1155 at [90] citing the Federal decisions of *Kelly v Fitzpatrick* [2007] FCA 1080 and *Mason v Harrington Corporation Pty Ltd* [2007] FMCA 7.

⁵ *Callan v Smith* [2021] WAIRC 216; 101 WAIG 1155 at [111].

⁶ The principles relating to consideration of multiple contraventions of civil penalty provisions is discussed in *Kelly v Fitzpatrick* [2007] FCA 1080; 166 IR 14; *Australian Ophthalmic Supplies Pty Ltd v McAlary-Smith* [2008] FCAFC 8; 165 FCR 560; *Fair Work Ombudsman v NSH North Pty Ltd trading as New Shanghai Charlestown* [2017] FCA 1301; (2017) 275 IR 148.

⁷ *Wong v The Queen* [2001] HCA 64; (2001) 207 CLR 584, [75] (Gaudron, Gummow & Hayne JJ); *Markarian v The Queen* (2005) 228 CLR 357 (*Markarian*) at 378 [51] (per McHugh J) and [37], per Gleeson CJ, Gummow, Hayne and Callinan JJ; *Australian Competition and Consumer Commission v Australia and New Zealand Banking Group Limited* [2016] FCA 1516 per Wigney J at [84]; *SKL v The State of Western Australia* [2024] WASCA 32 [24] (Mazza & Hall JJA).

⁸ *Markarian* [372]; *Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union* [2017] FCAFC 113 at [82]; *Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union (The BKH Contractors Case) (No 2)* [2018] FCA 1563 at [19].

⁹ *Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union* [2017] FCAFC 113, [108] – [149].

¹⁰ *Callan v Smith* [103].

¹¹ Tony Beech, *Inquiry into Wage Theft in Western Australia* (2019) 89-90; *Jillian Dixon, Department of Mines, Industry Regulations and Safety v Karakuyu & Anor* [2025] WAIRC 00451; 105 WAIG 2074, [87]-[99] (Kucera IM).

¹² *Pattinson* [9].

ANNEXURE 1

From postmaster@sinamon.com.au
 To [Registry Shared Mailbox](#)
 Subject Undeliverable: M 26 OF 2025 - PAUL DAVID CALLAGHAN, DEPARTMENT OF ENERGY, MINES, INDUSTRY REGULATION AND SAFETY -v- AHMED EL SAYED IMAM AND ANOTHER



Your message to bakery@sinamon.com.au couldn't be delivered.

A custom mail flow rule created by an admin at sinamon.com.au has blocked your message.

Delivery not authorized, message refused

registry	Office 365	sinamon.com.au
Sender		Action Required
<hr/>		
		Blocked by mail flow rule

How to Fix It

An email admin at sinamon.com.au has created a custom mail flow rule that blocks messages that meet certain conditions, and it appears that your message has met one or more of those conditions.

- Check the text above for a custom message from the email admin that may help explain why your message was blocked and how you might be able to fix it. For example, removing prohibited words from the message or sending the message from a different email account may be sufficient to deliver your message.

If you've tried and you're still not able to fix the problem, consider contacting the email admin at sinamon.com.au to discuss what to do. While they're unlikely to remove or relax the rule, if you have a legitimate need to deliver your message they may offer guidance for how to do so.

More Info for Email Admins

Status code: 550 5.7.1_ETR

This error occurs because an email admin at sinamon.com.au has created a custom mail flow rule that has blocked the sender's message.

In some cases, the sender can change the message so it no longer violates the rule. However, depending on the rule's conditions, it's possible that the only way to deliver the message is to change the rule itself, and only an email admin at sinamon.com.au can do that. Although it's possible the rule is unintentionally flawed or it's stricter than the admin intended, it may be working exactly as they want it to.

Original Message Details

Created Date: 4/9/2025 6:31:12 am
 Sender Address: registry@wairc.wa.gov.au
 Recipient Address: bakery@sinamon.com.au
 Subject: M 26 OF 2025 - PAUL DAVID CALLAGHAN, DEPARTMENT OF ENERGY, MINES, INDUSTRY REGULATION AND SAFETY -v- AHMED EL SAYED IMAM AND ANOTHER

2025 WAIRC 00784

INDUSTRIAL MAGISTRATES COURT OF WESTERN AUSTRALIA

CITATION : 2025 WAIRC 00784
 CORAM : INDUSTRIAL MAGISTRATE C. TSANG
 HEARD : TUESDAY, 15 APRIL 2025
 DELIVERED : TUESDAY, 16 SEPTEMBER 2025
 FILE NO. : M 29 OF 2024
 BETWEEN : PHILLIP RUSSELL SMITH

CLAIMANT

AND
 CITY OF SWAN

RESPONDENT

CatchWords : INDUSTRIAL LAW – Alleged contravention of industrial agreement by the non-payment of overtime under the incorporated award’s overtime clause – Whether the 15-minute morning tea break constitutes ‘work performed at the direction of the employer’ in excess of the claimant’s ordinary weekly hours such as to entitle the claimant to overtime pay

Instruments : *Local Government Industry Award 2010*
City of Swan – Parks, Facilities and Engineering Enterprise Agreement 2019

Cases referred to in reasons : *Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union’ known as the Australian Manufacturing Workers Union (AMWU) v Berri Pty Ltd* [2017] FWCFB 3005

Csomore v Public Service Board of New South Wales (1986) 17 IR 275

Director General, Department of Education v United Voice WA [2013] WASCA 287

Fedec v The Minister for Corrective Services [2017] WAIRC 00828

Federated Municipal and Shire Council Employees Union v Shire of Albany [1990] FCA 60

Gapes v Commercial Bank of Australia Ltd [1980] FCA 26

Hospital Employees’ Industrial Union of Workers, WA v Proprietors of Lee-Downs Nursing Home (1977) 57 WAIG 455

Minister for Police v Western Australian Police Force Union of Workers (1969) 49 WAIG 993

Pearson v Fremantle Harbour Trust [1929] HCA 19

Police Association (SA) v Public Service Board (SA) (1983) 5 IR 105

R v Darling Island Stevedoring & Lighterage Co Ltd; Ex parte Halliday; Ex parte Sullivan [1938] HCA 44

R v Galvin; Ex parte Metal Trades Employers’ Association [1949] HCA 12

United Workers’ Union v Metcash Trading Ltd [2021] FWC 3656

Result : Claim dismissed

Representation:

Claimant : Mr G McCorry (as agent)

Respondent : Ms J Flinn (of counsel)

REASONS FOR DECISION

Background

1 On 14 April 2025, the parties filed their Replacement Agreed Statement, stating that the agreed question to be determined in these proceedings is the following: (emphasis added)

The question to be determined at the trial is whether the Respondent contravened the *Parks, Facilities and Engineering Enterprise Agreement 2019 (2019 Agreement)*. The Claimant’s claim is that the Respondent **contravened clause 3 of the 2019 Agreement**.

2 Clause 3 of the 2019 Agreement incorporates, amongst other provisions, the overtime clause of the *Local Government Industry Award 2010 (2010 Award)*: (emphasis added)

24.1 Overtime

Unless otherwise provided, overtime means all work performed at the direction of the employer:

- (a) in excess of the employee's ordinary weekly hours as specified in clause 21.1;
- 3 In essence, the claimant (**Mr Smith**) claims that during the Claim Period (1 January 2023 to 1 January 2024),¹ the respondent (the **City**) contravened cl 3 of the 2019 Agreement by failing to pay overtime, arising from the daily 15-minute morning tea break. He claims the 15-minute morning tea break constituted 'work performed at the direction of the employer' under the overtime clause (cl 24.1 at [2] above), in excess of his 'ordinary weekly hours'.
- 4 Mr Smith claims the value of the unpaid overtime (\$771.70) and seeks an order for the payment of penalties arising from the City's contravention of the 2019 Agreement.
- 5 The parties agree that:
- (a) The principles to be applied to the construction of the 2019 Agreement are those set out by the Full Bench of the Fair Work Commission in *Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union' known as the Australian Manufacturing Workers Union (AMWU) v Berri Pty Ltd* [2017] FWCFCB 3005 (*Berri*) [114].²
- (b) The relevant provisions of the 2019 Agreement and the overtime clause of the 2010 Award (incorporated into the 2019 Agreement by cl 3 of the 2019 Agreement), each have a plain meaning, such that it is unnecessary to consider any surrounding circumstances or extrinsic material, including earlier iterations of the 2019 Agreement and 2010 Award.³
- (c) Of the overtime clause, only sub-clause (a) (at [2] above) is relevant.⁴
- 6 Mr Smith bears the onus of establishing that he was entitled to be paid overtime. Specifically, that he worked 'in excess of [his] ordinary weekly hours' of 38 hours a week.
- 7 Mr Smith argues that he worked 76.5 hours per fortnight, with the half-an-hour in excess of his 76 ordinary fortnightly hours being overtime, because the daily 15-minute morning tea break was '**work performed at the direction of the [City]**'.
- 8 The City argues that the 15-minute morning tea break was not '**work performed at the direction of the [City]**' and accordingly was not counted in Mr Smith's ordinary fortnightly hours. Rather, the 'work performed at the direction of the [City]' totalled 74.25 hours per fortnight, and Mr Smith was paid as though the 'work performed at the direction of the [City]' totalled 76 hours per fortnight.

The evidence

- 9 On 14 April 2025, the parties filed their Replacement Agreed Statement, agreeing to the following facts:
11. Between 30 October 2019 and 17 November 2024, [Mr Smith's] employment was covered by the 2019 Agreement. The 2019 Agreement:
- (a) was an enterprise agreement made in accordance with sections 186, 187, and 188 of the *Fair Work Act 2009* (Cth) by the Fair Work Commission;
- (b) became a new State instrument on 1 January 2023 in accordance with section 80BB of the *Industrial Relations Act 1979* (WA); and
- (c) incorporated the clauses of the [2010 Award] as set out in clause 3 of the 2019 Agreement, including clauses 24.1 and 24.2 of the 2010 Award, as were in place on the date that the 2019 Agreement was approved.
12. Clauses 24.1 and 24.2 of the 2010 Award provided as follows:
- 24.1 Overtime**
- Unless otherwise provided, overtime means all work performed at the direction of the employer:*
- (a) *in excess of the employee's ordinary weekly hours as specified in clause 21.1;*
- (b) *on days other than ordinary working days as specified in clause 21.2; or*
- (c) *in excess of the maximum ordinary hours on any day provided by clause 21.5.*
- 24.2 Payment for overtime**
- (a) *Except as otherwise provided, overtime will be paid at the rate of time and a half for the first two hours and double time thereafter.*
- (b) *Overtime worked from 12 noon on a Saturday and all day on a Sunday will be paid at the rate of double time.*
- (c) *The payment for overtime rates is calculated on the employee's hourly ordinary time rate.*
- (d) *In computing overtime, each day's work stands alone.*
13. The 2010 Award was amended by the *Local Government Industry Award 2020* [**2020 Award**] from 29 May 2020.
14. Clauses 21.1 and 21.2 of the 2020 Award are stated in the same terms as clauses 24.1 and 24.2 of the 2010 Award.

...

18. Between 2 January 2023 to 3 January 2024 (**Claim Period**), [Mr Smith]:
- (a) was bound by the 2019 Agreement;
 - (b) was classified as a level 3 in Schedule 1 of the 2019 Agreement;
 - (c) was required to work an average of 38 ordinary hours per week (not including unpaid meal breaks) in accordance with clause 14.1 of the 2019 Agreement and;
 - (d) was paid for 76 ordinary hours per fortnight;
 - (e) worked 8.5 hours on 9 June 2023 in excess of his 76 ordinary hours per fortnight, and was paid for those additional hours the sum of \$538.30;
 - (f) worked a 9-day fortnight in accordance with clause 14.4 of the 2019 Agreement and the section titled ‘hours of work’ in the letter of offer dated 15 April 2016;
 - (g) worked in accordance with a fortnightly roster. Under that fortnightly roster commencing 2 January 2023, he worked Monday to Thursday in the first week of the fortnightly roster and Monday to Friday in the second week of the fortnightly roster;
 - (h) was entitled to, and took, a 30 minute unpaid meal break in accordance with clause 15.1 of the 2020 Award;
 - (i) was entitled to, and took, a 15 minute morning tea break in accordance with his contract of employment; and
 - (j) the morning tea break of 15 minutes was included in, and was not taken separate from, the 8.5 hours of work each day.
19. During the Claim Period, [Mr Smith’s] roster stated his shifts were 8.5 hours per shift, plus 30 minutes for an unpaid meal break.
- ...
21. During the Claim Period, [Mr Smith] was required to and submitted a daily time sheet.
22. Neither [Mr Smith’s] letter of offer dated 12 April 2016, the 2019 Agreement, nor the 2020 Award expressly provided an entitlement to employees to take a morning tea break.
23. The entitlement to a 15 minute morning tea (smoko) break is an implied term of [Mr Smith’s] contract of employment.
- ...
25. During the Claim Period, [Mr Smith] took a 15 minute morning tea break per shift during which period [Mr Smith] was entitled to take by way of his contract of employment. He was not required to, and did not, perform work, during each morning tea break.
- ...
27. On the first Wednesday of the fortnightly roster, the City’s payroll team deducted 30-minutes from the final entry on the daily time card for each full time Parks Employee,⁵ so that the total number of ordinary hours stated to be worked for the purposes of calculating the Parks Employee’s wages is 76 hours per fortnight. Full time Parks Employees are paid for 76 hours of work per fortnight, even though they only perform work for 74.25 hours per fortnight.
- 10 On 28 January 2025, Mr Smith filed a witness statement, stating:
6. At roughly 9.30am each day we would stop work for a 15-minute rest break or smoko as it is known. The 9.30am break would sometimes be delayed so we could finish a particular job at a site. The leading hand would make this decision.
 7. The smoko break would end when the leading hand would either say something like ‘OK let’s go’ or start up a piece of equipment like a chainsaw to begin work again.
 8. Lunch was usually at 12.00 noon and was for 30 minutes. The same process was followed to end the lunch break as occurred to end the morning smoko.
- ...
10. We worked a regular 9-day roster of 8.5 hours per day, Monday to Friday (excluding public holidays and a lunch break of 30 minutes each day), with every second Friday off. The rosters have been in place ever since I began working for the City.
11. Each member of the crew filled out a timesheet each day. The timesheet showed the job number/work order number and the time spent at each job under the Labour hours column. The travelling times between jobs was not listed separately, instead it was divided between the jobs. The crew member who

drove the vehicle would add the registration/plant number of the vehicle to their time sheet under the Equipment/Plant hours Plant # column. The daily 30-minute meal break was usually not separately recorded and neither was the 15-minute smoko. As an example, a job may have been recorded from start time 11am to finish time 1pm, but the job was noted as 1.5 hours under the Labour hours column – this indicated that a 30-minute meal break was taken in the period 11am to 1pm. As another example, a job may be noted as start time 10am to finish 12pm, with the next job being recorded as starting at 12:30pm. This indicated a 30-minute lunch break. This was universally done and understood by all crew and supervisors.

12. I signed the daily timesheets each day and the contents of them are true and correct. ...
 13. The daily timesheets were countersigned by my supervisor when I returned to the depot each day at either the end of my shift or the following morning. The timesheets were handed to the supervisors by either the leading hand or myself, alternatively they were put into the supervisor's in tray if they were not present.
 14. I was paid fortnightly by the City by direct deposit into my bank account and provided with a payslip each fortnight. I was paid the amounts shown on the payslips. As can be seen from the payslips I was paid for 76 hours work each fortnight and not for the 76.5 hours that I was rostered to and did work except on those occasions when I took some form of authorised leave.
- 11 On 18 February 2025, the City filed a witness statement of Matthew Southern, Manager of Construction and Maintenance, stating:
6. Parks Employees, including [Mr Smith], are required to work an average of 38 hours per week, not including unpaid meal breaks.
 7. All full time Parks Employees, including [Mr Smith], are rostered to work 76 hours per fortnight, and are paid for 76 hours per fortnight unless there is approved unpaid leave or overtime hours worked.
 8. Parks Employees, including [Mr Smith], are entitled to, and take, a 30-minute unpaid meal break each shift.
 9. In addition to a 30-minute unpaid meal break, Parks Employees, including [Mr Smith], are entitled to, and take, a 15-minute morning tea break each shift. The entitlement to a 15-minute morning tea break is not recorded in the [2019 Agreement].
- ...
18. Despite only being required to work a maximum of 76 ordinary hours per fortnight, Parks Employees record 8.5 hours on their daily time cards, which they complete and submit to their supervisor at the end of each day. Parks Employees record 8.5 hours on their daily time cards each day because Parks Employees are rostered for 9 hours per day (inclusive of a 30-minute unpaid meal break each shift). However, full time Parks Employees do not actually work 76.5 hours a fortnight (i.e., 8.5 hours multiplied by 9 days). Parks Employees, including [Mr Smith], perform work for 8 hours and 15 minutes during each 9 hour shift. This is because Parks Employees, including [Mr Smith]:
 - (a) do not perform any work during their 15-minute morning tea break taken each shift. I regularly observe Parks Employees taking their morning tea breaks at around 9:30am each day. I usually observe Parks Employees sitting together on stools, under trees, or sitting in their trucks using their mobile phones; and
 - (b) also do not perform any work during their 30 minute meal break taken each shift.

Daily time cards

19. Parks Employees, including [Mr Smith], are required to record and submit a daily time card. ...
20. When completing daily time cards, Parks Employees are required to record the time spent at each location against a specific job number or work order number. The purpose is so the City's labour, plant and equipment can be appropriately internally costed to a particular City asset. This allows the City to track and report expenditure for each of the City's assets in its financial reports and against the [City's Construction and Maintenance Business Unit's (BU's)] budget.
21. The time cards are provided to the City's payroll team, who enter the details, including the job numbers or work order numbers, into the City's payroll system.
22. The unpaid lunch break is recorded on a Park Employee's daily time card. The unpaid lunch break may be recorded by:
 - (a) expressly recording 30 minutes for lunch on the daily time card;
 - (b) omitting 30 minutes between the end of a job and the start of the next job; or

- (c) recording a block of time between, for example, 10am – 3:30pm but only recording 5 hours of work and not 5.5 hours.
23. It is irrelevant which method a Parks Employee uses to record their lunch break in the time sheet, so long as payroll can clearly identify that a 30-minute lunch break was taken.
24. The 15-minute morning tea break has historically not been recorded as a break in the Parks Employees' daily time cards. As a result, the time for each 15-minute morning tea break is charged to a job number or work order number. As the manager of the BU responsible for managing the BU's budget, this is not of a concern to me, as the tracking of expenditure by the use of job numbers and work order numbers is for estimation purposes only. The internal cost of Parks Employees taking a 15 minute morning tea break each shift against the BU's budget is not relevant to the BU's reporting and budgeting.
25. As stated at paragraph 18, Parks Employees record 8.5 hours per day on their daily time cards. On the first Wednesday of the fortnightly roster, the City's payroll team deduct 30-minutes from the final entry on the daily time card for each full time Parks Employee, so that the total number of ordinary hours stated to be worked for the purposes of calculating the Parks Employee's wages is 76 hours per fortnight. Full time Parks Employees are paid for 76 hours of work per fortnight, even though they only perform work for 74.25 hours per fortnight.
26. The payroll system does not record the 15-minute morning tea break taken by each Parks Employee during each shift in a fortnightly cycle.

Recording overtime hours

27. If a Parks Employee is required to work overtime, they must record the additional hours on their daily time card, and identify those hours as overtime by including the identifier 'OT'.
28. When overtime is required to be worked, the Parks Employee's supervisor will submit an overtime request form to their coordinator for approval. The coordinator will then approve the overtime request and send the overtime request form to the Parks Employee's manager.
29. All daily time cards submitted by Parks Employees in each fortnightly cycle are collated and sent to payroll by 12pm on the Monday of each pay week. The Parks Employee's manager will receive a pay report for approval at approximately 4pm on the Tuesday of each pay week.
30. I receive a report outlining the wages to be paid to all employees in the BU each fortnight, including Parks Employees. If overtime hours have been worked by an employee, I ensure that the correct overtime hours are paid by reference to the request for overtime approved by the relevant coordinator. If there are any anomalies, I will make enquiries with the City's payroll team by 9:30am on the Wednesday of each pay week (i.e., pay day). Once any anomalies are rectified, pays are distributed into the employees' bank accounts late on Wednesday afternoon. This process also applies to any overtime hours worked by [Mr Smith] (if any).

The parties' submissions

12 Mr Smith relies on his written submissions filed on 12 March 2025 and 14 April 2025, and submits that:

- (a) He was contracted to work 76.5 ordinary hours in each fortnightly period, was rostered to work 76.5 hours per fortnight, completed timesheets reflecting the roster, but was only paid as though he worked 76 ordinary hours per fortnight.
- (b) His rostered hours are his hours worked, subject only to the unpaid meal break.
- (c) He was rostered to work 8.5 hours per day, across 9 days per fortnight, totalling 76.5 hours.
- (d) The 8.5 hours that he was rostered to work each day, includes time spent travelling between sites. Travel time constitutes time worked even though it does not involve his physical exertion, as the only person engaging in physical exertion is the driver of the vehicle transporting the workers from one site to the next during the course of the day.
- (e) The half-an-hour exceeding 76 ordinary fortnightly hours was '**work performed at the direction of the [City]**' because:
- (i) His contract contained an express directive (the **Hours of Work clause**) which required him to work an 8.5-hour day, over 9 days each fortnight:⁶

Hours of Work

At present, the [City] operates a 9-day fortnight within the Construction and Maintenance and Facilities Management areas. Your days of work will be five days one week and four days the second week, between Monday and Friday. On working days your hours of work will be 6.30am to 3.30pm, or as directed according to operational requirements, with half an hour for lunch.

- (ii) The extra half-an-hour is in excess of his contracted ordinary hours, and contracted remuneration for working ordinary hours, of 76 hours per fortnight:

SUBSTANTIVE POSITION

...

Employment Status: Permanent Full-time ...

Hours per fortnight: 76

Remuneration

This role is classified PEF3 in accordance with the [2019 Agreement] and [2010 Award]. The base salary for this classification is \$64,387.72 per annum and the leave loading allowance is \$866.76 per annum, totalling \$65,254.48 per annum.

- (iii) The 15-minute morning tea break is 'at the direction of the City', because the City is directing him to take the break, starting at a particular time and finishing at a particular time.
 - (iv) The 15-minute morning tea break is 'work performed', because the City is directing him to do nothing during the break.
 - (v) He is entitled to overtime pay because 'work performed' does not need to involve physical effort. The City directed him to do nothing during the break. It was a lawful direction, and constitutes 'work performed', regardless of the effort or lack of effort involved.
 - (f) The timesheets do not separately record the 15-minute morning tea break because they are considered time worked.
- 13 Mr Smith relies on the following decisions in support of his argument that the 15-minute morning tea break counts as time worked:
- (a) *Pearson v Fremantle Harbour Trust* [1929] HCA 19 (*Pearson*).
 - (b) *R v Darling Island Stevedoring & Lighterage Co Ltd; Ex parte Halliday; Ex parte Sullivan* [1938] HCA 44 (*Darling Island*).
 - (c) *Minister for Police v Western Australian Police Force Union of Workers* (1969) 49 WAIG 993 (*Minister for Police*).
 - (d) *Hospital Employees' Industrial Union of Workers, WA v Proprietors of Lee-Downs Nursing Home* (1977) 57 WAIG 455 (*Lee-Downs*).
 - (e) *Gapes v Commercial Bank of Australia Ltd* [1980] FCA 26 (*Gapes*).
 - (f) *Csomore v Public Service Board of New South Wales* (1986) 17 IR 275 (*Csomore*).
 - (g) *Federated Municipal and Shire Council Employees Union v Shire of Albany* [1990] FCA 60 (*Shire of Albany*).
- 14 Mr Smith submits that while he agreed to the facts stated in the Replacement Agreed Statement [25] and [27], his agreement to these facts is to be understood in the context that 'perform work' should be construed as the involvement of physical effort: (emphasis added)
- 25. During the Claim Period, [Mr Smith] took a 15 minute morning tea break per shift during which period [Mr Smith] was entitled to take by way of his contract of employment. **He was not required to, and did not, perform work, during each morning tea break.**
 - 27. [F]ull time Parks Employees are paid for 76 hours of work per fortnight, even though **they only perform work for 74.25 hours per fortnight.**
- 15 Mr Smith submits that to 'perform work' means to perform physical labour. He says that he agreed to the facts in the Replacement Agreed Statement [25] and [27] because he agrees that during the 15-minute morning tea break, he is not required to, and does not, perform physical labour. Likewise, when he is travelling from one site to another, but is not the driver of the vehicle transporting the workers, he does not perform physical labour.
- 16 Mr Smith submits that, under the terms of his contract, the City is required to pay him for 76.5 hours per fortnight, even if the City does not require him to perform physical labour during all of those 76.5 hours.
- 17 The City relies on its written submissions filed on 2 April 2025 and 14 April 2025, and submits that:
- (a) The preamble to the overtime clause requires two conditions to be met:
 - (i) Firstly, that work be performed.
 - (ii) Secondly, that the work performed is 'at the direction of the employer'.
 - (b) The first condition is not met because it is an agreed fact that Parks Employees, which includes Mr Smith, 'are paid for 76 hours of work per fortnight, even though they only perform work for 74.25 hours per fortnight.'⁷ Therefore, it cannot be the case that Mr Smith worked more than 76 ordinary hours per fortnight.
 - (c) Overtime must be 'work performed'. Mr Smith seeks to draw an analogy between his taking of the 15-minute morning tea break with an employee being stood down from work at the direction of the employer or agreeing to be on-call or on stand-by or travelling during work. Those situations are not analogous because the employee in each case is still at the direction of the employer – the employee remains subject to the control of the employer or must be ready, willing and able to work when directed.
 - (d) There is no evidence that Mr Smith was ready, willing and able to work if directed. It is both an agreed fact, and Mr Smith's evidence, that he took the 15-minute morning tea break each day and he was not required to work and

did not work during the break.⁸

- (e) During the 15-minute morning tea break, Mr Smith was not subject to the control of the City and was free to do as he pleased. Such periods do not constitute work performed: *R v Galvin; Ex parte Metal Trades Employers' Association* [1949] HCA 12 (*Galvin*); *United Workers' Union v Metcash Trading Ltd* [2021] FWC 3656 (*Metcash*) [24].
- (f) The 15-minute morning tea break is the same as the 30-minute lunch break in that during the lunch break, Mr Smith is not performing any work and is not at the control of the City. Neither the 15-minute morning tea break nor the 30-minute lunch break counts as time worked.
- (g) The second condition is not met because it is an agreed fact that Mr Smith has an implied contractual entitlement to a 15-minute morning tea break, which Mr Smith exercised each shift.⁹ As Mr Smith had a contractual entitlement to take the break, the City could not direct him to work during those 15-minutes. If the City sought to direct Mr Smith to work, Mr Smith was legally entitled to refuse to work or could sue the City for breach of his employment contract. Arguably, only if the City had given a direction to Mr Smith to perform work during the 15-minute break, would the time count towards his ordinary hours of work. There is no evidence that the City directed Mr Smith to work during the 15-minute morning tea break.
- (h) Further, as the implied contractual entitlement is to take a 15-minute morning tea break, the City is not directing Mr Smith to take the break and not perform work. The City is fulfilling its contractual obligation to provide Mr Smith with a 15-minute break. There is no direction. Arguably, the only direction is the time that the break starts, based on operational requirements of the day.
- (i) There is nothing in Mr Smith's contract, whether express or implied, that requires the 15-minute morning tea break to be regarded as time worked.
- (j) Contrary to Mr Smith's submission that the contract required the City to pay him for 76.5 hours per fortnight that he was contractually required to work, the contract expressly states Mr Smith's fortnightly hours as being 76:

SUBSTANTIVE POSITION

...

Employment Status: Permanent Full-time ...

Hours per fortnight: 76

- (k) Mr Smith agrees the contract provided that he was 'to work 76 hours per fortnight'.¹⁰
- (l) The reference, '[o]n working days your hours of work will be 6.30am to 3.30pm' in the Hours of Work clause of the contract, refers to the spread of hours in which the 76 ordinary hours of work stipulated on the first page of the contract (at [17(j)] above), must be worked. While the clause is headed 'Hours of Work', the reference to the lunch break within the clause ('[o]n working days your hours of work will be 6.30am to 3.30pm ... with half an hour for lunch'), is consistent with the clause referring to the span of hours during which the ordinary hours of work are to be worked.
- (m) Further, the span of hours in the clause is indicative. The parties agree that the hours during which ordinary hours are worked varies according to the season.¹¹
- (n) The Hours of Work clause does not refer to Mr Smith's rostered hours.
- (o) Mr Smith was neither contracted to work, nor did he work, 76.5 hours per fortnight.
- (p) As outlined by the evidence of Mr Southern, which was undisturbed on cross-examination, the purpose of the timesheets is not to record the employee's hours of work; it is to record the time spent at each site for internal costing and accounting purposes. There is a different system for the purposes of recording overtime on the timesheet that requires the approval for the working of overtime by the supervisor, coordinator and manager.

Consideration

Principles

- 18 While the parties agree that the principles to be applied to the construction of the 2019 Agreement are those in *Berri* (at [5(a)] above), it is the following decisions of the Industrial Appeal Court (IAC) and the Full Bench of the Western Australian Industrial Relations Commission (Full Bench) that are binding on the court:
 - (a) *Director General, Department of Education v United Voice WA* [2013] WASCA 287 (*Director General*); and
 - (b) *Fedec v The Minister for Corrective Services* [2017] WAIRC 00828 (*Fedec*).
- 19 *Director General* is an IAC decision delivered on 18 December 2013, in which Pullin J (with Le Miere J agreeing at [117]) outlined the principles for construing an industrial agreement at [18]–[20], [22].
- 20 *Director General* [18]–[19] is cited in *Fedec* [23] at [22] below.
- 21 *Director General* [20] and [22] states: (citations truncated)
 - 20 The phrase 'district office' is ambiguous if considered alone, but it would be wrong to concentrate only on that phrase. The phrase has to be construed in the context of the Agreement read as a whole: *Australian Broadcasting Commission v Australasian Performing Right Association Ltd* [1973] HCA 36. ...
 - 22 Allowing for the fact that industrial agreements are not always framed with that careful attention to form and draftsmanship which one expects to find in an Act of Parliament (see [*Geo*] *A Bond & Co Ltd (in liq) v McKenzie* [1929] AR (NSW) 498 [*Geo*], 503) ...

- 22 *Fedec* is a Full Bench decision delivered on 19 September 2017, in which Smith AP and Scott CC outlined the approach to be applied when interpreting an industrial agreement: [21]–[23]: (citations truncated)

Interpreting an industrial agreement – general principles of interpretation

- 21 The approach that is to be applied when interpreting an industrial agreement is well established. This is:
- (a) Industrial agreements are usually not drafted with careful attention to form by persons who are experienced in drafting documents that have legal effect.
 - (b) The task of construction of an industrial agreement is to be approached in a way that allows for a generous construction: *City of Wanneroo v Holmes* (1989) 30 IR 362 [*Holmes*].
 - (c) Industrial agreements are made for industries in light of the customs and working conditions of each industry and must not be interpreted in a vacuum divorced from industrial realities: [*Geo*]; [*Holmes*] (378–379) (French J).

- 22 The general principles that apply to the construction of contracts and other instruments also apply to the construction of an industrial agreement. In *Re Harrison; Ex parte Hames* [2015] WASC 247, Beech J said [50]–[51]:

The general principles relevant to the proper construction of instruments are well-known. In summary:

- (1) the primary duty of the court in construing an instrument is to endeavour to discover the intention of the parties as embodied in the words they have used in the instrument;
- (2) it is the objectively ascertained intention of the parties, as it is expressed in the instrument, that matters; not the parties' subjective intentions. The meaning of the terms of an instrument is to be determined by what a reasonable person would have understood the terms to mean;
- (3) the objectively ascertained purpose and objective of the transaction that is the subject of a commercial instrument may be taken into account in construing that instrument. This may invite attention to the genesis of the transaction, its background and context;
- (4) the apparent purpose or object of the relevant transaction can be inferred from the express and implied terms of the instrument, and from any admissible evidence of surrounding circumstances;
- (5) an instrument should be construed so as to avoid it making commercial nonsense or giving rise to commercial inconvenience. However, it must be borne in mind that business common sense may be a topic on which minds may differ; and
- (6) an instrument should be construed as a whole. A construction that makes the various parts of an instrument harmonious is preferable. If possible, each part of an instrument should be construed so as to have some operation (*Electricity Generation Corporation v Woodside Energy Ltd* [2014] HCA 7 [35] (French CJ, Hayne, Crennan & Kiefel JJ); *Kidd v The State of Western Australia* [2014] WASC 99 [122]; *Red Hill Iron Ltd v API Management Pty Ltd* [2012] WASC 323 [106]–[112]; *Primewest (Mandurah) Pty Ltd v Ryom Pty Ltd* [2014] WASCA 28 [55] (Martin CJ, Pullin & Murphy JJA agreeing)).

These general principles apply in the construction of an industrial agreement ([*Director General*] [18]–[20] (Pullin J, Le Miere J agreeing), [83] (Buss J)). The industrial character and purpose of an industrial agreement is part of the context in which it is to be construed (*Amtcor Ltd v Construction, Forestry, Mining and Energy Union* [2005] HCA 10 [*Amtcor*] [2] (Gleeson CJ and McHugh J); [*Director General*] [81]; see also [*Amtcor*] (Kirby J), 129–130 (Callinan J)).

- 23 To these principles, the following observations made by Pullin J in [*Director General*] [18]–[19] should be added:

The Agreement has to be construed to determine what the intention of the parties was at the time the Agreement was entered into. This has to be determined by ascertaining what a reasonable person would have understood the words of the Agreement to mean taking into account the text, the surrounding circumstances known to the parties and the purpose and object of the transaction: *Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd* [2004] HCA 52 [40]; *Pacific Carriers Ltd v BNP Paribas* [2004] HCA 35 [22].

Surrounding circumstances may only be taken into account if the ordinary meaning of the words used by the parties is ambiguous or susceptible of more than one meaning: *Codelfa Construction Pty Ltd v State Rail Authority of New South Wales* [1982] HCA 24, 352; *McCourt v Cranston* [2012] WASCA 60 [23].

- 23 Applying *Director General* and *Fedec*, the starting point is to ascertain what a reasonable person would have understood the words 'work performed at the direction of the employer' in the overtime clause to mean; with the overtime clause to be

construed in the context of the 2019 Agreement read as a whole, and with a construction that makes the various parts of the 2019 Agreement harmonious to be preferable.

The meaning of the phrase ‘work performed at the direction of the employer’

- 24 The overtime clause defines overtime as ‘all work performed at the direction of the employer’ that is in excess of the employee’s ordinary weekly hours.
- 25 As outlined in the Replacement Agreed Statement [18(k)] (at [9] above), it is an agreed fact that Mr Smith was entitled to, and took, a 15-minute morning tea break each day.
- 26 As outlined at [12(e)(iii)–(v)] above, Mr Smith contends those 15-minutes constitute ‘work performed at the direction of the employer’ such as to entitle him to overtime pay because the City directed him to take the 15-minute morning tea break at a specific time and to do nothing for the duration of the break, and such a direction (namely, to not perform physical labour) counts as time worked.
- 27 The overtime clause states that overtime means all ‘work performed at the direction of the employer’ in excess of the employee’s ordinary weekly hours. Therefore, for overtime to be payable, requires the satisfaction of both ‘work performed’ (**first requirement**) and that the work performed be ‘at the direction of the employer’ (**second requirement**).
- 28 The Macquarie Dictionary defines ‘work’ as:
- 1 exertion directed to produce or accomplish something; labour; toil.
 - 2 that on which exertion or labour is expended; something to be made or done; a task or undertaking.
 - 3 productive or operative activity.
 - 4 manner or quality of working.
 - ...
 - 6 employment; a job, especially that by which one earns a living.
 - 7 material, things, etc., on which one is working, or is to work.
 - 8 the result of exertion, labour, or activity.
 - 9 a product of exertion, labour, or activity.
 - ...
 - 12 a place or establishment for carrying on some form of labour or industry.
 - ...
 - 17 to do work, or labour; exert oneself.
 - 18 to be employed, as for one’s livelihood.
 - ...
 - 20 to act or operate.
- 29 ‘Performed’ is the past tense of ‘perform’, and the Macquarie Dictionary defines ‘perform’ as:
- 1 to carry out; execute; do.
 - 2 to go through or execute in due form.
 - 3 to carry into effect; fulfil.
 - ...
 - 8 to fulfil a command, promise, or undertaking.
 - 9 to execute or do something.
 - ...
 - 12 to go through any performance.
- 30 The Macquarie Dictionary defines ‘direction’ as:
- 1 the act of directing pointing, aiming, etc.
 - ...
 - 5 guidance; instruction.
 - 6 instructions.
 - 7 order; command.
 - 8 management; control.
 - 9 a directorate.
- 31 While ‘work’ may refer to ‘employment’ (see definitions 6 and 18 at [28] above), or the place at which work is performed (see

definition 12 at [28] above), the overtime clause uses the composite phrase, ‘work performed’.

- 32 Applying the ordinary meaning of ‘work’ and ‘performed’ at [28]–[29] above, I find the composite phrase, ‘work performed’ to mean the exertion, labour or activity that is carried out, executed or done by the employee. Specifically, that the composite phrase, ‘work performed’ means the labour or activity performed or engaged in by the employee.
- 33 Applying the ordinary meaning of ‘direction’ at [30] above, I find the balance of the overtime clause, requiring the ‘work performed’ be ‘at the direction of the employer’ to mean the work which the employer directed, instructed, or required the employee to perform.
- 34 It is only the work that the employer requires the employee to perform, in excess of their ordinary weekly hours, that is eligible for overtime pay. The employee is not eligible for overtime pay, even for work in excess of their ordinary weekly hours if the employer does not require the employee to perform that work.
- 35 For the reasons outlined at [27]–[34] above, I find the phrase, ‘work performed at the direction of the employer’ to mean the labour or activity performed by an employee that is required by the employer.

Harmonious construction

- 36 As stated in *Fedec* [22] (at [22] above), the 2019 Agreement should be construed as a whole, with a construction that makes the various parts of the 2019 Agreement harmonious to be preferable.
- 37 Applying *Fedec* [22], and on review of the 2019 Agreement as a whole, I find the construction of the phrase ‘work performed at the direction of the employer’ at [35] above, is a construction that is harmonious with cls 20.3 and 24 of the 2019 Agreement.
- 38 Clause 20 of the 2019 Agreement states: (emphasis added)

20. JOB FINISH

- 20.1 All employees finish at the Depot at the agreed time unless otherwise directed with sufficient time being allowed to complete the washing of vehicles and completion of necessary paperwork.
- 20.2 No employee will leave the depot prior to the agreed time without the expressed authority from their relevant coordinator.
- 20.3 If employees do not have **sufficient work** to keep them **fully occupied** until their finishing time, then they should notify their supervisor who will arrange **additional duties** to fill this time.
- 39 As outlined at [38] above, cl 20.3 provides that ‘work’ involves an employee being ‘occupied’ and involves the performance of ‘duties’. This is harmonious with the phrase ‘work performed’ having the meaning at [32] above.
- 40 Clause 24 of the 2019 Agreement states: (emphasis added)

24. PROJECT COMPLETION

- 24.1 From time to time the City is faced with the additional cost of returning to a job for a minimal amount of time because of knock off arrangements. Employees who believe that the project can be completed with an additional **hour of work**, may after consultation with the supervisor elect to **finish the project with self-authorized overtime to a maximum of one hour only**. On occasions when this does not suit all the members transport may be arranged for employees to return to the depot providing that occupational health and safety requirements are complied with.
- 41 As outlined at [40] above, cl 24.1 provides that ‘hour of work’ involves an employee undertaking what is necessary to ‘finish the project’. The clause provides that overtime to a maximum of one hour is payable if an employee performs an ‘hour of work’ to ‘finish the project’. The phrase ‘hour of work’ in cl 24.1 clearly provides for the employee performing labour for an hour. This is harmonious with the phrase ‘work performed’ having the meaning at [32] above.

Application of the construction of ‘work performed at the direction of the employer’

- 42 As outlined at [26] above, Mr Smith contends that during the 15-minute morning tea break the City directed him to ‘do nothing’, a direction he followed.
- 43 Given my finding at [32] above, that ‘work performed’ in the overtime clause requires the employee to have engaged in ‘activity’, I find Mr Smith’s contention that a period of ‘inactivity’ (at [42] above) constitutes ‘work performed’ under the overtime clause to be unsustainable.
- 44 Accordingly, I find that Mr Smith has not established that the 15-minute morning tea break meets the first requirement of the overtime clause at [27] above, of constituting ‘work performed’.
- 45 As outlined at [12(e)(iii)–(iv)] above, Mr Smith argues that the City directed him to take the 15-minute morning tea break. As outlined at [17(h)] above, the City argues that it did not direct Mr Smith to take the 15-minute morning tea break, but was providing him with the 15-minute morning tea break in fulfillment of its contractual obligation.
- 46 Given my findings at [44] above, that Mr Smith has not established the first requirement of the overtime clause, it is unnecessary to determine whether the City directed Mr Smith to take the 15-minute morning tea break in accordance with the second requirement of the overtime clause at [27] above.
- 47 As outlined in the Replacement Agreed Statement [22]–[23] (at [9] above), it is an agreed fact that Mr Smith’s entitlement to the 15-minute morning tea break was an implied term of his contract. As outlined at [1] above, the agreed question to be determined is whether Mr Smith had an entitlement to overtime pay pursuant to the overtime clause in the 2010 Award,

as incorporated into the 2019 Agreement by cl 3 of the 2019 Agreement. Accordingly, it is unnecessary to deal with the parties' arguments regarding the contract, specifically their arguments regarding the construction of the 'Hours of Work' clause.

48 Furthermore, it is unnecessary to deal with the parties' arguments regarding the content of, and purpose for, Mr Smith's timesheets.

Decisions relied upon by Mr Smith that a rest break can be 'time worked'

49 As outlined at [13] above, Mr Smith relies on the following decisions in support of his argument that the 15-minute morning tea break counts as time worked:

- (a) *Pearson*.
- (b) *Darling Island*.
- (c) *Minister for Police*.
- (d) *Lee-Downs*.
- (e) *Gapes*.
- (f) *Csomore*.
- (g) *Shire of Albany*.

50 For the reasons that follow, I find that these decisions do not support Mr Smith's claim.

51 *Pearson* is a High Court of Australia decision, delivered on 10 September 1929, in which a harbour worker claimed compensation under the *Workers' Compensation Act 1912–1924* (WA), in respect of injuries sustained as a result of an accident arising in the course of his employment.

52 Knox CJ, Rich and Dixon JJ said in *Pearson*, 329–330:

We think that the result of these authorities is to show that the words 'arising in the course of the employment' describe a condition which is satisfied if the accident happens while the workman is doing something in the exercise of his functions although it is no more than an adjunct to or an incident of his service.

Upon the facts of this case the workman (the appellant) was going from one part of his employer's premises to another during hours of labour for which he was paid and when he was bound to obey his employer's lawful commands, and he was doing so for the purpose of more conveniently supplying to a gang of men that which the employer habitually provided, generally as a matter of statutory obligation, sometimes without that compulsion, but in like case. The convenience served was not only that of the gang because it facilitated the supply of water, a thing which the respondent was bound to do when work was 'at a ship' and which it did in the same way although the ship was not yet, or no longer was, alongside.

53 *Pearson* involves the proper construction of the phrase 'arising in the course of the employment' in the context of workers' compensation legislation. *Pearson* does not involve a consideration of whether the time during which an employee is taking a break could constitute time worked for the purposes of determining an entitlement to payment.

54 *Darling Island* is a High Court of Australia decision, delivered on 1 September 1938, in which two members of the Waterside Workers' Federation were directed to place 35 bars of lead into slings, refused, and were charged with committing a breach of the award, which contained a clause stating, 'any refusal to carry out the reasonable instructions of the employer or his representative as to the quantity or weight of cargo to be placed in slings ... shall be deemed to be a breach of this award by the individual workman concerned'.

55 In separate reasons, Latham CJ, Rich, Starke and Dixon JJ, each found that the instruction to load 35 bars of lead into slings was reasonable, and therefore the employees were in breach of the award by only loading 30 bars into the slings.

56 Dixon J said in *Darling Island*, 622–623: (references omitted)

[W]hen the award was framed, the expression 'reasonable instructions' was adopted in describing the employees' duty to obey. But what is reasonable is not to be determined, so to speak, *in vacuo*. 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, supply considerations by which the determination of what is reasonable must be controlled. When an employee objects that an order, if fulfilled, would expose him to risk, he must establish a case of substantial danger outside the contemplation of the contract of service...

But I think that, upon a proper understanding of the award, a finding that the instruction was unreasonable could not be sustained. The rejected medical opinion could have made no difference in the result. It could not do so because it provides considerations which under the terms of the award should primarily be addressed to a board of reference, and because medical disapproval could not overcome the effect, upon such a question, of the fact that the instruction following a long-standing practice, a practice, moreover, supported by the result of the previous board of reference.

57 *Darling Island* involves the proper construction of the phrase 'reasonable instructions' in the context of a case where the issue for determination was whether the employees were rightly convicted for breaching a provision of the award imposing an obligation on employees to comply with a reasonable instruction of the employer regarding the quantity or weight of cargo to be placed in slings. *Darling Island* does not involve a consideration of whether the time during which an employee is taking a

break could constitute time worked for the purposes of determining an entitlement to payment.

58 **Minister for Police** is an IAC decision delivered on 21 November 1969, involving the proper construction of cl 19(1) of the *Police Award 1965*, that '[a]ll time worked in excess of eighty (80) hours per fortnight shall be regarded as overtime.'

59 Burt J (with Wickham J agreeing at 993) said in **Minister for Police**, 993:

I think the outcome of the appeal really turns entirely upon the proper construction of clause 19(1) of the award and to the circumstances of the case. So in the end it really comes down to a question as to whether a policeman who is rostered in the way this particular policeman was – whether the time during which that state of affairs is operating is time worked within the meaning of clause 19(1).

As soon as one sees that throughout that period he is subject to continual command of the employer, if I can refer to the commissioner in that way, or to the Honourable the Minister in that way, to stay at home and to abstain from doing certain things and to be ready to work in a more extensive manner should he be called upon, I think one is compelled to say that that period is time worked within the meaning of clause 19(1) of the award. That is the finding that the learned magistrate came to and in my opinion, he was correct and the appeal should be dismissed.

60 **Minister for Police** involved a police officer who was directed to stay at home and to abstain from doing certain things to ensure readiness for immediate recall to duty. The IAC held that such period, in the context of the *Police Award 1965* which made no separate provision for stand-by, on-call or waiting allowances, constituted time worked because the officer was subject to the continual command of the employer.

61 **Minister for Police** does not support Mr Smith's argument because the period of time under consideration in that case was effectively an on-call period, and on-call periods involve ongoing employer-imposed restrictions to ensure readiness to perform work. This is not analogous to the 15-minute morning tea break; I accept the respondent's submissions at [17(d)–(g)] above, that during the 15-minute morning tea break, Mr Smith was not restricted or required to be available to perform work.

62 **Lee-Downs** is an IAC decision delivered on 27 April 1977, involving the proper construction of cl 8(1) of the *Nursing Aides and Nursing Assistants' (Private) Award*, that '[a]ll time worked in excess of the ordinary hours as prescribed in clause 7 hereof shall be paid' at overtime rates.

63 Burt CJ (with Wallace J agreeing at 457) said in **Lee-Downs**, 456:

[T]he worker was on the premises pursuant to instructions received from the employer 'to report any emergencies which arose relative to the inmates of the home' it follows that the whole of the time during which she was on the premises pursuant to those instruction was 'time worked' within the meaning of the award. It may be that an emergency seldom arose and it may be that an emergency never arose but that, I think, would make no difference. The worker was not on call in the sense that she could be called upon by the employer to work. She was, I think, under a continual duty to act if called by a patient and she falls into the category of persons who serve while waiting. I would allow this appeal.

64 **Lee-Downs** involved nursing assistants of a nursing home requested to sleep on the premises, with the object of reporting any emergency that arose relative to the inmates of the home. The IAC held that the period under consideration constituted time worked because the nursing assistants were doing what they were doing upon instructions given by their employer.

65 **Lee-Downs** does not support Mr Smith's argument because during the period of time under consideration in that case, the employees were under a continual duty to act. This is not analogous to the 15-minute morning tea break; I accept the respondent's submissions at [17(d)–(g)] above, that during the 15-minute morning tea break, Mr Smith was not under a duty to act. On the contrary, Mr Smith agrees that during the 15-minute morning tea break, the City directed him to do nothing (see [12(e)(iv)–(v)] above).

66 **Gapes** is a Federal Court of Australia (FCA) decision, delivered on 13 March 1980, involving the proper construction of cl 12(c) of the *Bank Officials' (Federal) (1963) Award*, entitling the bank to make deduction in accordance with a formula in respect of every hour or part of an hour that an employee 'has been absent from duty without the consent of the Bank during the period in respect of which the salary is paid'. Mr Gapes refused to perform certain of his duties as an accountant, in conformity with an industrial campaign which was being waged by the Australian Bank Employees' Union. While the bank initially directed Mr Gapes to cease work, it subsequently waived this direction and Mr Gapes worked in his job for the three days for which the bank refused to pay Mr Gapes his salary.

67 Smither and Evatt JJ said in **Gapes**, 4, 7:

The award may specify whether the employee's remuneration shall be earned hourly, weekly or otherwise and whether that remuneration is payable periodically as part of a salary in a particular classification of employment. In cases of the latter kind the obligation to pay salary as and when it is expressed to be payable could be made conditional on performance of all the duties of an employee in the relevant classification of employment or it may be created subject to no such condition. In this case it is impossible to find any factor by reference to which the obligation to pay salary, being expressed absolutely, may be construed as subject to an implication that the obligation to pay is conditional on the duties of the employment being performed to some lesser or greater degree...

The critical issue between the parties was therefore whether, according to the terms of the award properly construed, there was created an unconditional obligation to pay on the date specified for payment, the fortnightly component of salary falling due under the award in respect of the fortnight during part of which the employee was in default in respect of performance of part of his duties. In our opinion the award properly construed did create an unconditional obligation to pay the fortnightly component on the date provided in the award for payment thereof.

Whether when an employee refuses to perform a significant part of his duties and the employer rejects performance of the remaining part of the duties and excludes the employee from rendering such part performance, the state of employment

upon which the relevant obligations under the award depend, has come to an end or is suspended is a question that does not arise here. ... [I]n this case the employer did not reject part performance. Accordingly the state of employment upon which the obligations of the award depended continued at all times.

- 68 *Gapes* involved an award clause that entitled Mr Gapes to receive his annual salary on a fortnightly basis. The FCA held that the bank's obligation to pay Mr Gapes the fortnightly component of his annual salary was absolute; the FCA found no provision in the award making the obligation to pay Mr Gapes the fortnightly component of his annual salary conditional on him performing his duties in full. The FCA found that the award clause entitling the bank to make deduction for every hour or part hour an employee is absent from duty could not be relied upon by the bank as Mr Gapes was not absent from duty.
- 69 *Gapes* does not assist Mr Smith. Firstly, *Gapes* does not involve an employee seeking payment for a period of inactivity. Mr Gapes was not performing no duties; rather he was performing his duties but not the full scope of duties because of an industrial campaign. Secondly, unlike the award in *Gapes*, which required Mr Gapes to be paid an annual salary divisible by the fortnightly frequency for payment, the 2019 Agreement provides for Mr Smith to be paid an annual base salary rate, divided by 52 and then divided by 38 to obtain the base salary hourly rate, which Mr Smith is to be paid for each ordinary hour worked by him. Mr Smith is not claiming an entitlement to his annual salary for working his ordinary weekly hours of 38 hours a week. Rather, Mr Smith is claiming overtime, under an overtime clause which expressly imposes a condition on the payment of overtime, namely that it is only payable where the employee performs work at the direction of the employer in excess of the employee's ordinary weekly hours of 38 hours a week.
- 70 *Csomore* is a Supreme Court of New South Wales decision, delivered on 4 November 1986, involving two public service officers who, in conformity with a ban imposed by the Public Service Association of New South Wales (**Association**) on the processing of cheques received in government offices and the issuing of receipts, as part of the industrial campaign waged by the Association, declined to carry out instructions given to them designed to ensure that a full range of work was carried out. The defendant did not pay the public service officers for the days when they failed to carry out work assigned to them, relying on the 'no work, no pay' principle, and the public service officers instituted the proceedings to recover the pay withheld.
- 71 Rogers J said in *Csomore*, 284-285:
- The facts in *Gapes* provide the crucial point of difference. In that case, the bank accepted the work that was in fact carried out by the plaintiff ...
- Here, the plaintiffs were told not to work and that their work would not be accepted unless they carried out the full range of duties. Neither the statute nor the award has the effect of foisting upon the employer the obligation to accept a willingness on the part of the employee to perform some of the duties but not others. The employer is entitled to reject the offer of partial service and insist on the full range of duties being performed. It is not for the employee to make a choice of what he or she will do and not do. The employer may, of course, waive the entitlement to reject part performance, may accept the work done. It is difficult to know with what greater clarity the defendant could have signalled its refusal to accept part performance. ...
- In my view, the plaintiffs are not entitled to the salary claimed.
- 72 *Csomore* does not assist Mr Smith. The issue for determination in *Csomore* was whether the employees were entitled to the payment of salary, notwithstanding their refusal to carry out a portion of their duties. Rogers J held that, an employer is not obliged to accept an employee's part performance of their duties; an employer may waive the requirement for the employee to perform their full duties, or they may insist on the employee performing their full duties and refuse to accept part performance. In the latter situation, Rogers J held that the employee would not be entitled to payment of their salary. Rather than assisting Mr Smith, *Csomore* supports the argument that even if an employee performs work, if the work that they perform is not the full scope of their duties and the employer does not waive the requirement for the employee to perform the full scope of their duties, the employee is not entitled to payment for the work performed.
- 73 *Shire of Albany* is a FCA decision, delivered on 7 March 1990, involving the proper construction of the *Municipal Employees (Western Australia) Award 1982*, and whether employees are entitled to be paid overtime rates for time spent after the conclusion of ordinary work hours travelling from site to depot.
- 74 In *Shire of Albany*, the parties agreed that employees cease work at the site at 4:30pm, following which they travel back to the work depot in a vehicle belonging to the Shire. French J was satisfied that the return to the work depot from site in the Shire's vehicle is 'an incident of the instruction requiring such travel to the site at the beginning of the day', and in that sense, was undertaken pursuant to the original instruction; such that cl 27 'Fares and Travelling Time' applied to the travel: *Shire of Albany*, 4, 13-14.
- 75 French J said in *Shire of Albany*, 15, 17:
- But cl.27 taken as a whole assumes a distinction between time engaged in travelling in or in connection with work on the one hand and time worked on the other. It does not exclude the possibility that an employee's travel may be his work. A driver engaged to deliver spare parts or personnel from depot to job site, would if covered by the Award, be working while travelling. Whether travel is also work outside the category of travel addressed by cl.27 must be a question of fact according to the circumstances of the case. On the agreed facts however the travelling in issue in this case was of the class contemplated by cl.27 and was not work for the purposes of the overtime provisions of the Award.
- A number of decisions were cited in argument relating to the scope of work activities and the concept of 'time worked' for the purpose of calculating remuneration under industrial awards. ...
- While the general principles enunciated in that line of cases indicate criteria for the determination of 'time worked' where that expression is used in industrial awards, the decision in any particular case must depend upon the construction of the relevant award, whether it makes specific provision for the activity in question, and the facts of the case. None of these 'on-call' authorities, in my view weigh against the conclusion that cl.27 of the *Municipal Employees (Western Australia)*

Award 1982 covers the travelling time which is the subject of these proceedings.

76 French J said in *Shire of Albany*, 19:

Subsequently in *Police Association (SA) v Public Service Board (SA)* (1983) 5 IR 105 [(*SA Police*)], Russell J in the Industrial Court of South Australia held that time spent by a police officer travelling from one place of duty to another at the direction of a superior officer was ‘time worked’ for the purpose of the *Police Officers Award* and attracted overtime rates where it extended beyond ordinary hours as defined in the award. No reference was made in the judgment to any equivalent of cl.27 and in my respectful opinion, his Honour was clearly correct in characterising the travel time which was an integral part of the performance of the officer’s duties as time worked for purposes of the award.

In this case cl.27 requires a distinction to be drawn between a class of travel that is travel between home and site and between site and site for the purpose of performing work at the site on the one hand, and travel which is also work on the other. For the reasons already expressed I am satisfied that the travel undertaken in this case fell into the first category.

77 *Shire of Albany* does not support Mr Smith’s argument because it affirms that whether travel time constitutes ‘time worked’ will depend upon the construction of the relevant industrial instrument, whether the instrument contains a provision for travel, and the facts of the case.

78 French J found that pursuant to the award and facts under consideration in *Shire of Albany*, that the travel time was not time worked, but time to which cl 27 ‘Fares and Travelling Time’ applied.

79 French J notes that in the decision of *SA Police*, the applicable award did not contain a provision for travel, and in that case the time spent by a police officer travelling from one place of duty to another at the direction of a superior officer, was time worked, because the travel time was an integral part of the performance of the officer’s duties: *Shire of Albany*, 19.

80 Mr Smith submits that the time he spends travelling from one job to another counts as time worked because it is an integral part of his rostered work.¹²

81 However, when asked how the analogy could be drawn between Mr Smith’s travel time and the 15-minute morning tea break, Mr Smith’s agent said:¹³

McCORRY, MR: We’re not saying that the rest break is integral to the work. What we’re saying is that the meaning of perform work is not limited to physical exertion. Perform work means to do whatever you are required to do by the employer in accordance with the terms of the contract of employment and that includes not working when the employer directs.

82 Absent any submissions that the 15-minute morning tea break was an integral part of the performance of Mr Smith’s duties, analogous to the travel time under consideration in *SA Police* as cited in *Shire of Albany*, I do not consider that *Shire of Albany* assists Mr Smith.

83 The decisions at [49] above, discussed at [51]–[82] above, involve scenarios where the time an employee spends on-call or on standby or travelling might count as time worked, because of the employer’s control or because what the employee is doing in that time is an integral part of the performance of the employee’s duties.

84 On the contrary, and as contended by the parties’ at [12(e)(iv)–(v)], [14]–[15] and [17(d)–(e)] above, all of which I accept, during the 15-minute morning tea break, Mr Smith is relieved of all duties, performs no work, and faces no restrictions beyond the break’s start time and duration.

85 Accordingly, these decisions do not assist Mr Smith’s argument that the 15-minute morning tea break should count as time worked.

Decisions relied upon by the City that a rest break is not ‘time worked’

86 As outlined at [17(e)] above, the City relies on *Galvin* and *Metcash*.

87 *Galvin* is a High Court of Australia decision, delivered on 27 April 1949, in which the issue for determination was whether the insertion of a new provision into an award allowing a tea break of 15-minutes two hours after the usual starting time is an alteration of the standard hours of work in an industry, in circumstances where s 13 of the *Commonwealth Conciliation and Arbitration Act 1904-1947* provides that, ‘[a] conciliation commissioner shall not be empowered to make an order or award altering: – (a) the standard hours of work in an industry...’.

88 The High Court said in *Galvin*, 447: (emphasis added)

During a non-working period, the employees are not subject to the control of the employer in relation to the work for doing which they are employed. **An hour during which no work is to be done cannot be called an hour of work. So also a shorter period during which no work is to be done is not part of ‘hours of work.’ Thus a luncheon interval is not a period of work.** If an award prescribed that working hours should be from 8 a.m. to 5 p.m. with one hour for lunch, there would be eight hours of work. If the award were altered so as to provide that the working hours should be from 8 a.m. to 5 p.m. with seventy-five minutes for lunch or with forty-five minutes only for lunch, the hours of work would be altered. No distinction can be drawn between such a case and the alteration of an award by providing a new tea-break of fifteen minutes or by abolishing an existing tea-break of fifteen minutes. In either case the hours of work would be altered.

89 As outlined at [88] above, *Galvin* states that a non-working period is a period where the employee is not subject to the control of the employer in relation to the work they were employed to do. During a non-working period, no work is done, and therefore that period of non-working is not part of the employee’s ‘hours of work’. Accordingly, a luncheon interval is ‘not a period of work’ but a non-working period.

- 90 *Metcash* is a decision of Deputy President Mansini of the Fair Work Commission (FWC) delivered on 29 June 2021, where the parties agreed that the question for the FWC to determine was whether the employees are entitled to be paid an afternoon shift allowance pursuant to cl 8 of the *Metcash IGA Distribution Victoria Enterprise Agreement 2019 (Metcash Agreement)*, in circumstances where cl 8 defined ‘Afternoon Shift’ as meaning any shift finishing after 6:00pm and at or before 1:00am, except where employees on dayshift work in accordance with cl 6. Clause 6.1.2 provides that the ordinary hours of work for day workers are 38-hours per week ‘to be worked’ between 6:00am and 7:30pm.
- 91 In *Metcash*, the employees’ shifts commenced at 9:45am and concluded at 7:45pm. During each shift, employees were entitled to a 30-minute unpaid meal break and two paid rest breaks of 15 minutes’ duration. The second 15-minute rest break was taken from 7:30pm to 7:45pm, with employees leaving (or commencing to leave) Metcash’s Laverton Distribution Centre at 7:30pm.
- 92 The two 15-minute rest breaks were provided by cl 20 of the *Metcash Agreement*, which expressed them to be a ‘paid’ entitlement to a ‘break’, with the second 15-minute paid break to occur ‘at the end of the ordinary hours of work for the day’, which the FWC found, in *Metcash* [23]:
- [23] In my view, the words ‘at the end of’ designate the point in time at which the break is to be taken and neither this expression, nor anything in the express drafting of [cl 20 of the *Metcash Agreement*], provides that these breaks are to be regarded as work or time worked for the purposes of the shiftwork provisions or otherwise.
- 93 The FWC cited *Galvin*, and said in *Metcash* [24]–[25]: (footnote omitted)
- [24] The general legal principle was enunciated by the High Court of Australia in [*Galvin*] as follows:
- During a non-working period, the employees are not subject to the control of the employer in relation to the work for doing which they are employed. An hour during which no work is to be done cannot be called an hour of work. So also a shorter period during which no work is to be done is not part of ‘hours of work’. Thus a luncheon interval is not a period of work. [...]
- [25] The parties properly acknowledged that an enterprise agreement may be struck to reflect a different intention and so this principle only takes matters so far. ...
- 94 The FWC said in *Metcash* [28]–[30]:
- [28] I accept that, other than perhaps the exception of overtime (subject to the specific provisions of [cl 11 – Overtime], the *Metcash Agreement*) does not contemplate financial penalty for or indeed permit work to be required to be performed during the second paid 15 minute break and it does not logically follow that a time in which work is prohibited would be regarded as time worked or work.
- [29] There is also some textual support for the proposition that payment is not necessarily indicative of the calculation of working time and in this respect *Metcash*’s contentions about clause 22 (Waiting Time) are persuasive.
- [30] Finally, there was some conjecture in oral submissions about the purpose and use of the 5 minute down time from 1925 to 1930 but it was not disputed that Affected Employees are released from duty and either depart or commence departing the workplace from 1930 hours (other than where there is a separate request to work overtime, which is outside the scope of this dispute). This fact is crucial in the context of the words of [the *Metcash Agreement*]. No Affected Employee is required or directed to perform any ordinary hours of work after 1930 hours. No Affected Employee does perform work after 1930 (other than overtime). Whilst the shift might be scheduled to finish at 1945, when viewed in context, the time from 1930 to 1945 [cannot] be considered time worked or work as there is no performance of any work or even attendance in the workplace during this time.
- 95 The FWC concluded (*Metcash* [33]–[34]) that the second 15-minute paid rest break is not time worked, such as to entitle employees to payment of the afternoon shift allowance pursuant to cl 8 of the *Metcash Agreement*.
- 96 As outlined at [87]–[89] above, *Galvin* states that a period during which an employee is not subject to the control of the employer, is a non-working period. Accordingly, a luncheon interval or rest break constitutes a non-working period.
- 97 As outlined at [90]–[95] above, *Metcash* states that the second 15-minute rest break, a period during which an employee is not required or directed to perform any work and does not perform work, does not qualify as time worked under the *Metcash Agreement*. This is the case even where the rest break is a paid entitlement.
- 98 Collectively, the decisions at [49] above, involve scenarios of employer-imposed restrictions or integral duties, which are absent in Mr Smith’s case.
- 99 Instead, the 15-minute morning tea break aligns with a non-working period, or a period during which an employee is not required to and does not perform any work such that the period does not qualify as time worked: *Galvin*; *Metcash*.

Conclusion

- 100 For the preceding reasons, I am not persuaded that Mr Smith has discharged the onus on him to establish his claim that the daily 15-minute morning tea break constitutes ‘work performed at the direction of the employer’ pursuant to the overtime clause of the 2010 Award, as incorporated into the 2019 Agreement by cl 3 of the 2019 Agreement.
- 101 As I am not persuaded that the 15-minute morning tea break counts as time worked, I find that Mr Smith worked 74.25 hours per fortnight (see Replacement Agreed Statement [27] at [9] above), and not in excess of his ordinary hours of 76 hours per

fortnight, such as to entitle him to overtime pay.

102 Therefore, I find that Mr Smith has not established his claim for overtime pay.

103 Accordingly, Mr Smith's claim will be dismissed.

C. TSANG

INDUSTRIAL MAGISTRATE

¹ Transcript of Proceedings, 24.

² Replacement Agreed Statement [2].

³ Transcript of Proceedings, 17, 33–34.

⁴ Claimant's Further Submissions & Authorities [8]; Transcript of Proceedings, 24.

⁵ Defined to mean the approximately 154 employees (of an approximate total of 233 employees) who work in the City's Construction and Maintenance Business Unit that are covered by the [2019 Agreement]: Witness Statement of Matthew Southern [3]–[4].

⁶ Exhibit 1: Document 11: Letter of offer – General Hand/Arborist dated 5 September 2022 (Exhibit 1, 312–320).

⁷ Replacement Agreed Statement [27].

⁸ Witness Statement of Phillip Russell Smith [6]; Replacement Agreed Statement [25].

⁹ Replacement Agreed Statement [23], [25].

¹⁰ Claimant's Further Submissions & Authorities [12(b)].

¹¹ Witness Statement of Matthew Southern [17]; Replacement Agreed Statement [20].

¹² Transcript of Proceedings, 38.

¹³ Transcript of Proceedings, 39.

POLICE ACT 1892—APPEAL—Matters Pertaining To—

2025 WAIRC 00796

APPEAL AGAINST THE DECISION OF COMMISSIONER TO TAKE REMOVAL ACTION ON 3 DECEMBER 2024

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

BRETT MORGAN PALMER

APPLICANT

-v-

COMMISSIONER OF THE WESTERN AUSTRALIAN POLICE

RESPONDENT

CORAM

SENIOR COMMISSIONER R COSENTINO

COMMISSIONER T B WALKINGTON

COMMISSIONER C TSANG

DATE

FRIDAY, 19 SEPTEMBER 2025

FILE NO.

APPL 4 OF 2025

CITATION NO.

2025 WAIRC 00796

Result

Directions issued

Representation

Appellant

Mr D Weekley from Tindall Gask Bentley Lawyers (of counsel) on behalf of Mr B Palmer

Respondent

Mr A Miller (of counsel) from the State Solicitor's Office on behalf of the Commissioner of the Western Australian Police

Direction

HAVING heard from Mr Weekley of counsel on behalf of the appellant and Mr A Miller of counsel on behalf of the respondent, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979 (WA)*, by consent hereby directs –

1. THAT the directions hearing listed for 23 September 2025 be vacated.
2. THAT the matter be listed for a further directions hearing on 14 October 2025 at 9:30am.

(Sgd.) R COSENTINO,
Senior Commissioner,

By the Commission In Court Session.

[L.S.]

UNFAIR DISMISSAL/CONTRACTUAL ENTITLEMENTS—

2025 WAIRC 00836

UNFAIR DISMISSAL APPLICATION

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
BRUCE STANTON HILL DIGGINS

PARTIES**APPLICANT**

-v-

WA COUNTRY HEALTH SERVICE

RESPONDENT**CORAM** COMMISSIONER T EMMANUEL**DATE** TUESDAY, 7 OCTOBER 2025**FILE NO/S** U 73 OF 2025**CITATION NO.** 2025 WAIRC 00836**Result** Application discontinued**Representation****Applicant** On his own behalf**Respondent** Mr A Bleach (as agent)

Order

WHEREAS application U 73 of 2025 is an application under s 29(1)(c) of the *Industrial Relations Act 1979* (WA);

AND WHEREAS Mr Diggins filed an application in application U 73 of 2025 on 4 July 2025;

AND WHEREAS WA Country Health Service filed a response in application U 73 of 2025 on 28 July 2025;

AND WHEREAS a conciliation conference was held in application U 73 of 2025 jointly with application P 22 of 2025 on 12 September 2025;

AND WHEREAS on 3 October 2025, Mr Diggins telephoned the Commission and said he wished to discontinue application U 73 of 2025;

NOW THEREFORE the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), orders –

THAT application U 73 of 2025 be, and by this order is, discontinued.

(Sgd.) T EMMANUEL,
Commissioner.

[L.S.]

PROCEDURAL DIRECTIONS AND ORDERS—

2025 WAIRC 00825

OVIS COMMUNITY SERVICES ENTERPRISE AGREEMENT 2025

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
PAT THOMAS HOUSE INC.

PARTIES**APPLICANT**

-v-

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

RESPONDENT**CORAM** COMMISSIONER C TSANG**DATE** THURSDAY, 2 OCTOBER 2025**FILE NO.** AG 25 OF 2025**CITATION NO.** 2025 WAIRC 00825

Result Order issued
Representation
Applicant Mr S Farrell (as agent)
Respondent Mr C Fogliani (of counsel)

Order

HAVING heard from Mr S Farrell (as agent) on behalf of the applicant and Mr C Fogliani (of counsel) on behalf of the respondent, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), and by consent, hereby orders –

1. THAT subject to any further order of the Commission, the affidavit of Ms Megan McKrill and its attachments filed by the applicant on 9 September 2025 is to be marked confidential and not to be provided to any person other than:
 - (a) The Commissioners, Registrar and Deputy Registrar of the Commission, or any of their staff;
 - (b) The applicant and their representatives; and
 - (c) The respondent and their legal representatives.
2. THAT the parties have liberty to apply on short notice.

(Sgd.) C TSANG,
Commissioner.

[L.S.]

2025 WAIRC 00818

SHIRE OF KONDININ MUNICIPAL COLLECTIVE ENTERPRISE AGREEMENT 2024

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THE SHIRE OF KONDININ

APPLICANT

-v-

AUSTRALIAN SERVICES UNION

RESPONDENT

CORAM SENIOR COMMISSIONER R COSENTINO
DATE WEDNESDAY, 1 OCTOBER 2025
FILE NO/S AG 68 OF 2025
CITATION NO. 2025 WAIRC 00818

Result Order issued
Representation
Applicant The Shire of Kondinin
Respondent Australian Services Union

Order

WHEREAS this is an application filed by The Shire of Kondinin on 25 September 2025 to register the *Shire of Kondinin Municipal Collective Enterprise Agreement 2024 (Agreement)* pursuant to s 41 of the *Industrial Relations Act 1979* (WA) (**IR Act**);

AND WHEREAS the Commission wrote to the parties seeking their views on whether it is appropriate to issue orders to:

- (a) amend the name of the respondent;
- (b) dispense with the requirements of reg 55(1)(b) of the *Industrial Relations Commission Regulations 2005* (WA);

AND WHEREAS the applicant and the respondent consented to the proposed orders;

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

1. THAT the name of the respondent be amended to Western Australian Municipal, Administrative, Clerical and Services Union of Employees.
2. THAT the requirements of reg 55(1)(b) of the *Industrial Relations Commission Regulations 2005* (WA) be dispensed with.

(Sgd.) R COSENTINO,
Senior Commissioner.

[L.S.]

2025 WAIRC 00787

CONTRACTUAL BENEFIT CLAIM

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

AMANDA JAYNE VARIAN

APPLICANT

-v-

FRONT LINE FINANCIAL SOLUTIONS PTY LTD

RESPONDENT**CORAM**

COMMISSIONER T KUCERA

DATE

TUESDAY, 16 SEPTEMBER 2025

FILE NO/S

B 6 OF 2025

CITATION NO.

2025 WAIRC 00787

Result Order Issued**Representation****Applicant**

Ms Z Kalimeris (of Counsel)

Respondent

Mr A King

Order

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

AND WHEREAS a second conciliation conference was held on Thursday, 11 September 2025 in relation to the application, but the matter was not resolved;

HAVING HEARD from Ms Z Kalimeris (of counsel) on behalf of the applicant and Mr A King on behalf of the respondent, the Commission, pursuant to its powers under the IR Act, hereby orders -

1. THAT the applicant is to provide an amended Form 3 and particulars of claim by Friday, 25 September 2025.
2. THAT the respondent is to provide an amended Form 3A response by Friday, 10 October 2025.
3. THAT the provision of any further documents that are relevant to the application (discovery) is to be provided on an informal basis.
4. THAT leave is granted for the applicant to file any supplementary witness statements by Friday, 31 October 2025.
5. THAT leave is granted for the respondent to file its witness statements by Friday, 21 November 2025.
6. THAT both parties' witness statements are to be filed in the manner required by practice note 9 of 2021, which will stand as their evidence in chief.
7. THAT the matter be relisted for a directions hearing not before Friday, 21 November 2025.
8. THAT there be liberty to apply.

[L.S.]

(Sgd.) T KUCERA,
Commissioner.

2025 WAIRC 00809

CONTRACTUAL BENEFIT CLAIM

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

DAVID MARK BIGNOLD

APPLICANT

-v-

THE ORANGE CARD PTY LTD

RESPONDENT**CORAM**

COMMISSIONER C TSANG

DATE

FRIDAY, 26 SEPTEMBER 2025

FILE NO.

B 50 OF 2025

CITATION NO.

2025 WAIRC 00809

Result	Direction issued
Representation	
Applicant	Mr D M Bignold (on his own behalf)
Respondent	No appearance

Direction

HAVING heard from Mr D M Bignold on his own behalf and noting there was no appearance by the respondent at the Directions Hearing on 26 September 2025, the Commissioner, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), hereby directs –

1. THAT the matter be listed for hearing and determination on a date to be determined that is not before Friday, 30 January 2026 (**Hearing**).
2. THAT the applicant file the outlines of witness evidence and documents that he intends to rely upon at the Hearing **by Friday, 24 October 2025**.
3. THAT the respondent file the outlines of witness evidence and documents that it intends to rely upon at the Hearing **by Friday, 21 November 2025**.
4. THAT the applicant file the outline of submissions that he intends to rely upon at the Hearing **by Friday, 19 December 2025**.
5. THAT the respondent file the outline of submissions that it intends to rely upon at the Hearing **by Friday, 23 January 2026**.
6. THAT the parties have liberty to apply.

[L.S.]

(Sgd.) C TSANG,
Commissioner.

2025 WAIRC 00786

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 GOSNELLS

THIRD INTERVENOR

CORAM

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER S J KENNER

SENIOR COMMISSIONER R COSENTINO

COMMISSIONER T KUCERA

DATE

TUESDAY, 16 SEPTEMBER 2025

FILE NO/S

CICS 3 OF 2025

CITATION NO.

2025 WAIRC 00786

Result Order issued

Representation

Applicant Mr L Slaney

Intervenor Mr C Fogliani of counsel on behalf of 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 Gosnells

Order

HAVING heard Mr L Slaney on behalf of the Transport Workers' Union Industrial Union of Workers Western Australian Branch, Mr C Fogliani of counsel on behalf of 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), and Mr C Beetham of counsel on behalf of the City of Gosnells, the Commission in Court Session, pursuant to the powers conferred on it under the *Industrial Relations Act 1979* (WA), hereby orders –

THAT in the Form 13A filed on 3 February 2025 the name of the applicant be amended by the deleting the name 'Transport Workers' Union Industrial Union of Workers Western Australian Branch' and inserting in lieu thereof the name 'Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch'.

(Sgd.) S J KENNER,
Chief Commissioner,

[L.S.]

By the Commission in Court Session.

2025 WAIRC 00773

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 GOSNELLS

THIRD INTERVENOR

CORAM

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER S J KENNER

SENIOR COMMISSIONER R COSENTINO

COMMISSIONER T KUCERA

DATE

WEDNESDAY, 10 SEPTEMBER 2025

FILE NO/S

CICS 3 OF 2025

CITATION NO.

2025 WAIRC 00773

Result Order issued

Representation

Applicant Mr L Slaney

Intervenor Mr C Fogliani of counsel on behalf of 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)

Ms D Lamb of counsel on behalf of the City of Gosnells

Order

HAVING heard Mr C Fogliani of counsel on behalf of the Western Australian Municipal, Administrative, Clerical and Services Union of Employees and Ms D Lamb of counsel on behalf of the City of Gosnells, the Commission in Court Session, pursuant to the powers conferred on it under the *Industrial Relations Act 1979* (WA), hereby orders –

THAT the City of Gosnells produce and make available for inspection by the WASU the following documents by no later than 4.00 pm Friday, 12 September 2025:

- (a) The first warning the City of Gosnells issued to Mr Gary Barrett on or around 20 May 2014 relating to occupational health and safety issues;
- (b) The ‘performance issues’ referred to in the City of Gosnells’ (via Mr George Naylor) letter dated 23 October 2014 to Mr Barrett relating to an incident involving ‘AdBlue’ and non-compliance with instructions; and
- (c) The second and final warning issued by the City of Gosnells to Mr Barrett sometime in or around 2018.

(Sgd.) S J KENNER,
Chief Commissioner,

By the Commission in Court Session.

[L.S.]

2025 WAIRC 00794

APPLICATION TO REVOKE THE RIGHT OF ENTRY PERMIT OF EDMOND MARGJINI

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

REGISTRAR, WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

APPLICANT

-v-

EDMOND MARGJINI

FIRST RESPONDENT

THE CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION OF WORKERS

SECOND RESPONDENT

CORAM

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER S J KENNER

COMMISSIONER T B WALKINGTON

COMMISSIONER C TSANG

DATE

THURSDAY, 18 SEPTEMBER 2025

FILE NO/S

CICS 12 OF 2025

CITATION NO.

2025 WAIRC 00794

Result	Direction issued
Representation	
Applicant	Mr J Carroll of counsel
First Respondent	Mr D Rafferty of counsel
Second Respondent	Mr D Rafferty of counsel

Direction

HAVING heard Mr J Carroll of counsel on behalf of the applicant and Mr D Rafferty of counsel on behalf of the respondents, the Commission in Court Session, pursuant to the powers conferred on it by the *Industrial Relations Act 1979* (WA), hereby directs –

- (1) THAT the directions hearing listed for Friday, 19 September 2025 be and is hereby vacated.
- (2) THAT by 4.00 pm on 26 September 2025, the respondents are to file a response to application CICS 12 of 2025.
- (3) THAT at the final hearing of this matter:
 - (a) evidence in chief directed towards the interaction that occurred at the Sydney Charles Quarter apartment project on 14 May 2025 is to be given orally; and
 - (b) evidence in chief directed towards matters other than the matter referred to in par 3(a) is to be given by affidavit.
- (4) THAT by 4.00 pm on 3 October 2025, the applicant is to file:

- (a) any further affidavits, and documents; and
- (b) any outlines of witness evidence directed towards the interaction that occurred at the Sydney Charles Quarter apartment project on 14 May 2025
- upon which she intends to rely at the final hearing.
- (5) THAT by 4.00 pm on 24 October 2025, the respondents are to file:
- (a) any affidavits, and documents; and
- (b) any outlines of witness evidence directed towards the interaction that occurred at the Sydney Charles Quarter apartment project on 14 May 2025
- upon which they intend to rely at the final hearing.
- (6) THAT by 4.00 pm on 3 November 2025, the applicant is to file:
- (a) any reply affidavits and documents;
- (b) any reply outlines of witness evidence directed towards the interaction that occurred at the Sydney Charles Quarter apartment project on 14 May 2025; and
- (c) an outline of written submissions
- upon which she intends to rely at the final hearing.
- (7) THAT by 4.00 pm on 10 November 2025, the respondents are to file outlines of written submissions upon which they intend to rely at the final hearing.
- (8) THAT the matter is to be listed for hearing for three days on dates to be fixed not before 17 November 2025.
- (9) THAT there be liberty to apply on short notice.

(Sgd.) S J KENNER,
Chief Commissioner,

By the Commission in Court Session.

[L.S.]

2025 WAIRC 00814

APPEAL AGAINST A DECISION OF THE COMMISSION IN MATTER NUMBER U 73 OF 2024 GIVEN ON 19 MAY 2025

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

AJAH ABUY

APPELLANT

-v-

TOWN OF PORT HEDLAND

RESPONDENT

CORAM

FULL BENCH

CHIEF COMMISSIONER S J KENNER

COMMISSIONER T B WALKINGTON

COMMISSIONER T KUCERA

DATE

TUESDAY, 30 SEPTEMBER 2025

FILE NO/S

FBA 6 OF 2025

CITATION NO.

2025 WAIRC 00814

Result

Order issued

Representation

Appellant

In person

Respondent

Ms A Greenwood of counsel

Order

HAVING heard from the appellant on her own behalf and Ms A Greenwood of counsel on behalf of the respondent, the Full Bench, pursuant to the powers conferred on it under the *Industrial Relations Act 1979* (WA), hereby orders –

THAT the appellant be and is hereby granted leave to appear at the appeal hearing on 15 October 2025 by video link.

By the Full Bench
(Sgd.) S J KENNER,
Chief Commissioner.

[L.S.]

2025 WAIRC 00793

APPEAL AGAINST A DECISION OF THE COMMISSION IN MATTER NUMBER B 67/2023 GIVEN ON 13 AUGUST 2025

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
JESSICA MAUREEN MCCARTHY

APPLICANT

-v-
MY FOODIE BOX LIMITED

RESPONDENT

CORAM SENIOR COMMISSIONER R COSENTINO
COMMISSIONER T EMMANUEL
COMMISSIONER C TSANG

DATE THURSDAY, 18 SEPTEMBER 2025

FILE NO. FBA 8 OF 2025

CITATION NO. 2025 WAIRC 00793

Result Directions issued

Representation

Appellant Ms J McCarthy

Respondent My Foodie Box Limited

Direction

WHEREAS on 3 September 2025, the appellant filed a notice of appeal under s 84 of the *Industrial Relations Act 1979* (WA);

AND WHEREAS the appeal books were due to be filed on 17 September 2025;

AND WHEREAS on 12 September 2025, the appellant applied to the Full Bench for an order extending the time for lodging the appeal books in respect of this appeal;

AND WHEREAS on 12 September 2025, the respondent advised that they object to the application for an extension;

AND WHEREAS the appellant subsequently amended the application to abridge the extension of time sought, so that the application sought an extension only until 19 September 2025;

AND WHEREAS the Full Bench has considered the application for an extension and the respondent's objection;

NOW THEREFORE, the Full Bench, pursuant to the powers conferred on it under the IR Act, hereby orders –

1. THAT the time within which the appellant is required to file the appeal books be extended to 4:00 p.m. on 19 September 2025, and
2. THAT the time for service of the appeal books on the respondent be extended to 4:00 p.m. on 25 September 2025.

By the Full Bench
(Sgd.) R COSENTINO,
Senior Commissioner.

[L.S.]

2025 WAIRC 00823

APPEAL AGAINST A DECISION OF THE INDUSTRIAL MAGISTRATE IN MATTER NUMBER M 23 OF 2024 GIVEN ON 20 AUGUST 2025

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
MAURICE WALSH

APPELLANT

-v-
THE SHIRE OF VICTORIA PLAINS, SEAN FLETCHER

RESPONDENTS

CORAM FULL BENCH
CHIEF COMMISSIONER S J KENNER
SENIOR COMMISSIONER R COSENTINO
COMMISSIONER C TSANG

DATE THURSDAY, 2 OCTOBER 2025

FILE NO/S FBA 9 OF 2025

CITATION NO. 2025 WAIRC 00823

Result	Order issued
Representation	
Appellant	Mr T Camp of counsel
Respondents	Mr A Sinanovic of counsel

Order

HAVING heard Mr T Camp of counsel on behalf of the appellant and Mr A Sinanovic of counsel on behalf of the respondents, the Full Bench, pursuant to the powers conferred on it under the *Industrial Relations Act 1979* (WA), and by consent, hereby orders –

1. THAT the appellant's Form 1A application filed on 25 September 2025 for an extension of time to file and serve the appeal book be and is hereby granted.
2. THAT the appellant serve the respondents with a stamped copy of the appeal book within 24 hours of it being returned to him for service.

By the Full Bench
(Sgd.) S J KENNER,
Chief Commissioner.

[L.S.]

2025 WAIRC 00783

APPEAL AGAINST THE DECISION OF THE EMPLOYER TAKEN ON 27 DECEMBER 2024

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

JEAN-PIERRE CLEMENT

APPELLANT

-v-

DIRECTOR GENERAL, DEPARTMENT OF WATER AND ENVIRONMENTAL REGULATION

RESPONDENT

CORAM

PUBLIC SERVICE APPEAL BOARD
COMMISSIONER C TSANG – CHAIR
MR G LEE – BOARD MEMBER
MR N NORTON – BOARD MEMBER

DATE

MONDAY, 15 SEPTEMBER 2025

FILE NO.

PSAB 3 OF 2025

CITATION NO.

2025 WAIRC 00783

Result	Order issued
Representation	
Appellant	Mr J Clement (on his own behalf)
Respondent	Mr M McIlwaine (of counsel)

Order

HAVING heard from Mr J Clement on his own behalf and Mr M McIlwaine (of counsel) on behalf of the respondent, the Public Service Appeal Board (**Board**), pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), hereby orders –

1. THAT subject to any further order of the Board, the documents listed at paragraph 2 of these Orders (**Confidential Documents**) are to be marked confidential and not to be provided to any person other than:
 - (a) The Commissioner and members constituting the Board hearing the appeal;
 - (b) The Registrar and Deputy Registrar of the Commission, or any of the Registrar's staff;
 - (c) An Associate or Chambers Support Staff of the presiding Commissioner;
 - (d) The appellant and his legal representatives, if any; and
 - (e) The respondent and their legal representative.
2. THAT the Confidential Documents are:
 - (a) Form 4 – Response, filed on 11 February 2025;

- (b) Bundle of Agreed Documents, filed on 16 June 2025;
 - (c) Witness Outline for Jean-Pierre Clement, filed on 8 July 2025;
 - (d) Form 1A – Multipurpose Form, filed on 4 August 2025; and
 - (e) Respondent’s Bundle of Documents, filed on 6 August 2025.
3. THAT unless they have access to the Confidential Documents by reason other than their involvement in these proceedings, the persons referred to in paragraphs 1(d) and 1(e) of these Orders may only use, and make copies of, the Confidential Documents, for the purposes of these proceedings.
 4. THAT the appellant and respondent (or their legal representatives) are to make each person referred to in paragraph 1(d) and 1(e) of these Orders aware of the existence and effect of paragraphs 1 to 3 of these Orders which can be achieved by providing those persons with a copy of these Orders.
 5. THAT the parties have liberty to apply on short notice.

(Sgd.) C TSANG,
Commissioner,

[L.S.]

On behalf of the Public Service Appeal Board.

2025 WAIRC 00838

UNFAIR DISMISSAL APPLICATION

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

NATALIE WARNOCK

APPLICANT

-v-

DIRECTOR GENERAL, DEPARTMENT OF EDUCATION

RESPONDENT

CORAM

COMMISSIONER C TSANG

DATE

TUESDAY, 7 OCTOBER 2025

FILE NO.

U 3 OF 2025

CITATION NO.

2025 WAIRC 00838

Result

Direction issued

Representation

Applicant

Mr C Fogliani (of counsel)

Respondent

Mr M McIlwaine (of counsel)

Direction

HAVING heard from Mr C Fogliani (of counsel) on behalf of the applicant and Mr M McIlwaine (of counsel) 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 Trevor Stace have leave to give his evidence at the hearing via videolink.
2. THAT the applicant have leave to rely upon the expert report of Dr Ian Sherman dated 13 August 2025, marked as Annexure B and enclosed with her *Form 1A – Application* filed on 2 October 2025 (**report**), at the hearing of this matter.
3. THAT the report stand as Dr Sherman’s evidence-in-chief and that Dr Sherman have leave to give his evidence at the hearing via videolink.
4. THAT the applicant have leave to rely upon the Applicant’s Amended Outline of Submissions, marked as Annexure A and enclosed with her *Form 1A – Application* filed on 2 October 2025, at the hearing of this matter.
5. THAT the respondent have leave to file, within two-weeks of the conclusion of the hearing of this matter, amended written submissions addressing the report and the Applicant’s Amended Outline of Submissions.
6. THAT the applicant have leave to file, within one week following the date of service of the respondent’s written submissions at Direction 4 above (**respondent’s submissions**), written submissions in reply addressing any matters raised in the respondent’s submissions that were not raised by the respondent in closing oral submissions at the hearing.

(Sgd.) C TSANG,
Commissioner.

[L.S.]

2025 WAIRC 00791

UNFAIR DISMISSAL APPLICATION

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

BRADLEY MARK FLAVEL

APPLICANT

-v-

DIRECTOR GENERAL, DEPARTMENT OF JUSTICE

RESPONDENT**CORAM**

COMMISSIONER T B WALKINGTON

DATE

THURSDAY, 18 SEPTEMBER 2025

FILE NO.

U 18 OF 2025

CITATION NO.

2025 WAIRC 00791

Result

Direction issued

Representation**Applicant**

Mr B Flavel

Respondent

Mr J Carroll (of counsel)

Direction

HAVING heard from the Applicant on their own behalf, and Mr J 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 parties file with the Commission's Registry, an agreed statement of facts and bundle of documents by no later than 4.00 pm, 23 October 2025;
2. THAT the Applicant file and serve with the Commission's Registry, any outlines of witness evidence and any documents upon which they intend to rely by no later than 4.00 pm, 13 November 2025;
3. THAT the Respondent file and serve with the Commission's Registry, any outlines of witness evidence and any documents upon which they intend to rely by no later than 4.00 pm, 27 November 2025;
4. THAT the Applicant file and serve with the Commission's Registry, an outline of submissions and any list of authorities upon which they intend to rely by no later than 4.00 pm, 16 December 2025;
5. THAT the Respondent file and serve with the Commission's Registry, an outline of submissions and any list of authorities upon which they intend to rely by no later than 4.00 pm, 8 January 2025;
6. THAT the matter be listed for a 2-day hearing not before 15 January 2025; and
7. THAT the parties have liberty to apply on short notice.

(Sgd.) T B WALKINGTON,
Commissioner.

[L.S.]

2025 WAIRC 00828

UNFAIR DISMISSAL APPLICATION

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

BRAD CASSERLY

APPLICANT

-v-

PUBLIC TRANSPORT AUTHORITY OF WESTERN AUSTRALIA

RESPONDENT**CORAM**

COMMISSIONER T KUCERA

DATE

MONDAY, 6 OCTOBER 2025

FILE NO/S

U 48 OF 2025

CITATION NO.

2025 WAIRC 00828

Result	Order Issued
Representation	
Applicant	Kevin Sneddon (of counsel)
Respondent	Emily Negus (of counsel)

Order

WHEREAS the parties requested on Friday, 26 September 2025, a one week extension to comply with order 1 issued by the Commission in order [2025] WAIRC 00789.

WHEREAS the parties requested on Friday, 3 October 2025, a further extension to comply with order 1 issued by the commission in order [2025] WAIRC 00811.

HAVING heard from Mr K Sneddon (of counsel) on behalf of the applicant and Ms E Negus (of counsel), on behalf of the respondent, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), hereby orders -

1. THAT the parties are to file a statement of agreed facts by 4pm Wednesday 8 October.
2. THAT the parties' expert witnesses are to confer with one another in the absence of the parties and their representatives, to prepare a joint statement on any matters on which they agree, any matters on which they disagree, and the reasons for any disagreement (**experts' joint statement**). The experts' joint statement is to be filed by Friday, 24 October 2025.
3. THAT by Friday, 7 November 2025, the applicant is to file any witness statements in the manner required by Practice Note 9 of 2021;
4. THAT by Friday, 7 November 2025, the applicant is to file his expert report in accordance with Reg 45(1) *Industrial Relations Commission Regulations 2005* (WA).
5. THAT by Friday, 28 November 2025, the respondent is to file any witness statements in the manner required by Practice Note 9 of 2021;
6. THAT by Friday, 28 November 2025, the respondent is to file its expert report in accordance with Reg 45(1) *Industrial Relations Commission Regulations 2005* (WA).
7. THAT the matter is to be listed for a further conciliation conference and/or directions hearing not before Friday, 28 November 2025.
8. THAT there be liberty to apply.

[L.S.]

(Sgd.) T KUCERA,
Commissioner.

2025 WAIRC 00811

UNFAIR DISMISSAL APPLICATION

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

BRAD CASSERLY

APPLICANT

-v-

PUBLIC TRANSPORT AUTHORITY OF WESTERN AUSTRALIA

RESPONDENT

CORAM	COMMISSIONER T KUCERA
DATE	FRIDAY, 26 SEPTEMBER 2025
FILE NO/S	U 48 OF 2025
CITATION NO.	2025 WAIRC 00811

Result	Order Issued
Representation	
Applicant	Kevin Sneddon (of counsel)
Respondent	Emily Negus (of counsel)

Order

WHEREAS the parties requested on Friday, 26 September 2025, a one week extension to comply with order 1 issued by the Commission in order [2025] WAIRC 00789.

HAVING heard from Mr K Sneddon (of counsel) on behalf of the applicant and Ms E Negus (of counsel), on behalf of the respondent, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), hereby orders -

1. THAT the parties are to file a statement of agreed facts by Friday, 3 October 2025.
2. THAT the parties' expert witnesses are to confer with one another in the absence of the parties and their representatives,

to prepare a joint statement on any matters on which they agree, any matters on which they disagree, and the reasons for any disagreement (**experts' joint statement**). The experts' joint statement is to be filed by Friday, 24 October 2025.

3. THAT by Friday, 7 November 2025, the applicant is to file any witness statements in the manner required by Practice Note 9 of 2021;
4. THAT by Friday, 7 November 2025, the applicant is to file his expert report in accordance with Reg 45(1) *Industrial Relations Commission Regulations 2005* (WA).
5. THAT by Friday, 28 November 2025, the respondent is to file any witness statements in the manner required by Practice Note 9 of 2021;
6. THAT by Friday, 28 November 2025, the respondent is to file its expert report in accordance with Reg 45(1) *Industrial Relations Commission Regulations 2005* (WA).
7. THAT the matter is to be listed for a further conciliation conference and/or directions hearing not before Friday, 28 November 2025.
8. THAT there be liberty to apply.

[L.S.]

(Sgd.) T KUCERA,
Commissioner.

2025 WAIRC 00789

UNFAIR DISMISSAL APPLICATION

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

BRAD CASSERLY

APPLICANT

-v-

PUBLIC TRANSPORT AUTHORITY OF WESTERN AUSTRALIA

RESPONDENT

CORAM

COMMISSIONER T KUCERA

DATE

THURSDAY, 17 SEPTEMBER 2025

FILE NO/S

U 48 OF 2025

CITATION NO.

2025 WAIRC 00789

Result Order Issued

Representation

Applicant Kevin Sneddon (of counsel)

Respondent Emily Negus (of counsel)

Order

HAVING heard from Mr K Sneddon (of counsel) on behalf of the applicant and Ms E Negus (of counsel), on behalf of the respondent, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), hereby orders -

1. THAT the parties are to file a statement of agreed facts by Friday, 26 September 2025.
2. THAT the parties' expert witnesses are to confer with one another in the absence of the parties and their representatives, to prepare a joint statement on any matters on which they agree, any matters on which they disagree, and the reasons for any disagreement (**experts' joint statement**). The experts' joint statement is to be filed by Friday, 24 October 2025.
3. THAT by Friday, 7 November 2025, the applicant is to file any witness statements in the manner required by Practice Note 9 of 2021;
4. THAT by Friday, 7 November 2025, the applicant is to file his expert report in accordance with Reg 45(1) *Industrial Relations Commission Regulations 2005* (WA).
5. THAT by Friday, 28 November 2025, the respondent is to file any witness statements in the manner required by Practice Note 9 of 2021;
6. THAT by Friday, 28 November 2025, the respondent is to file its expert report in accordance with Reg 45(1) *Industrial Relations Commission Regulations 2005* (WA).
7. THAT the matter is to be listed for a further conciliation conference and/or directions hearing not before Friday, 28 November 2025.
8. THAT there be liberty to apply.

[L.S.]

(Sgd.) T KUCERA,
Commissioner.

2025 WAIRC 00819

UNFAIR DISMISSAL APPLICATION

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

MYKCAL SCOTT

APPLICANT

-v-

DIRECTOR GENERAL, DEPARTMENT OF JUSTICE

RESPONDENT**CORAM** COMMISSIONER T B WALKINGTON**DATE** WEDNESDAY, 1 OCTOBER 2025**FILE NO.** U 65 OF 2025**CITATION NO.** 2025 WAIRC 00819

Result	Direction issued
Representation	
Applicant	Mr M Scott
Respondent	Ms E Negus (of counsel)

Direction

HAVING heard from the applicant on their own behalf and Ms E Negus 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 to accept the application out of time be determined in conjunction with the substantive matter;
2. THAT the parties file a statement of agreed facts and bundle of documents by no later than 31 October 2025;
3. THAT the applicant file and serve any outlines of witness evidence and any documents upon which they intend to rely by no later than 20 November 2025;
4. THAT the respondent file and serve any outlines of witness evidence and any documents, upon which they intend to rely by no later than 3 December 2025;
5. THAT the applicant file and serve an outline of submissions and any list of authorities upon which they intend to rely by no later than 17 December 2025;
6. THAT the respondent file and serve an outline of submissions and any list of authorities upon which they intend to rely by no later than 7 January 2025;
7. THAT the matter be listed for hearing for two days on a date to be fixed; and
8. THAT the parties have liberty to apply on short notice.

[L.S.]

(Sgd.) T B WALKINGTON,
Commissioner.

2025 WAIRC 00817

UNFAIR DISMISSAL APPLICATION

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

MYKCAL SCOTT

APPLICANT

-v-

DEPARTMENT OF JUSTICE WESTERN AUSTRALIA.

RESPONDENT**CORAM** COMMISSIONER T B WALKINGTON**DATE** WEDNESDAY, 1 OCTOBER 2025**FILE NO/S** U 65 OF 2025**CITATION NO.** 2025 WAIRC 00817

Result	Respondent's name amended
Representation	
Applicant	Mr M Scott

Respondent Ms E Negus (of counsel)

Order

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

THAT the name of the respondent be and is hereby amended to ‘Director General, Department of Justice’.

[L.S.]

(Sgd.) T B WALKINGTON,
Commissioner.

2025 WAIRC 00782

UNFAIR DISMISSAL APPLICATION

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

RICHARD BURNELL

APPLICANT

-v-

CITY OF NEDLANDS

RESPONDENT

CORAM SENIOR COMMISSIONER R COSENTINO

DATE MONDAY, 15 SEPTEMBER 2025

FILE NO. U 92 OF 2025

CITATION NO. 2025 WAIRC 00782

Result Directions issued

Representation

Applicant Mr R Burnell

Respondent Ms J Fairweather on behalf of the City of Nedlands

Direction

HAVING heard from the Applicant on his own behalf, and Ms J Fairweather on behalf of the City of Nedlands, the Commission, pursuant to the powers conferred on it by the *Industrial Relations Act 1979* (WA), hereby directs –

1. THAT, subject to further order, the respondent’s jurisdictional objection be determined as a preliminary issue, on the papers.
2. THAT the applicant file any documents relied upon ,relevant to the determination of the jurisdictional objection, together with written submissions addressing the question of the Commission’s jurisdiction, by 26 September 2025.
3. THAT the respondent file any documents relied upon, relevant to the determination of the jurisdictional objection, together with written submissions addressing the question of the Commission’s jurisdiction, by 10 October 2025.
4. THAT the applicant file any submissions in reply to the respondent’s submissions by 17 October 2025.
5. THAT There be liberty to apply.

[L.S.]

(Sgd.) R COSENTINO,
Senior Commissioner.

2025 WAIRC 00807

APPLICATION FOR EXTERNAL REVIEW PURSUANT TO SECTION 229 OF THE WORK HEALTH AND SAFETY ACT 2020

THE WORK HEALTH AND SAFETY TRIBUNAL

PARTIES

AARON ANDERTON

APPLICANT

-v-

WORKSAFE COMMISSIONER

RESPONDENT

CORAM COMMISSIONER T EMMANUEL

DATE THURSDAY, 25 SEPTEMBER 2025

FILE NO/S WHST 9 OF 2024

CITATION NO. 2025 WAIRC 00807

Result	Programming orders issued
Representation	
Applicant	Mr M Quinn (of counsel)
Respondent	Ms H Wreford (of counsel)
Intervenor	Mr C Deckers (of counsel)

Programming orders

HAVING heard from Mr M Quinn (of counsel) on behalf of the applicant, Ms H Wreford (of counsel) on behalf of the respondent, and Mr C Deckers (of counsel) on behalf of the Intervenor, the Work Health and Safety Tribunal, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA) and the *Work Health and Safety Act 2020* (WA), orders –

1. THAT by Wednesday, 15 October 2025, the respondent file any materials on which she seeks to rely, and written submissions in support of her Form 1A Dismissal Application;
2. THAT by Wednesday, 29 October 2025, the intervenor file its written submissions in relation to the Form 1A Dismissal Application;
3. THAT by Thursday, 13 November 2025, the applicant file any materials on which he seeks to rely, and written submissions opposing the Form 1A Dismissal Application and tell the Tribunal whether asks the Tribunal to hear the Form 1A Dismissal Application on the papers; and
4. THAT by Thursday, 27 November 2025, the respondent file any submissions in reply.

(Sgd.) T EMMANUEL,
Commissioner.

[L.S.]

INDUSTRIAL AGREEMENTS—Notation of—

Agreement Name/Number	Date of Registration	Parties		Commissioner	Result
City of Busselton Industrial Agreement 2025 AG 69/2025	01/10/2025	City of Busselton, Local Government, Racing and Cemeteries Employees Union (LGRCEU), Western Australian Municipal, Administrative, Clerical and Services Union (WASU)	(Not Applicable)	Senior Commissioner R Cosentino	Agreement registered
City of Gosnells Operations Centre Industrial Agreement 2025 AG 67/2025	30/09/2025	City of Gosnells	Western Australian Municipal, Administrative, Clerical and Services Union of Employees, Local Government, Racing and Cemeteries Employees Union (WA), Construction, Forestry, Mining, and Energy Union of Workers (WA)	Senior Commissioner R Cosentino	Agreement registered
City of Joondalup Inside Workforce Agreement 2022 AG 64/2025	23/09/2025	City of Joondalup	Western Australian Municipal, Administrative, Clerical and Services Union of Employees (WASU)	Senior Commissioner R Cosentino	Agreement registered
Main Roads TWU Enterprise Bargaining Agreement 2025 AG 61/2025	17/09/2025	Main Roads Western Australia	Transport Workers' Union of Australia, Industrial Union of Workers, Western Australia	Commissioner T Kucera	Agreement registered

NOTICES—Cancellation of Awards/Agreements/Respondents—under Section 47—

2025 WAIRC 00826

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Application Nos. APPL 47 OF 2025, APPL 48 OF 2025, & APPL 49 OF 2025

CANCELLATION OF THE *CLERKS' (GRAIN HANDLING) AWARD, 1977, CHILD CARE (LADY GOWRIE CHILD CENTRE) AWARD, AND THE CHILDREN'S SERVICES CONSENT AWARD 1984*

NOTICE is given of applications APPL 47 of 2025, APPL 48 of 2025, & APPL 49 of 2025 by the Commission's Own Motion pursuant to section 47(1) of the *Industrial Relations Act 1979* (WA) (IR Act).

The Commission intends to make an order to cancel the following awards on the grounds that there is no employee to whom the awards apply, namely the:

1. *Clerks' (Grain Handling) Award, 1977,*
2. *Child Care (Lady Gowrie Child Centre) Award, and*
3. *Children's Services Consent Award 1984.*

Pursuant to section 47(4) of the IR Act, any person may, within 30 days of the day on which this notice is first published, object to the Commission making the order referred to in the notice. Pursuant to regulation 15(2) of the *Industrial Relations Commission Regulations 2005* (WA), a notice of objection must clearly state the grounds of the objection and must specify with particularity the manner in which the objector is, or is likely to be, affected by the application.

The approved form, a Form 1A – Multipurpose Form, is available on the Western Australian Industrial Relations Commission's website at www.wairc.wa.gov.au under 'Resources' and then 'Applications & Forms' and can be lodged online or filed with the Registry at registry@wairc.wa.gov.au.

(Sgd.) S BASTIAN,
Registrar.

[L.S.]
1 October 2025

PUBLIC SERVICE APPEAL BOARD—

2025 WAIRC 00801

APPEAL AGAINST THE DISCIPLINARY DECISION AND PENALTY GIVEN ON

28 MAY 2024

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

DIANNE LYSLE

APPELLANT

-v-

MR IAIN CAMBERON, MANAGING DIRECTOR, DEPARTMENT OF TRANSPORT

RESPONDENT

CORAM

PUBLIC SERVICE APPEAL BOARD

COMMISSIONER T KUCERA - CHAIRPERSON

MR G BROWN - BOARD MEMBER

MS VICCI DIJKHUIZEN-STRATTON - BOARD MEMBER

DATE

MONDAY, 22 SEPTEMBER 2025

FILE NO

PSAB 16 OF 2024

CITATION NO.

2025 WAIRC 00801

Result Appeal dismissed

Representation**Appellant** Mr W Milward (of counsel)**Respondent** Mr J Carroll (of counsel)

Order

WHEREAS the appellant on 18 June 2024 filed a *Form 8B – Notice of Appeal - Government Officers, Public Service Officers* pursuant to s 29(1)(a) of the *Industrial Relations Act 1979* (**appeal**);

AND WHEREAS the Public Sector Appeal Board (**Board**) scheduled a directions hearing to be held on 29 May 2024 (**directions hearing**);

AND WHEREAS the parties agreed to adjourn the directions hearing so they could hold ‘without prejudice discussions’, in an attempt to resolve the matter;

AND WHEREAS counsel for the respondent advised in an email dated 12 August 2025 that the matter has been resolved between the parties;

AND WHEREAS the appellant’s counsel, in an email dated 20 August advised that he had not received instructions to file a *Form 1A - Notice of Discontinuance (Notice of Discontinuance)*;

AND WHEREAS the appellant’s counsel has advised that he would be ceasing to act for the appellant, but to date has not filed a *Form 11 - Notification of Representative Commencing or Ceasing to Act*.

AND WHEREAS the Board by way of an email dated 8 September 2025, asked the appellant to advise by Friday 12 September 2025 on whether she intended file a Notice of Discontinuance or if she was content for the file in the appeal to be ‘closed administratively’ (**Board’s 8 September email**);

AND WHEREAS the Board also advised the appellant that if she did not provide a response to the Board’s 8 September email, an order dismissing the appeal would issue;

AND WHEREAS the appellant has not filed a Notice of Discontinuance nor provided a response to the Board’s 8 September email;

NOW THEREFORE the Board, pursuant to the powers conferred under the *Industrial Relations Act 1979 (WA)*, hereby orders –

THAT the appeal be dismissed.

(Sgd.) T KUCERA,
Commissioner,

On behalf of the Public Service Appeal Board.

[L.S.]

2025 WAIRC 00803

APPEAL AGAINST THE DECISION OF THE EMPLOYER TAKEN ON 29 NOVEMBER 2024

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

CITATION	:	2025 WAIRC 00803
CORAM	:	PUBLIC SERVICE APPEAL BOARD COMMISSIONER T EMMANUEL - CHAIRPERSON MR B HAWKINS - BOARD MEMBER MR P HESLEWOOD - BOARD MEMBER
HEARD	:	TUESDAY, 29 JULY 2025
DELIVERED	:	THURSDAY, 25 SEPTEMBER 2025
FILE NO.	:	PSAB 32 OF 2024
BETWEEN	:	HARSHA RANASINGHE ARACHCHILLAGE Appellant AND THE BOARD OF HEALTH SUPPORT SERVICES Respondent

CatchWords	:	Public Service Appeal Board – Application for discovery – Request for further and better particulars – Confidential and sensitive information – Breach of confidentiality – Breach of discipline – Disciplinary action a fair response – Application dismissed
Legislation	:	<i>Health Services Act 2016 (WA)</i> ss 172(2), 220 <i>Industrial Relations Act 1979 (WA)</i> ss 27(1)(o), 80I(1), 80L(1), 125, Sch 6 cl 5(3) <i>Industrial Relations Legislation Amendment Act 2024 (WA)</i> s 57
Result	:	Application dismissed
Representation:		
Appellant	:	Ms T Rajapaksa (as agent)
Respondent	:	Mr J Carroll (of counsel)

Case(s) referred to in reasons:

Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch v Burswood Resort (Management) Ltd (1995) 75 WAIG 180

Harvey v Commissioner for Corrections, Department of Corrective Services [2017] WASCA 00728; (2017) 97 WAIG 1525

Millward v Chief Executive, North Metropolitan Health Service [2021] WAIRC 00152; (2021) 101 WAIG 414

Reasons for Decision

- 1 These are the unanimous reasons of the Public Service Appeal Board (**Board**).
- 2 Mr Harsha Ranasinghe Arachchillage (**Mr Ranasinghe**) is employed by Health Support Services (**HSS**) as a Level G8 Senior Supply Specialist. He has appealed HSS's decision to reduce his remuneration and reprimand him after HSS found that Mr Ranasinghe engaged in three breaches of discipline.
- 3 Mr Ranasinghe says the decision maker failed to facilitate a fair and reasonable outcome based on all available facts. He asks the Board to quash the disciplinary action.
- 4 HSS says the Board should find that Mr Ranasinghe committed three breaches of discipline and the decision to reduce his remuneration and reprimand him was a fair response in the circumstances.

What the Board must decide

- 5 To resolve this matter, the Board must decide:
 - a. Did Mr Ranasinghe engage in the conduct alleged?
 - b. Did the conduct amount to a breach of discipline?
 - c. If so, was the disciplinary action a fair response in the circumstances?

Overview of the allegations

- 6 **Allegation 1** is that Mr Ranasinghe breached confidentiality when he sent two emails attaching a confidential and sensitive document to Mr Simon Harrison (and Mr Harrison was not employed or engaged by HSS).
- 7 **Allegation 2** is that Mr Ranasinghe breached discipline by failing to raise any concerns with his subordinate when he emailed personal and confidential information to Mr Harrison (and Mr Harrison was not employed or engaged by HSS, and had no other lawful business receiving that information).
- 8 **Allegation 3** is that Mr Ranasinghe breached confidentiality when he emailed personal and confidential information to Mr Harrison (and Mr Harrison was not employed or engaged by HSS).

Background

- 9 The following background is not in dispute.
- 10 The *WA Health System – HSUWA – PACTS Industrial Agreement 2024* applies to Mr Ranasinghe's employment with HSS.
- 11 Mr Ranasinghe is employed as a Level G8 Senior Supply Specialist. From time to time he has acted as a Level G10 Manager, Inventory. He has acted as a Level G11 Director, Inventory and Customer Supply. At the time the disciplinary action was imposed, he was substantively a Level G8.2 but was acting in a Level G10.2 position.
- 12 In a letter dated 12 April 2024, HSS put three allegations of breach of discipline to Mr Ranasinghe. It is not in dispute that:
 - a. on 1 April 2022, Mr Ranasinghe sent two emails from his work email address to Mr Harrison's personal email address titled 'Corona Virus Kathrin file' and 'Stock Summary';
 - b. on 1 April 2022, Mr Dassanayake copied Mr Ranasinghe into two emails sent to Mr Harrison's personal email address with attachments titled 'Supply Controller Level 4.csv' and 'Inventory Controller Level 5.csv'; and
 - c. on 25 March 2022, Mr Ranasinghe sent an email from his work email address to Mr Harrison's personal address titled 'Available positions'.
- 13 On 22 April 2024, Mr Justin Rapanaro approved and submitted an M3 Staff Movement form for Mr Ranasinghe to be put on higher duties as a Level G10.1 Manager Inventory for the period 1 January 2024 to 30 January 2024. Payroll processed that form and Mr Ranasinghe was back paid a higher duties allowance.
- 14 Mr Ranasinghe responded to the allegations by email on 26 April 2024.
- 15 The matter was investigated by an external investigator.
- 16 In around August 2024, HSS proposed to find all three allegations substantiated and proposed to take disciplinary action by way of dismissal. Mr Ranasinghe requested the investigation report to respond and eventually on 20 September 2024 HSS gave him a redacted copy of the investigation report.
- 17 On 16 September 2024, Mr Ranasinghe responded to HSS.
- 18 By letter dated 24 October 2024, HSS confirmed its findings that all three breaches of discipline were substantiated and took disciplinary action by imposing a reprimand for each breach of discipline, a reduction in monetary remuneration and a final warning. That letter was superseded by a letter dated 29 November 2024.
- 19 Mr Ranasinghe was a Level G8.2 but was acting in a Level G10.2 position when HSS reprimanded and demoted him.

Allegations

- 20 Specifically in relation to the three allegations at the heart of this matter, the parties agree:

Allegation 1

18. A copy of the job description form for the position Level G8 Senior Supply Specialist is found at **Agreed Document 6**.

19. On 28 February 2022, while at work for Health Support Services, the appellant sent two emails from his work email address to Mr Harrison's personal email address at [redacted]@iinet.net.au. The first email was sent at around 4.39 pm and was titled "Corona Virus Kathrin file", and the second email was sent at around 4.53 pm and was titled "Stock Summary".
20. Copies of those emails and the attachments to those emails are found at **Agreed Documents 1.4 and 1.5**.

Allegation 2

21. On 1 April 2022:
- (a) Mr Madhuka Dassanayake was employed by Health Support Services as Senior Supply Specialist, Warehouse & Logistics, Procurement and Supply.
 - (b) The appellant was employed as the Acting Manager Inventory, Warehouse & Logistics, which was a Level G9.1 position at this time, and was Mr Dassanayake's line manager.
22. On 1 April 2022, Mr Dassanayake sent two emails from his work email address to Mr Harrison's personal email address at [redacted]@iinet.net.au. Mr Dassanayake copied the appellant into both of these emails. The first email was sent at around 2.50 pm and the second email was sent at around 3.45 pm.
23. The emails contained attachments which contained information relating to a Health Support Services recruitment process for a Supply Controller Level 4 position and an Inventory Controller Level 5 position. The first attachment was titled "Supply Controller Level 4.csv" and it contained information about 47 job applications. The second attachment was titled "Inventory Controller Level 5.csv" and it contained information about 58 job applicants.
24. The appellant, Mr Dassanayake and the Mr Rapanaro were each on the Health Support Services' selection panel for the selection and appointment for the Supply Controller Level 4 position and an Inventory Controller Level 5 position.
25. The panel also included Ms Victoria Arrowsmith (HSS panel voting member) and Mr Peter Buckingham (Independent Recruitment Consultant).
26. Copies of the two emails sent by Mr Dassanayake to Mr Harrison, copying in the appellant, and their attachments are found at **Agreed Documents 1.6 and 1.7**.

Allegation 3

27. On 25 March 2022, at around 11.37 am, the appellant sent an email with an attachment from his work email address to Mr Harrison's personal email address at [redacted]@iinet.net.au titled "Available positions".
28. A copy of that email and attachment is found at **Agreed Document 1.8**.

Legal framework for this appeal

- 21 Section 125 of the *Industrial Relations Act 1979* (WA) (**IR Act**) provides that the Board may hear and determine this appeal. Repealed Part IIA of the IR Act continues to apply in relation to this appeal as if the *Industrial Relations Legislation Amendment Act 2024* (WA) s 57 had not been enacted. Mr Ranasinghe has a right of appeal against the decision to take disciplinary action against him in accordance with the now repealed s 172(2) of the *Health Services Act 2016* (WA) (**HS Act**). Under s 80I(1) of the IR Act, the Board's remedial power is limited to 'adjusting' the decision Mr Ranasinghe appeals.
- 22 This appeal is by way of a hearing de novo and any procedural defects can be cured by the de novo hearing before this Board: *Harvey v Commissioner for Corrections, Department of Corrective Services* [2017] WASCA 00728; (2017) 97 WAIG 1525: [65].

Witnesses

- 23 Mr Ranasinghe did not give evidence at the hearing. He called Ms Pauline Woods and Mr Justin Rapanaro as his witnesses. Ms Woods presented as a credible witness, but her evidence did not go to the matters in issue in these proceedings. In cross-examination she gave evidence of peripheral relevance that Mr Rapanaro complained to the Office of the Chief Executive about the disciplinary process in relation to Mr Ranasinghe, and that Mr Ranasinghe signed the N1 Request to Appoint dated 21 August 2024 appointing Mr Harrison to his position at HSS.
- 24 Mr Rapanaro's evidence in chief focussed on Mr Ranasinghe's skills, experience, professionalism and integrity. In cross-examination, Mr Rapanaro was less than forthcoming in answering some questions. We found his evidence to be evasive at times. Mr Rapanaro was very reluctant to, or did not, make some concessions that were clearly due, as set out in [47], [58], [62] and [68] below. As a result, the Board treats Mr Rapanaro's evidence with some caution.
- 25 Ms Kathrin Macher gave evidence for HSS. She was forthcoming in her evidence and presented as a reliable, credible witness. Her evidence was not undermined in cross-examination. The Board accepts her evidence. To the extent of inconsistency between the evidence of Ms Macher and Mr Rapanaro, the Board prefers the evidence of Ms Macher.

Interlocutory decision – Mr Ranasinghe's Form 1A

- 26 Shortly before the hearing, Mr Ranasinghe applied for discovery of 13 categories of documents. He also sought an order for further and better particulars and invited HSS to admit facts (**Form 1A Application**). HSS opposed the Form 1A Application.
- 27 Under s 27(1)(o) of the IR Act, the Commission has the power to 'make such orders as may be just' within respect to the discovery, inspection or production of documents. Section 27 of the IR Act applies to the exercise of the jurisdiction of this Board: former s 80L(1) of the IR Act (applied through Sch 6 cl 5(3) of the IR Act). As the Board in *Millward v Chief Executive, North Metropolitan Health Service* [2021] WAIRC 00152; (2021) 101 WAIG 414 said at [7]:

Discovery is confined to what is in issue on the pleadings. The Board can only make an order for discovery under s 27(1)(o) of the *Industrial Relations Act 1979* (WA) if it is just to do so and necessary for the fair disposal of the case. ‘Just’ means ‘right and fair, having reasonable and adequate grounds to support it, well-founded and conformable to a standard of what is proper and right’: *Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch v Burswood Resort (Management) Ltd* (1995) 75 WAIG 1801 at 1805.

28 Despite Mr Ranasinghe’s case focussing on bias and procedural matters, what is in issue in this case is:

- a. Did Mr Ranasinghe engage in the conduct alleged?
- b. Did the conduct amount to a breach of discipline?
- c. If so, was the disciplinary action a fair response in the circumstances?

29 We were satisfied that the documents Mr Ranasinghe seeks in categories 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 13 are not relevant because they do not go to any of the matters in issue. Category 12 was less clear, however we accepted (based on the affirmed affidavit before us) that no informal discovery request was made in relation to Category 12, and the formal request was made very late in the proceedings. Overall, we considered that it was not necessary to order discovery for the fair disposal of the case, and it would not be just to do so.

30 Further, Mr Ranasinghe did not identify which facts he wanted HSS to admit or which particulars were sought.

31 In those circumstances, the Board dismissed the Form 1A Application.

Did Mr Ranasinghe engage in the conduct?

Allegation 1

32 Mr Ranasinghe disputes that the conduct amounts to a breach of discipline, but he does not otherwise dispute that he engaged in the conduct.

33 HSS says it is uncontroversial that Mr Ranasinghe engaged in the conduct alleged in Allegation 1.

34 It is not seriously in dispute that Mr Ranasinghe engaged in the conduct alleged. Clearly he sent the emails with the attached spreadsheets to Mr Harrison’s personal email address.

35 We find that Mr Ranasinghe engaged in the conduct alleged in Allegation 1.

Allegation 2

36 Again, it is not seriously in dispute that Mr Ranasinghe engaged in the conduct alleged in Allegation 2. Plainly he was copied into the emails in question and there is no evidence before us to suggest that he raised any concerns about it.

37 We find Mr Ranasinghe engaged in the conduct alleged in Allegation 2.

Allegation 3

38 Again, it is not seriously in dispute that Mr Ranasinghe engaged in the conduct alleged in Allegation 3. Plainly he sent the email in question.

39 We find Mr Ranasinghe engaged in the conduct alleged in Allegation 3.

Was the conduct a breach of discipline?

40 Overall, Mr Ranasinghe characterises his actions as ‘reaching out and asking for help during the global pandemic’, when he emailed his former HSS colleague who had previously had access to much of the information he shared. Mr Ranasinghe says he was using his initiative to ask Mr Harrison for help, because Mr Harrison was uniquely qualified and skilled to help quickly and at no cost to HSS.

Allegation 1

41 Mr Ranasinghe oscillated between whether the information in question was confidential/sensitive or not. For example, in his response to Ms Emily Pestell dated 16 September 2024, on page 3 Mr Ranasinghe admits he sent the emails and says if he shared commercially sensitive information, then it was unintentional, and he was confident in Mr Harrison’s integrity and trustworthiness, while on page 7, Mr Ranasinghe seems to agree that some of the information was confidential and ‘could be sensitive’ in particular hands. In Mr Ranasinghe’s response, and his opening address at the hearing, Mr Ranasinghe said the information was not confidential or sensitive but then when Mr Ranasinghe objected to HSS’s line of questioning during Mr Rapanaro’s cross-examination at the hearing, Mr Ranasinghe agreed the information was confidential.

42 Further, Mr Ranasinghe argues that Mr Harrison previously had access to the information when he was engaged by HSS, and the information was only shared with a trusted mentor and an ex-colleague rather than with competitors or the public. He argues that Mr Harrison did not use the information for any other purpose and by engaging Mr Harrison during the COVID-19 pandemic, HSS had shown that it trusted Mr Harrison with HSS data and information.

43 Mr Rapanaro gave evidence generally about the unprecedented circumstances of the COVID-19 pandemic. He explained that Mr Harrison was engaged to assist HSS via an intergovernmental agency arrangement during the early part of the COVID-19 pandemic. While engaged at HSS, Mr Harrison had IT access. Mr Rapanaro agreed in cross-examination that by the relevant period in 2022, Mr Harrison was not doing any work for HSS.

44 Mr Rapanaro gave evidence that if Mr Ranasinghe had asked him at the time, Mr Rapanaro would have given him permission to send Mr Harrison the documents the subject of Allegations 1 and 3.

45 In cross-examination Mr Rapanaro agreed that the ‘Corona Virus Kathrin’ and ‘Stock Summary’ spreadsheets show:

- a. price per unit of purchase;

- b. the demand of all hospitals that HSS supplies;
 - c. how many weeks of stocks remain;
 - d. pricing that HSS pays for goods; and
 - e. when metropolitan hospitals would run out of a particular item (if it was known how much of that item the hospitals had in stock).
- 46 Mr Rapanaro also agreed in cross-examination:
- a. if a supplier saw the information in the spreadsheet, the supplier might work out if HSS was a ‘desperate buyer’ of a particular item, and that could influence the price at which the supplier was willing to sell the item to HSS; and
 - b. unit pricing is confidential.
- 47 Mr Rapanaro was extremely unwilling to agree that the information in the spreadsheet was confidential, but eventually Mr Rapanaro agreed that unit pricing is confidential.
- 48 Ms Macher gave evidence about the ‘Corona Virus Kathrin’ spreadsheet. She said she created an earlier version of that document (which carries her name) and Mr Harrison developed the document while he was at HSS during the pandemic. The effect of Ms Macher’s evidence was that the pricing details and other information in the spreadsheet are confidential and sensitive, because it affects competition, and that data about stock on hand is generally confidential to the Western Australian health system.
- 49 In cross-examination, Ms Macher said that Mr Harrison had access to the information while he was working for HSS, but that information is still generally sensitive information for anyone outside the organisation. Ms Macher said it was not for her to judge the risk involved in sending the information to Mr Harrison.
- 50 HSS says that there can be no doubt that the information was confidential and sensitive. On the face of the document, it includes commercial in confidence prices that vendors agreed as the price for HSS to buy goods from them. The ‘Corona Virus Kathrin’ spreadsheet is not publicly available and stock levels are confidential. Even if Mr Ranasinghe wanted Mr Harrison’s help to merge two documents, that is not a permissible use or disclosure of the information under s 220 of the HS Act and is not permitted under the Code of Conduct. The prevailing circumstances of the pandemic are not relevant to determining whether there was a breach. They could only be relevant to context and for the purpose of mitigation if appropriate.
- 51 HSS says it is irrelevant whether Mr Rapanaro would have approved the release of the information. Mr Rapanaro did not approve it and he had no authority to do so. HSS disagrees with Mr Ranasinghe’s argument that there was no harm caused. HSS says there is harm:
- a. in the trust and confidence the employer needs to have in Mr Ranasinghe;
 - b. in an ongoing risk that confidential, sensitive information was released and is uncontrolled by HSS;
 - c. potentially to HSS’s reputation if vendors become aware their commercial in confidence information was released; and
 - d. potentially to the pricing HSS will have to pay for products if the release of the information led to vendors not offering their best price to HSS because they become aware HSS is willing to pay a higher price.
- 52 We agree that the context of the pandemic is not relevant to determining whether there was a breach. Rather it is a matter that goes to mitigation and the proportionality of the response. Obviously, the information in the spreadsheets was commercially sensitive. Information about pricing detail, stock on hand and the matters set out at [45] is confidential and sensitive.
- 53 Even if Mr Ranasinghe did not intend to share commercially sensitive information, plainly he did. Considering that Mr Harrison is a trustworthy person of integrity does not change that. Mr Harrison’s past employment or engagement with HSS is not relevant. HSS is quite correct that as Mr Harrison:
- ...was not an employee or contractor and otherwise had no confidentiality obligations to HSS, the disclosure of the information to Mr Harrison meant the information was no longer under the control of HSS and HSS could not limit Mr Harrison’s use of the information or his further disclosure of the information.
- 54 Whether Mr Rapanaro would have approved the release of the information is irrelevant in circumstances where he did not and we accept that there is harm as set out from [51a] – [51d] above.
- 55 The conduct the subject of Allegation 1 amounts to a breach of discipline.
- Allegation 2
- 56 Mr Ranasinghe says that he thought it was appropriate to seek ‘high level opinions and advice from experts without divulging specific details’ and the outcome of the recruitment was not influenced by Mr Harrison. Accordingly, Mr Ranasinghe says that he did not believe that Mr Dassanayake had done anything wrong.
- 57 Mr Rapanaro gave evidence that he does not think that Mr Ranasinghe needed to take any action in relation to Mr Dassanayake in the circumstances. Mr Rapanaro considers that sharing the information with Mr Harrison did not risk the confidentiality of that information and the information does not have any great value to anyone. In Mr Rapanaro’s view, sharing the information the subject of Allegation 2 posed ‘very very low risk, if any’.
- 58 In cross-examination Mr Rapanaro agreed that he was on the selection panel related to Allegation 2. He agreed that the names of applicants for a job with HSS are confidential and should not be shared outside HSS. Mr Rapanaro was evasive about whether the assessments in the relevant document should not be shared outside HSS. He would not agree that it was improper

to get advice from someone not employed by HSS but eventually agreed that the advice sought should not disclose confidential information.

- 59 HSS says there can be no doubt the information was personal and confidential. It included names of those who applied for positions at HSS and comments from a member of the selection panel assessing whether candidates addressed and met selection criteria. There was no reason for that information to have been disclosed beyond the selection panel (being Mr Ranasinghe, Mr Dassanayake and Ms Arrowsmith). HSS submits that Mr Dassanayake's conduct was a plain and obvious breach of the Code of Conduct. It should have been obvious to Mr Ranasinghe that he was obliged to raise concerns about that conduct, but he did not. HSS argues that the conduct was a gross breach of confidentiality. Mr Harrison had no business being asked to comment on the quality of the applicants and that approach was 'grossly inconsistent with public sector decision making regarding selection and appointment.' HSS says that the conduct plainly exposed HSS to complaints of breach of confidence and breach of the Employment Standard.
- 60 The difficulty for Mr Ranasinghe is, contrary to his submission set out at [56] above, Mr Dassanayake did divulge specific details about confidential information. We think that it is clear that the conduct the subject of Allegation 2 amounts to a breach of discipline. Mr Dassanayake sent confidential information about a recruitment process to a person outside the organisation who was not involved in that recruitment process and was not subject to any contractual confidentiality obligation. The attachment to his email showed applicants' names, whether they were or would be interviewed, whether they had answered selection criteria and comments about their application. All of that information should have been treated as confidential. We agree that the conduct exposed HSS to complaints of breach of confidence and breach of the Employment Standard. Mr Ranasinghe was copied into the email in question. He was on the selection panel and was Mr Dassanayake's line manager. It was a breach of discipline to fail to raise concerns about what Mr Dassanayake had done, and Mr Ranasinghe's lack of insight into this matter reflects poorly on him.

Allegation 3

- 61 Mr Ranasinghe says that he shared the Warehousing and Logistics organisation chart to get Mr Harrison's support in finding short term employees to recruit. Mr Ranasinghe says he was told to leverage his networks to identify and recruit skilled employees. In his later response in August 2024, Mr Ranasinghe disputed that the information was confidential and sensitive, saying the organisation chart is widely available and shared.
- 62 Mr Rapanaro was evasive when answering questions about whether a briefing note should be sent outside of government. He eventually agreed in cross-examination that Mr Harrison had no contractual obligation of confidentiality.
- 63 HSS says the confidential information was potential positions within the Warehousing and Logistics function of HSS. The information was internal to HSS and contained budget uplift information, budget increases and newly created positions. Mr Ranasinghe did not have authority to provide that information to people outside the agency.
- 64 Being told to leverage one's networks to identify and recruit skilled employees is not permission to divulge confidential information. Further, even if the organisation chart is widely available, we consider it obvious that the information relating to potential positions within the Warehousing and Logistics function of HSS, and budget uplifts and increases were confidential. We accept that Mr Ranasinghe had no authority to provide such information to people external to the agency. The conduct in question clearly amounts to a breach of discipline.
- 65 Overall, we consider that the conduct the subject of each of the allegations is conduct that amounts to a breach of discipline.

Was the disciplinary action a fair response?

- 66 Mr Ranasinghe's submissions focus very much on his work ethic and performance, which he says is outstanding. He highlights the unprecedented circumstances of a global pandemic and the demands on his team at the time. Mr Ranasinghe says he did not deny that he had sent the emails and he 'firmly believed that he had taken the best possible action during a difficult period'. Mr Ranasinghe argues that he acted in WA Health's best interests and caused no damage or loss to HSS.
- 67 In effect, Mr Ranasinghe submits that the disciplinary action was not a fair response, it has had a significant impact on him and the Board should quash the findings of breach of discipline. Mr Ranasinghe asks the Board for a range of remedies that he concedes are outside of the Board's power to order, for example:
- a. to declare that the external report is unreliable and lacks credibility;
 - b. to order an apology from Ms Emily Pestell, Mr Philip Watson, Mr Tony Franks, and Mr Ben Prescott; and
 - c. to order that Mr Peter Burgess be removed from the Common Use Agreement.
- 68 Mr Rapanaro gave evidence that in November 2024 he approved Mr Ranasinghe acting in a Level G10 position from 2 September 2024 until 2 March 2025. After that acting arrangement ended, Mr Rapanaro approved a further acting up arrangement for Mr Ranasinghe from 4 March 2025 until 29 June 2025. Despite this, Mr Rapanaro would not agree in cross-examination that his actions in approving those acting arrangements for Mr Ranasinghe largely made the disciplinary action redundant.
- 69 Mr Ranasinghe's written submissions centre around various matters of procedural fairness and apprehended bias. They focus on perceived deficiencies in the investigation and investigation report.
- 70 The difficulty for Mr Ranasinghe is that the de novo nature of an appeal of this kind means that procedural defects can be cured by the hearing before the Board. We must determine the matter ourselves, by answering the questions set out at [5] above.
- 71 Taken at its highest, Mr Ranasinghe's submissions characterise the conduct as a minor, low risk information breach. The effect of his submissions is that the Board should adjust the disciplinary outcome such that no disciplinary action should be imposed.

- 72 HSS sees matters quite differently. It says the conduct in question is serious:
- a. Allegation 1 is particularly serious, and some of the information disclosed is highly confidential and commercial in confidence. The disclosure could seriously harm HSS and its reputation with vendors.
 - b. Allegation 2 involves highly confidential information but Mr Ranasinghe's conduct is less serious because it was the failure to raise concerns with the release of the information, rather than the release of the information itself.
 - c. Allegation 3 involves sensitive information.
- 73 HSS argues that the totality of the conduct is very serious because of the magnitude of information released under Allegation 1, the nature of information released, Mr Ranasinghe's seniority and his 'profound lack of insight into his wrongdoing.'
- 74 HSS concedes that the prevailing circumstances surrounding the COVID-19 pandemic and Mr Ranasinghe's explanation for being under stress and simply trying to achieve the best result for HSS provided moderate mitigation of his wrongdoing and was enough to save his job. However HSS submits that on its face, the conduct warrants dismissal, particularly given Mr Ranasinghe continues to fail to see the error of his ways.
- 75 Having not been dismissed, HSS argues that the reduction in remuneration and reprimands imposed were not unfair in the circumstances.
- 76 Finally, HSS says:
- The fact that the reduction in remuneration was largely defeated by his manager providing him with acting opportunities in a manner inconsistent with the disciplinary action imposed upon him is a further reason why the disciplinary action should not be adjusted. He essentially has not suffered the full impact of the fair disciplinary action imposed upon him. Indeed, that may be a factor influencing his ongoing profound lack of insight. (footnotes omitted)
- 77 The Board has considered this matter carefully. As set out above, we are satisfied that Mr Ranasinghe engaged in the conduct alleged and the conduct amounts to breaches of discipline.
- 78 In our view, Mr Rapanaro's actions in approving the acting arrangements set out above at [68] largely undermined the effect of the reduction in remuneration aspect of the disciplinary action.
- 79 Contrary to Mr Ranasinghe's submission, this matter does not involve 'a minor, low risk information breach'. We accept HSS' submission set out at [72] above. We are satisfied that the conduct involves three breaches of discipline and that Allegation 1 is particularly serious. Overall we consider the conduct to be serious, because of how much of information was released under Allegation 1, the nature of that information released, Mr Ranasinghe's seniority and because it is clear that Mr Ranasinghe lacks any insight into why his conduct is problematic.
- 80 Without the extenuating circumstances of a global pandemic and the unique and significant pressures that placed on Mr Ranasinghe and his team at the time of the events in question, we would have considered that the appropriate disciplinary response was dismissal. However, in light of those circumstances, like HSS, we consider that a lesser response is appropriate. We have taken into account Mr Ranasinghe's previously unblemished record.
- 81 We consider that the disciplinary action taken by HSS was fair and proportionate in all the circumstances and we are not persuaded that we should adjust it.
- 82 We must dismiss application PSAB 32 of 2024.

2025 WAIRC 00804

APPEAL AGAINST THE DECISION OF THE EMPLOYER TAKEN ON 29 NOVEMBER 2024

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

HARSHA RANASINGHE ARACHCHILLAGE

APPELLANT

-v-

THE BOARD OF HEALTH SUPPORT SERVICES

RESPONDENT**CORAM**

PUBLIC SERVICE APPEAL BOARD
 COMMISSIONER T EMMANUEL - CHAIRPERSON
 MR B HAWKINS - BOARD MEMBER
 MR P HESLEWOOD - BOARD MEMBER

DATE

THURSDAY, 25 SEPTEMBER 2025

FILE NO

PSAB 32 OF 2024

CITATION NO.

2025 WAIRC 00804

Result Application dismissed
Representation
Appellant Ms T Rajapaksa (as agent)
Respondent Mr J Carroll (of counsel)

Order

HAVING heard from Ms T Rajapaksa (as agent) on behalf of the appellant, and Mr J Carroll (of counsel) on behalf of the respondent, the Public Service Appeal Board, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), orders –

THAT application PSAB 32 of 2024 be, and by this order is, dismissed.

(Sgd.) T EMMANUEL,
Commissioner,

On behalf of the Public Service Appeal Board.

[L.S.]

2025 WAIRC 00780

APPEAL AGAINST THE DECISION TO TERMINATE EMPLOYMENT ON 6 MARCH 2024

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

CITATION : 2025 WAIRC 00780
CORAM : PUBLIC SERVICE APPEAL BOARD
 COMMISSIONER T B WALKINGTON - CHAIR
 MR B HAWKINS - BOARD MEMBER
 MR M HAYMAN - BOARD MEMBER
HEARD : MONDAY, 14 APRIL 2025
DELIVERED : MONDAY, 15 SEPTEMBER 2025
FILE NO. : PSAB 21 OF 2024
BETWEEN : JORG ARNO NOTTLE
 Appellant
 AND
 DIRECTOR GENERAL OF THE DEPARTMENT OF JUSTICE
 Respondent

CatchWords : Industrial Law W.A. - Public Service Appeal Board - Appeal against decision to terminate employment - Appeal filed outside timeframe - Extension of time - Relevant considerations applied - Extension of time granted
Legislation : *Industrial Relations Act 1979* (WA)
Young Offenders Act 1994 (WA)
Young Offenders Regulations 1995 (WA)
Industrial Relations Commission Regulations 2005 (WA)
Result : Extension of time granted
Representation:
Appellant : Ms D Levitt (of counsel)
Respondent : Mr J Carroll (of counsel)

Case(s) referred to in reasons:

Crabtree v Director General, Department of Education [2021] WAIRC 00538; (2021) 101 WAIG 1401

Nottle v Chief Executive Officer (Department of Justice) [2024] WAIRC 00751; (2024) 104 WAIG 1793

Lawn v Director General, Department of Justice [2024] WAIRC 00773; (2024) 104 WAIG 1926

Reasons for Decision

1 Mr Jorg Arno Nottle (**Appellant**) commenced employment with the Department of Justice (**Respondent**) as a Probationary Youth Custodial Officer in February 2023. The Appellant was purportedly discharged from this office on 6 March 2024.

- 2 On 13 August 2024, the Appellant referred the decision to terminate his employment to the Public Service Appeal Board (**Board**). The referral has not been made within the prescribed timeframe, which is 21 days in accordance with reg 107(2) of the *Industrial Relations Commission Regulations 2005* (WA).
- 3 The Board may extend the time for lodging an appeal.
- 4 In *Nicholas v Department of Education and Training* [2008] WAIRC 01645; (2008) 89 WAIG 817, the Board in this case set out four key considerations in the determination of whether to grant an extension of time to file an appeal:
 - (a) the length of the delay;
 - (b) the reason for the delay;
 - (c) whether the Appellant has an arguable case; and
 - (d) any prejudice to the Respondent if the application were granted.

Length of delay

- 5 The appeal was filed around 4 1/2 months out of time.
- 6 The Appellant argues that an assessment of the length of delay ought to consider the Appellant's earlier unsuccessful attempts to bring this matter before the appropriate authority under the *Industrial Relations Act 1979* (WA) (**IR Act**).
- 7 The Appellant previously filed an application under s 29(1)(c) of the IR Act for unfair dismissal, which was accepted for filing on 4 April 2024 having been lodged on 3 April 2024 (**U 28 of 2024**). This application was made on the Appellant's behalf by his lawyers at the time.
- 8 On 21 May 2024, the Appellant also filed an appeal against removal action under s 11CH(2) of the *Young Offenders Act 1994* (WA) (**APPL 92 of 2024**).
- 9 The Respondent submits that the Appellant was on notice that the correct jurisdiction to appeal against his discharge from office was the Board, since the Respondent advised of this in its filed response in U 28 of 2024 on 9 April 2024. Accepting it would have then been appropriate for him to take advice as to the correct jurisdiction, the Respondent asserts a reasonable person would have filed an appeal with the Board by at least the end of April. Consequently, this would be a 3 1/2 month delay.
- 10 The Appellant referred the decision to terminate his employment to the Board on 13 August 2024. The Appellant submits that the correct jurisdiction was not known until APPL 92 of 2024 had been decided on 9 August 2024.
- 11 The Board finds that the length of the delay was about 4 1/2 months, which compared to the limit of 21 days provided for in the IR Act, is a significant delay. This element weighs against granting an extension of time. The weight of this may be modified with the consideration of the reasons for the delay.

Reasons for the delay

- 12 The Appellant submits that he engaged lawyers, Baldwin Legal, and was guided by their advice. The first application made on 4 April 2024 was under s 29(1)(c) of the IR Act. The Appellant filed a *Form 2 – Unfair Dismissal Application* which was commenced within the 28-day timeframe under U 28 of 2024.
- 13 On 24 April 2024, the Appellant was advised of the Respondent's jurisdictional objection to the unfair dismissal application. The Respondent submitted that the Commission did not have jurisdiction because the Appellant was a 'Government Officer' within the meaning of s 80C of the IR Act and therefore the Board was the appropriate authority.
- 14 On 7 May 2024, the Appellant informed the Commission he was no longer represented by Baldwin Legal effective from 6 May 2024. On 8 May 2024, a *Form 11 – Notification of Representative Ceasing to Act* was filed by Baldwin Legal, formally confirming that they ceased acting on behalf of the Appellant.
- 15 On 21 May 2024, the Appellant filed an appeal against a decision to remove him on grounds of no confidence in APPL 92 of 2024.
- 16 On 2 July 2024, the Commission was notified that Ms Laura Campbell of Campbell Legal commenced to represent the Appellant.
- 17 On 17 July 2024, at a Directions Hearing in U 28 of 2024, the Appellant sought leave to discontinue the matter which was subsequently granted.
- 18 On 9 August 2024, the Full Bench dismissed APPL 92 of 2024 for want of jurisdiction.
- 19 The Appellant's explanation sets out several attempts to make applications to different authorities established by different provisions of the IR Act. The Appellant engaged several different lawyers in his various attempts.
- 20 The Board considers the Appellant genuinely attempted to bring an application for an independent review of the decision to terminate his employment. The Board accepts that navigating the terrain of the rights of employees engaged in the public sector is not straightforward. The Board notes that subsequent to this application, the legislature has sought to reduce the complexity for public sector employees and employers following the Ministerial Review of the State Industrial Relations System. The Final Report observed:

As the analysis in this chapter will illustrate, the law in Western Australia with respect to the regulation of public sector employment and the public sector jurisdiction of the WAIRC is bafflingly complex. There is a patchwork maze of provisions that lead only to confusion, uncertainty and the possibility, at least, for unfairness. This is quite contrary to the ideal of an accessible, fair and modern State system. Government of Western Australia, *Ministerial Review of the State Industrial Relations System*, Final Report (2018) 371.

- 21 Unfortunately for the Appellant, even with the guidance and advice from legal representatives, the avenues initially pursued by the Appellant were ultimately without jurisdiction.
- 22 Given the original application was made within time, albeit to an authority lacking jurisdiction, and acknowledging the challenges of navigating the regulatory authorities for public sector employment, the Board favours the granting of an extension of time on this element.

Arguable case

- 23 The Appellant appears to raise the following arguments as to why his dismissal was unfair:
- (a) The Appellant was no longer on probation when he was purportedly discharged under reg 52A(2) of the *Young Offenders Regulations 1995* and therefore the discharge was not valid;
 - (b) The letter of discharge was never served on the Appellant but was sent to the Civil Service Association (CSA) and the CSA forwarded the letter to him. It is then said that the Appellant only has possession of 'a copy' of the letter of apparent discharge;
 - (c) It is not entirely clear, but it seems to be alleged that incorrect notice was paid. It is not clear if that is the allegation however as the Appellant refers to the summary of the payment being incorrect, and as such, it is not clear if issue is taken with the payment per se, or just the summary of payment;
 - (d) The Respondent had no right to stand the Appellant down while the question of suitability was resolved and standing the Appellant down indicated preordained judgment;
 - (e) Standing the Appellant down caused him severe stress;
 - (f) The Respondent failed to take into account the Appellant's response;
 - (g) The Respondent based its decision on matters beyond that which were put to him; and
 - (h) The Respondent failed to take into account the Appellant's personal circumstances.
- 24 The Respondent was lawfully able to direct the Appellant away from the workplace on full pay for the period while the Appellant's suitability was assessed. Doing so was a risk mitigation mechanism that does not give rise to questions of preordained judgment. Any stress caused to the Appellant by the mere fact of him being directed away from the workplace while the Appellant's suitability was assessed would not, without something more, sound in a finding of harshness or unfairness or abuse of the right to dismiss.
- 25 The test for assessing the fairness of discharge of probationary employment was set out in *Crabtree v Director General, Department of Education* [2021] WAIRC 00538; (2021) 101 WAIG 1401 [30]:
- [30] In industrial law, the implications of probationary employment are clear. They were explained by the Full Bench of the Western Australian Industrial Relations Commission in *East Kimberley Aboriginal Medical Service v The Australian Nursing Federation, Industrial Union of Workers Perth* [2000] WAIRC 00067; (2000) 80 WAIG 3155. At [49], the Full Bench said:
- the following principles apply—
- (a) The employer, throughout the period of probation, retains the right to see whether he/she wants the employee or not in his/her employment.
 - (b)
 - (i) The employer is entitled to consider the employee as if the employee was still at first interview with the following modifications in this case.
 - (ii) There was an identifiable contract of employment for a period, indeed, a fixed term, including a period of probation of three months. This advances the matter beyond a notional first interview situation.
 - (c) Probation is an extension of the selection process, a period of learning and a time for attention, assessment and adjustment to standards of performance and conduct. (Inherent in that is that it is a time for teaching, training and counselling.)
 - (d)
 - (i) However, a probationary employee knows that he/she is on trial and that he/she must establish his/her suitability for the post. The employer, on his side, must give the employee a proper opportunity to prove him/herself, but he/she reserves the right to determine the employment with appropriate notice provided he has reason for so doing (see *Sommerville v Brinzz Pty Ltd Clerk Vehicle Repair Industry* [1994] SAIRComm 8 (31 January 1994), citing *Re J M Hamblin v London Borough of Ealing* (1975) IRLR 354 and see *Hutchinson v Cable Sands (WA) Pty Ltd (FB)*(op cit)).
 - (ii) Further, an employee on probation can expect to be counselled and informed that she/he is not meeting the required standards of performance, to be given reasonable training in this respect, and to be warned of the possible consequences of a failure to improve. Provided this is done, an employee who is on probation would have little cause to complain if a decision was taken during the course of or at the end of a probationary period to terminate the employment (see *Sommerville v Brinzz Clerk Vehicle Repair Industry* (op cit), citing *Hull v F F Seeley Nominees Pty Ltd* (1988) 55 SAIR 550 at 562).
 - (e)
 - (i) Consonant with those principles, a probationary employee is able to seek reinstatement, but an employer is entitled to terminate a probationary employee more easily, e.g length of

service is not a factor generally, because probationary employment is for a finite period and, in that period, assessment, training and acquisition of skills and demonstration of ability can occur. In addition, any genuine question of compatibility between employer, employee and other employees can be assessed. (This is not a comprehensive inventory of such matters.)

- (ii) However, probation is not a licence for harsh, oppressive, capricious, arbitrary or unfair treatment of a probationer (see *Hutchinson v Cable Sands* (WA) Pty Ltd (FB)(op cit) and the cases cited therein).

- 26 In determining an appeal against a discharge during probation, 'it is not necessary to determine whether the grounds for concern are substantiated. Instead, the focus is on whether the respondent's concerns were genuinely held and whether the respondent's right to terminate [the officer's] probationary employment was exercised without misuse or abuse.': *Lawn v Director General, Department of Justice* [2024] WAIRC 00773; (2024) 104 WAIG 1926 [95].
- 27 On the information before the Board, it appears the Respondent had concerns, genuinely held, that the Appellant displayed a dismissive, aggressive and belligerent attitude towards his peers and was therefore unsuitable for continued engagement. However, there has not been an opportunity for this material to be tested at a hearing nor to assess this information with regard to any relevant context.
- 28 In addition, in assessing whether the Appellant has an arguable case, the Board is mindful of the observations of the Full Bench in *Nottle v Chief Executive Officer (Department of Justice)* [2024] WAIRC 00751; (2024) 104 WAIG 1793 [39]:

We also accept that there is an at least arguable case that the failure to notify Mr Nottle that his probationary employment was extended means that it was not validly extended, that he was therefore a permanent employee at the relevant time, and the power to dismiss under reg 52A was not available to the Chief Executive Officer [39].

- 29 The Board considers this element favours an extension of time.

Prejudice

- 30 The Respondent submits that they have suffered the prejudice of having wasted resources on other proceedings commenced by the Appellant in respect of his discharge. However, the Respondent has not otherwise suffered relevant prejudice. The Respondent says this is a neutral consideration and is not a consideration in favour of granting an extension of time.
- 31 The Appellant says that the Respondent's written communications contributed to the confusion over the correct jurisdiction.
- 32 The Board considers this is a neutral consideration.

Conclusion

- 33 The Board considers the assessment of factors as outlined above, favour the granting of an extension of time.

2025 WAIRC 00781

APPEAL AGAINST THE DECISION TO TERMINATE EMPLOYMENT ON 6 MARCH 2024

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

JORG ARNO NOTTLE

APPELLANT

-v-

DIRECTOR GENERAL OF THE DEPARTMENT OF JUSTICE

RESPONDENT

CORAM

PUBLIC SERVICE APPEAL BOARD
 COMMISSIONER T B WALKINGTON - CHAIR
 MR B HAWKINS - BOARD MEMBER
 MR M HAYMAN - BOARD MEMBER

DATE

MONDAY, 15 SEPTEMBER 2025

FILE NO

PSAB 21 OF 2024

CITATION NO.

2025 WAIRC 00781

Result	Extension of time granted
Representation	
Appellant	Ms D Levitt (of counsel)
Respondent	Mr J Carroll (of counsel)

Order

HAVING heard from Ms D Levitt on behalf of the Appellant and Mr J Carroll on behalf of the Respondent, the Public Service

Appeal Board, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), hereby orders –
 THAT the time for filing the appeal be, and is hereby, extended to 13 August 2024.

(Sgd.) T B WALKINGTON,
 Commissioner,

On behalf of the Public Service Appeal Board.

[L.S.]

ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL—Matters Dealt With—

2025 WAIRC 00810

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

IN THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

SITTING AS

THE ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL

PARTIES

JOONDALUP TRANSPORT PTY LTD

APPLICANT

-v-

KHALISTAN TRANSPORT PTY LTD

RESPONDENT

CORAM COMMISSIONER T KUCERA
DATE FRIDAY, 26 SEPTEMBER 2025
FILE NO/S RFT 3 OF 2025
CITATION NO. 2025 WAIRC 00810

Result	Order issued
Representation	
Applicant	Transport Workers' Union of Australia, Industrial Union of Workers WA Branch
Respondent	No Appearance

Order

WHEREAS the applicant on 16 May 2025, filed a *Form 7 – Referral to the Road Freight Transport Industry Tribunal (Tribunal)* under the *Owner-Drivers (Contracts and Disputes) Act 2007* (WA) (**OD Act**) and the *Owner-Drivers (Contracts and Disputes) (Code of Conduct) Regulations 2010* (WA) (**application**);

AND WHEREAS the relief sought by the application included an order for payment for work performed under the terms of an owner-driver contract, between the applicant and the respondent in the amount of \$14,844.50 (inclusive of GST) (**payment amount**);

WHEREAS the Tribunal on 30 July 2025 pursuant to the powers vested in it under the OD Act and the IR Act in [2025] WAIRC 00456 made the following ORDERS –

1. THAT the respondent pay the applicant the sum of \$14,844.50.
2. THAT the hearing of the application in relation to the balance of the relief sought by the applicant is adjourned to a date to be fixed.

AND WHEREAS the applicant on 10 September 2025 made a request to the Tribunal to relist the application for further hearing;

AND WHEREAS the Tribunal on 12 September 2025 issued a *Form 17 - Notice of Hearing*, listing the application for a 'Hearing' to be held on 26 September 2025 (**further hearing**);

AND WHEREAS the applicant prior to the further hearing, filed and served an Outline of Submissions in support of the making of an order requiring the respondent to pay interest in accordance with Schedule 1 Division 2 of the OD Act (**payment of interest**);

AND WHEREAS the applicant appeared at the further hearing but there was no appearance by the respondent;

AND WHEREAS the Tribunal is satisfied the payment amount remains outstanding and that it is appropriate to make an order under section 47A of the OD Act, requiring the payment of interest;

NOW THEREFORE, the Tribunal, pursuant to the powers vested in it under the OD Act and the *Industrial Relations Act 1979* (WA) hereby ORDERS –

THAT the respondent pay the applicant the further sum of \$492.88.

(Sgd.) T KUCERA,
 Commissioner.

[L.S.]