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## GENERAL ORDERS—

**2026 WAIRC 00381**

**2026 STATE WAGE ORDER PURSUANT TO SECTION 50A OF THE ACT**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | | |
|---|---|---|
| **CITATION** | : | 2026 WAIRC 00381 |
| **CORAM** | : | CHIEF COMMISSIONER S J KENNER<br>SENIOR COMMISSIONER R COSENTINO<br>COMMISSIONER T B WALKINGTON<br>COMMISSIONER C TSANG |
| **HEARD** | : | WEDNESDAY, 20 MAY 2026, THURSDAY, 4 JUNE 2026 |
| **DELIVERED** | : | THURSDAY, 11 JUNE 2026 |
| **FILE NO.** | : | CICS 1 OF 2026 |
| **BETWEEN** | : | COMMISSION'S OWN MOTION<br>Applicant<br>AND<br>(NOT APPLICABLE)<br>Respondent |

| | | |
|---|---|---|
| Catchwords | : | State Wage order – Commission's own motion – Minimum wage for employees under the *Minimum Conditions of Employment Act 1993* – Minimum award rates of wage –State Wage principles |
| Legislation | : | *Industrial Relations Act 1979* (WA) s 6(ac), s 50A, s 50A(1)(a)(iii), s 50A(1A), s 50A(1B), s 50A(3), s 50A(3)(a)(i)-(iv), s 50A(3)(a)(vii), s 50A(3)(b), s 50A(3)(d), s 50A(3)(c), s 80BB<br>*Minimum Conditions of Employment Act 1993* (WA)<br>*Fair Work Act 2009* (Cth) s 284(1)(c), s 285(2)(c) |
| Result | : | 2026 State Wage order issued |

**Representation:**

Mr B Entrekin and with him Ms D Arntzen on behalf of the Hon. Minister for Industrial Relations

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

Ms R Hendon and with her Mr G Hansen on behalf of UnionsWA

Ms R Newbury-Freeman on behalf of the Western Australian Council of Social Service Inc

Mr M Smith and with him Ms J Love on behalf of the Western Australian Local Government Association

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

2022 State Wage Case [2022] WAIRC 00273; (2022) 102 WAIG 431

2023 State Wage Case [2023] WAIRC 00330; (2023) 103 WAIG 733

2024 State Wage Case [2024] WAIRC 00293; (2024) 104 WAIG 731

2025 State Wage Case [2025] WAIRC 00348; (2025) 105 WAIG 1167

Statement of Principles – July 2025 [2025] WAIRC 00365; (2025) 105 WAIG 1184

Annual Wage Review 2019-20 [2020] FWCFB 3500

Annual Wage Review 2022-23 [2023] FWC 1255

Annual Wage Review 2026 [2026] FWCFB 3500

*Reasons for Decision*

**THE COMMISSION IN COURT SESSION:**

**Background**

1 The Commission in Court Session is required to make a State Wage Order effective on 1 July each year under s 50A of the *Industrial Relations Act 1979* (WA). In doing so, the Commission is required to take a range of economic, social and equity factors into account. The Commission must balance the interests of the low paid, who are reliant on the State Minimum Wage and minimum award rates of pay, with the interests of employers, who, in the State industrial relations system, are predominantly small firms engaged in industries including accommodation and food services, construction, retail trade, and health care and social assistance.

2 Both written and oral submissions have been received by the Commission in Court Session from the Minister for Industrial Relations, the Chamber of Commerce and Industry of Western Australia (Inc), UnionsWA, the Western Australian Council of Social Service Inc and the Western Australian Local Government Association. Additionally, as part of the Minister's case, the Commission in Court Session has been assisted by a presentation from Mr Christmas, the Director of the Economic and Revenue Forecasting Division, of the Western Australian Treasury. Mr Christmas provided the Commission with an overview of the global, national, and Western Australian economies. In the context of this year's SWO proceedings, the economic analysis included the present volatility arising from the conflict in the Middle East. We are grateful to the parties and Mr Christmas for their assistance.

**Contentions of the parties**

***The Minister***

3 The Minister emphasised the importance of the annual SWO proceedings for those employees in the State industrial relations system who rely on the SMW and minimum award rates of pay and for the businesses that employ them. Whilst not specifying an amount by which the SMW should be increased, the Minister submitted that any adjustment should be meaningful and take into account the cost of living pressures facing those employees who are award reliant and who are on the SMW. At the same time, the Minister contended that the Commission in Court Session needs to be cognisant of cost pressures on employers and the need for any increase to be sustainable.

4 The Minister also submitted that the Commission in Court Session should take into account the decision of the Fair Work Commission in its ***Annual Wage Review 2026***, as a part of ensuring State system employees receive fair minimum wages. It was acknowledged that if there are significant changes to the operation of the National Minimum Wage or structural changes to classifications in modern awards, then such matters will need to be progressed outside of these proceedings.

5 As to economic factors, the Minister noted that the Western Australian economy remains resilient, despite the disruption caused by the Middle East conflict which has resulted in a spike in energy prices, and its inflationary effect. The domestic economy, reflected in State Final Demand, is projected to grow by 3.5% over 2025-26. Strength is also evident in the State's overall economic growth, as measured by Gross State Product, which is forecast to grow by 3.25% over 2025-26. The robust State economy is also evident in the labour market, with elevated levels of employment growth through late 2025 and early 2026. Unemployment remains low, in historical terms.

***Chamber of Commerce and Industry of Western Australia***

6 Whilst acknowledging the fundamental strength of the Western Australian economy, the CCIWA contended that smaller businesses, those most prevalent in the State system, have been exposed to rising costs, through increasing inflation. It is noted that the Consumer Price Index, nationally, has risen to 4.6% for the year to March 2026. The impact of the Middle East conflict has pushed fuel costs up by 32% in the year to March 2026. This has led to the transport component of the CPI increasing by 9.2% for the month of March 2026 alone. Similarly, Perth inflation has risen to 4.6% for the year to March 2026, largely reflecting the sharp rise in the transport component of the CPI.

7 Cost pressures on small businesses are also reflected in the Producer Price Index, which has increased by 3.0% to March 2026. The CCIWA noted elevated levels of business insolvencies in Western Australia to April 2026, especially in those industries prevalent in the State industrial relations system, including accommodation and food services, construction, health care, social assistance, and retail trade. Given almost half of all insolvencies have occurred in these sectors in the 2024-25 year, combined with continued low productivity levels, and the uncertain outlook led by global volatility, the CCIWA contended that the Commission in Court Session should adopt a cautious approach in this year's proceedings. Having regard to all of these factors the CCIWA contended that an increase in the SMW of 3.25% should be granted on this occasion.

***UnionsWA***

8 The position of UnionsWA is that with the Western Australian and Australian economies performing strongly, in the face of the rising cost of living, a substantial increase in the SMW and minimum award rates of pay should be awarded. UnionsWA propose a flat increase to the SMW of $61.95 per week and an increase in minimum award wages of 6.5%. According to UnionsWA, not only are the fundamentals of the Western Australian economy strong, but increased levels of business investment, and household consumption, evidence an economy performing well.

9 A major focus of UnionsWA in its submissions is the rising cost of living and the pressure this is placing on the low paid. With inflation already elevated in late 2025 and into early 2026, the effect of increasing fuel prices resulting from the Middle East conflict may not be fully understood until the April 2026 CPI figures are released. Accordingly, the CPI to March 2026 may understate the full effect on the cost of living. Given these circumstances, in particular rising costs for housing, transport and food, low paid households are increasingly finding it hard to make ends meet.

***Western Australian Council of Social Service Inc***

10 The WACOSS contended that the SMW should be increased by 6.5%. It noted that while the 3.75% increase in the SMW in the Commission's ***2025 State Wage Case*** decision ([2025] WAIRC 00348; (2025) 105 WAIG 1167) was crucial, the cost of living, in the form of increased rental prices, food, transport and healthcare, has exceeded wages growth. Despite temporary cost of living assistance measures introduced by Governments, a number of which have now ceased, low income households often struggle to afford the basics for a dignified lifestyle.

11 The effect of increases in minimum wages on the WACOSS submissions, extends into families and communities, through increasing spending supporting local businesses. The WACOSS also noted the impact of financial disadvantage on children, and that deprivation in terms of the basics whilst children are growing up, can have an impact later in life in terms of educational achievement, health outcomes, and community participation.

***Western Australian Local Government Association***

12 The WALGA membership comprises all 147 Local Governments and Regional Councils established in the State. The industry employs 26,500 employees. Of the 147 Councils, some 105 of them apply a State award or a New State Instrument in effect under s 80BB of the *Act*. Given this situation, the WALGA submitted that increases in minimum award wages have a material effect on the operations of these Councils.

13 In its submissions, whilst acknowledging the underlying strength of the Western Australian economy, the WALGA noted in particular the impact of the Middle East conflict on fuel costs, especially diesel and related products such as bitumen, used extensively by Local Governments in road construction and maintenance. The increased costs of diesel in particular, has been higher for regional Local Governments. Additionally, Local Governments, being part of complex supply chains, statutory intervention such as the *Road Transport Contractual Chain Order – Fuel Cost Recovery 2026*, made by the Fair Work Commission in April 2026, have an impact on costs.

14 Given the limited capacity of Local Governments to absorb cost increases, the WALGA submitted that any increase in minimum wages should balance the provision of fair and sustainable wages with the ability of Local Governments to manage their budgets and serve their communities.

**Statutory requirements**

15 The requirements the Commission needs to consider are set out in s 50A(3) of the *Act* which relevantly provides as follows:

> (3) In making an order under this section, the Commission must take into consideration —
>
> (a) the need to —
>
> (i) ensure that Western Australians have a system of fair wages and conditions of employment; and
>
> (ii) meet the needs of the low paid; and
>
> (iii) provide fair wage standards in the context of living standards generally prevailing in the community; and
>
> (iv) contribute to improved living standards for employees; and
>
> (v) protect employees who may be unable to reach an industrial agreement; and
>
> (vi) encourage ongoing skills development; and
>
> (vii) provide equal remuneration;
>
> and
>
> (b) the state of the economy of Western Australia and the likely effect of its decision on that economy and, in particular, on the level of employment, inflation and productivity in Western Australia; and
>
> (c) to the extent that it is relevant, the state of the national economy; and
>
> (d) to the extent that it is relevant, the capacity of employers as a whole to bear the costs of increased wages, salaries, allowances and other remuneration; and
>
> (e) for the purposes of subsection (1)(b) and (c), the need to ensure that the Western Australian award framework represents a system of fair wages and conditions of employment; and
>
> (f) relevant decisions of other industrial courts and tribunals; and
>
> (g) any other matters the Commission considers relevant.

***Fairness, living standards and the needs of the low paid - s 50A(3)(a)(i)-(iv)***

16 In addressing these criteria, we have previously observed that the notion of fair wage standards in the context of living

standards generally, and the requirement for the Commission to consider contributing to improvements in living standards, requires us to take into account cost of living changes to date, and how any increase in the SMW and minimum award wages may improve living standards for the future.

17 We have also stated, in reliance on the broadly similar provision in s 284(1)(c) of the *Fair Work Act 2009* (Cth), that to meet the needs of the low paid, means enabling low paid employees to purchase essentials in order to have a decent standard of living, so that they can participate in the community: ***2025 State Wage Case*** at [55]. This requires consideration of how the cost of living has changed since last year, and also movements in wages generally over the same period.

18 The notion of fair wage standards also requires the Commission to balance the interests of employees and employers.

19 In these contexts, the Minister contended that the SMW and minimum award wages provide a critical safeguard in order to protect the needs of the low paid. This includes ensuring the maintenance of living standards and their improvement, consistent with the broader community. It is accepted that those paid the SMW and others who are low paid, are dependent on the outcome of the SWO proceedings to improve their standard of living. As set out in the Minister's submissions at Figure 16, those employees who are solely award reliant are paid substantially lower rates of pay than employees employed under other pay setting arrangements.

20 UnionsWA and the WACOSS focussed heavily on the escalation of the cost of living and its impact on the low paid. With headline inflation projected to rise to 5.5% to the June quarter 2026 in year end terms (excluding the electricity sub-index) and to 4.4% from March 2025 to May 2026 (excluding the electricity sub-index), UnionsWA submitted that the pace of wages erosion has picked up. Goods and services inflation (tradeable and non-tradeable) is reflected in the following tables as set out in the UnionsWA submissions at p 14:

**Tradeable items (goods and services exposed to international trade)**

| Automotive fuel | Accessories | Lamb and goat | Beef and veal | Coffee, tea and cocoa | Audio, visual and computing media and services | Newspapers, magazines and stationery | Garments for women | Gas and other household fuels | Games, toys and hobbies |
|---|---|---|---|---|---|---|---|---|---|
| 25.7 | 16.8 | 15.1 | 11.9 | 10.3 | 9.2 | 8.8 | 7.5 | 7.8 | 7.0 |

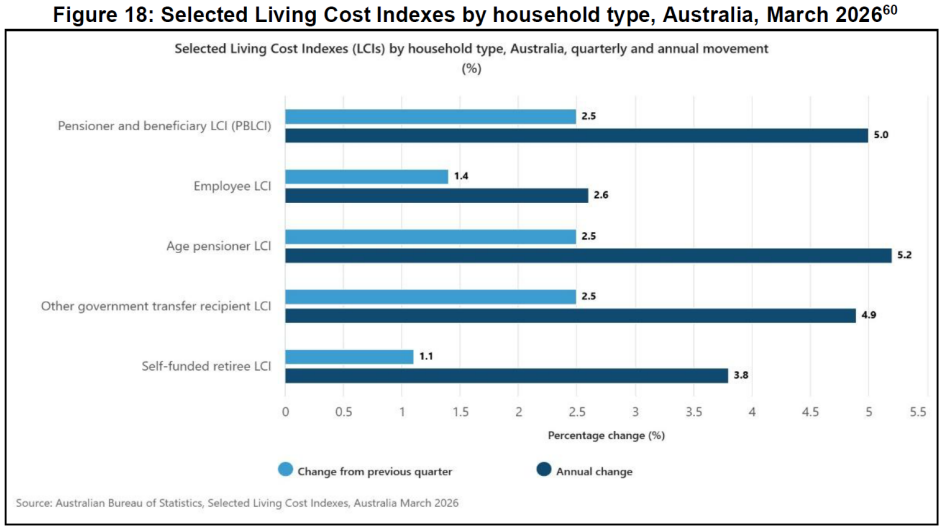
**Non-tradeable items (goods and services that do not face international competition)**

| Tobacco | Child care | Maintenance and repair of motor vehicles | Domestic holiday travel and accommodation | Postal services | Veterinary services and other services for pets | Secondary education | Preschool and primary education | New dwelling purchase by owner-occupiers | Rents |
|---|---|---|---|---|---|---|---|---|---|
| 12.1 | 9.9 | 8.0 | 7.6 | 7.5 | 7.5 | 6.6 | 6.4 | 5.6 | 6.4 |

Source: ABS, *Consumer Price Index*

21 Further assistance on the impact of cost of living increases for households is obtained from the *Australian Bureau of Statistics Selected Living Cost Indexes* series, the latest being to the March quarter 2026. These indexes differ from the CPI measure of inflation, in that they reflect the purchasing power of households in after tax income, for a fixed basket of goods. Mortgage costs are included. The most relevant index for present purposes is the LCI for 'Employee' households. This shows a 2.6% increase for the year to March 2026, as set out in Figure 18 in the Minister's submission at [97] as follows:

**Figure 18: Selected Living Cost Indexes by household type, Australia, March 2026[60]**




22 Whilst the Minister submitted that the rate of increase in the LCI for 'Employee' households is lower than in previous years, the ABS notes that this figure does not capture recent interest rate increases by the Reserve Bank of Australia in February and March 2026, which are likely to be reflected in the June quarter of 2026 (*ABS (2026) Selected Living Cost Indexes, Australia, March 2026, Catalogue 6467.0*). This means, on the Minister's submissions, that in the coming quarters, living costs are most likely to increase further.

23 As to housing, as a result of rental cost increases placing Perth now in the second highest place in the nation to Sydney, both the WACOSS and UnionsWA emphasised that housing affordability is at a critical point for low paid employees. Rental costs

have increased by 74% since 2021, far outpacing wages growth. It was contended that this has meant most rental properties in Perth are now out of reach for most minimum wage households. UnionsWA also referred to ABS statistics in relation to the distribution of household income, showing the disproportionate share of income spent on housing costs, of the lowest income quartiles (see UnionsWA submissions at [4.31]-[4.32]).

24 When combined with the escalation in the cost of food and utilities, and most recently the spike in fuel prices, both UnionsWA and the WACOSS contended that minimum wage households struggle to make ends meet and often fall short to cover the basics (see *Anglicare WA, Rental Affordability Snapshot 2026 (Report 2026* at p 6; *WACOSS, Cost of Living 2025 (Report 2025)* pp 5-9)).

25 In connection with these submissions, both the WACOSS and UnionsWA referred to case studies of low paid households, detailing the challenges they face in meeting basic needs on low incomes. In its submissions in reply, UnionsWA submitted that what the case studies show is that many low paid households have little or no buffers to meet increased price pressures faced by consumers generally.

26 These case studies are insightful, and do assist the Commission in understanding the circumstances that many low paid households face, in assessing the needs of the low paid and how increases in minimum wages can contribute to improving living standards.

27 Whilst not cavilling with the underlying data on which the UnionsWA and the WACOSS submissions were based, the CCIWA observed in their main submissions and in their submissions in reply, that the Commission has consistently held that increases in the SMW and minimum award wages are not able to address all the needs of the low paid. That is so. Tax and transfer payments, via various Commonwealth and State Government benefits, provide targeted assistance to low income households. However, the extent to which low income households receive Government assistance in Western Australia is difficult to estimate, as there is no State specific data available.

28 The CCIWA referred to a recent Australian Institute of Health and Welfare report (*Australian Institute of Health and Welfare, Unemployment Payments, 2023*), which estimates that about 25% of those receiving Federal Government income support also declared an income. We note that this data is not disaggregated by State or Territory. UnionsWA took issue with this report in its submissions in reply and in its oral submissions, and contended that Fair Work Commission research for the ***Annual Wage Review 2019-20*** [2020] FWCFB 3500 suggested that only some 16% of low paid employees were in receipt of Government payments (see 34T).

29 These issues are difficult to grapple with in the absence of relevant data. It is likely that some minimum wage employees are in receipt of various Government assistance payments. However, as we have said in the past, Government assistance, including recent initiatives such as the reduction in fuel excise to 1 July 2026, the suspension of freight user charges and State Budget 2026 cost of living support measures, are not a substitute for the ongoing beneficial effect of economically sustainable, regular adjustments to the SMW and minimum award wages. To discount any prospective increase in wages on the basis of receipt of such payments, would be to undermine their purpose, and would be contrary to the requirements of s 50A(3)(a)(i)-(iv) of the *Act.*

30 Additionally, whilst the disaggregation of components of the CPI, and rates of inflation in terms of non-discretionary and discretionary goods and services provides useful insight into the areas where low paid employees may need to expend disproportionate amounts of income, we have, as pointed out by the CCIWA in its reply submissions, generally resisted the 'unpacking' of the CPI as a general measure of the cost of living across the community. This does not mean however, that the Commission cannot have regard to particular challenges facing the low paid such as, in the present context, sharp rises in housing costs in Perth and regional areas.

31 We remain of the view that regular, sustainable minimum wage increases, will assist in meeting the needs of the low paid, contribute to improving living standards and help to ensure that State system employees have fair wages and conditions of employment.

***Protecting employees unable to reach an industrial agreement – s 50A(3)(a)(v)***

32 It is not controversial that employees employed in small businesses prevalent in the State industrial relations system are most likely to be paid wages in accordance with a relevant State award. We have previously observed that bargaining for industrial agreements in the small business sector covered by the State system is negligible. This is reflected in the Minister's submissions, to the effect that industrial agreements registered in the Commission tend to fall outside of those industry sectors represented in the State system.

33 This is also reinforced by the analysis of methods of pay setting referred to by both UnionsWA and the Minister, and the high level of award reliance in Western Australia in the industry sectors of accommodation and food services, healthcare and social assistance and retail trades (see also Minister's submissions at [75], and Table 7: 'Employment and award reliance by industry, WA, May 2025 (*ABS (2026)*, *Employee Earnings and Hours, Australia, May 2025, Catalogue 6306.0*). In these circumstances, regular and sustainable increases in the SMW and minimum award rates of pay for this cohort of employees, will assist in achieving this statutory criterion.

***Encouraging skills development – s 50A(3)(a)(vi)***

34 Apprenticeship and trainee data contained in the Minister's submissions shows that there has been a steady decline in both apprenticeship and traineeship commencements since the peak in 2022. This corresponded with the introduction of Commonwealth and State Government incentives to assist employers to engage apprentices and trainees: ***2022 State Wage Case*** [2022] WAIRC 00273; (2022) 102 WAIG 431 at [70]. Since that time, with the winding back of incentives, commencements have declined. UnionsWA also noted the same trend in their submissions, when examining apprenticeship and traineeship entry and exit rates.

35 Total numbers of apprentices fell from 10,926 in 2024 to 10,800 in 2025. Over the corresponding period, traineeships fell

from 10,816 to 9,014. The total numbers of apprentices and trainees in training over the same period fell from 38,926 to 36,006. Whilst noting this gradual decline, the UnionsWA data does show a steady increase in the numbers of apprentices and trainees who complete their training, as a proportion of the total number in training from the third quarter in 2022.

36 The reasons for those in training withdrawing or failing to complete are no doubt varied. The decline in entry rates is more challenging. As we observed in the ***2025 State Wage Case*** at [81], regular increases in minimum wages to assist in meeting rises in the cost of living, can only be a positive factor in encouraging commencements and retentions in apprenticeships and traineeships, and hence, assisting and encouraging skills development.

***Equal remuneration for work of equal value – s 50A(3)(a)(vii)***

37 As noted in the Minister's submissions, the principle of equal remuneration and the elimination of gender based undervaluation of work, is also now reflected in the objects of the *Act* in s 6(ac). The gender pay gap has narrowed from 21.7% to 20.2% in the year to November 2024, and from 20.2% to 19.3% in the year to 2025 (see ***2025 State Wage Case*** at [82] and Minister's submissions at [58]-[59] and Table 3).

38 Both the Minister and UnionsWA submitted that 60.7% of award reliant non-managerial employees in Western Australia were women. The present gender pay gap of 19.3% means that Western Australia maintains the highest level comparatively with other States and Territories and nationally. It is the case that the reasons for the gender pay gap are complex, and it is partly the result of structural issues in the Western Australian labour market, with a high concentration of male employees employed in the resources sector. The Minister also notes in her submissions that the average weekly earnings for women in Western Australia are the third highest, with the Australian Capital Territory and New South Wales being first and second respectively.

39 Given the reduction in the gender pay gap from 2023 to 2025, it is reasonable to conclude that the increases in the SMW and minimum award wages resulting from SWO cases over that period have had some positive impact and will continue to do so. To some extent, this is reinforced by the research referred to by UnionsWA in its submissions at [8.3] and [8.8], in relation to the impact of above average increases in award wages and the narrowing of the gender pay gap.

***State of the Western Australian economy – s 50A(3)(b)***

40 The Minister, the CCIWA, UnionsWA and the WALGA, all agreed that the State economy continues to perform strongly, as it did in 2024-25, as considered by the Commission in the ***2025 State Wage Case***. For the fifth consecutive year, Western Australia has been judged the nation's top performing economy overall in the *CommSec State of the States* October 2025 report. It is noted in the report that 'resources focused **Western Australia** has the strongest annual economic growth momentum, helped by robust household spending, a rebound in the export sector and solid population growth' (at p 3).

41 The following table, setting out the major economic aggregates in the Minister's *2026 State Wage Case – Economic Conditions and Outlook* at Table 1, is as follows:

**Table 1 – Major Economic Aggregates, Annual Growth (%)**

| | 2024-25 | 2025-26 | 2026-27 | 2027-28 | 2028-29 | 2029-30 |
|---|---|---|---|---|---|---|
| | Actual | Estimated Actual | **Budget Year** | Outyear | Outyear | Outyear |
| State Final Demand | 3.0 | 3.5 | **2.25** | 2.25 | 2.75 | 2.75 |
| Gross State Product | 1.3 | 3.25 | **2.25** | 2.0 | 2.0 | 2.0 |
| Employment | 3.1 | 1.5 | **1.75** | 1.5 | 1.5 | 1.5 |
| Unemployment rate [(a)] | 3.7 | 4.0 | **4.25** | 4.25 | 4.25 | 4.5 |
| Consumer Price Index [(b)(c)] | 2.8 | 5.5 | **3.75** | 2.75 | 2.5 | 2.5 |
| Wage Price Index [(c)] | 3.7 | 3.75 | **3.25** | 3.25 | 3.25 | 3.0 |
| Population [(c)] | 2.2 | 1.8 | **1.6** | 1.5 | 1.5 | 1.5 |

(a) Data expressed as annual average rate during the financial year.
(b) CPI growth rates are based on the total index excluding the electricity sub-sector.
(c) Growth is expressed in year-ended terms.
Source: Australian Bureau of Statistics, DTF.

42 The domestic economy remains robust. The forecast SFD growth of 3.5% for 2025-26, flows on from SFD growth of 3.3% for 2025. As Mr Christmas noted in his evidence, household consumption and business investment remain strong, in particular the latter, with business investment forecast to grow by 6.75% for 2025-26. UnionsWA emphasised that business investment has grown particularly strongly in the non-mining sector, which rose by 25.7% in the December quarter 2025, and increasing by 34.2% over the year, indicating increased activity and growth. Household spending in Western Australia is noted as being the strongest of all the States. Dwelling investment has been particularly robust, with growth of 8% over 2025. The forecast for 2025-26 is dwelling investment growth of 9.5%, before some moderation in the out years. Strong population growth has underpinned household consumption and dwelling investment.

43 In terms of the external sector, goods exports are forecast to increase in 2025-26, following a fall of 6% for 2024-25. Gross State Product is projected to grow by 3.25% for 2025-26, substantially ahead of 2024-25. Mr Christmas noted in particular the contribution of the record grain harvest for 2025 and an increase in lithium production, along with some lift in iron ore and gold exports. The CCIWA also noted in its submissions the significant role of exports in driving economic growth, with around 43% of the State's GSP underpinned by net exports.

44 The robustness of the State economy is sustaining a strong labour market, with a record 1.68 million people in employment as of March 2026, although the rate of growth is forecast to soften to 1.50% for 2025-26. Growth in the market sector is outstripping growth in the non-market sector by a considerable margin. To February 2026, retail trades, manufacturing, and

utilities are the leading industry sectors. Healthcare also has had solid growth. Retail trades employment grew by 6.5% over the year to February 2026. Accommodation and food services fell by 1.6% and healthcare and social services lifted by 0.9% (see Minister's submissions at [34] and Table 1).

45 As has been the case for a number of years, the level of unemployment, although showing some uplift, remains well below trend and is forecast to average 4.0% for 2025-26. Participation rates, emphasised by the Minister, the CCIWA and UnionsWA in their submissions, remain at an elevated level. To March 2026, Western Australia's participation rate was 68.8%, still the highest in the country. Along with shortages of skilled labour, the CCIWA maintained that the labour market remains very tight, posing challenges for businesses in terms of constraining growth.

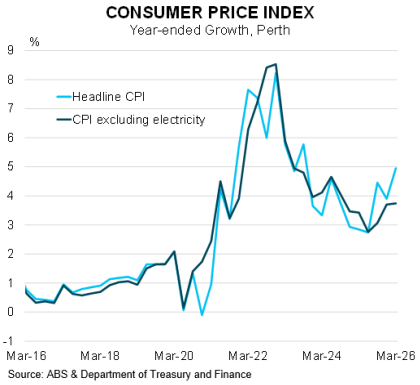
46 This tightness tends to be supported by the UnionsWA submissions concerning payroll jobs and wages data, using the ABS Single Touch Payroll system, which enables up to date statistics in relation to jobs growth and employee earnings. As of December 2025, Western Australia had the second largest growth in payroll jobs and the third largest increase total wages and salaries paid by employers.

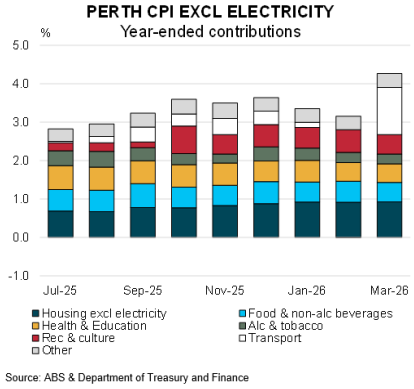
47 This leads into considering wages growth generally, as measured by the Wage Price Index, which rose by 3.6% for the year to March 2026. The WPI remains the Commission's preferred measure of wages growth. The forecast is for growth to be 3.75% for 2025-26, broadly in line with the growth in WPI for 2024-25. Average weekly ordinary time earnings grew by 1.7% in the 12 months to November 2025, to $2,193.20. Whilst the CCIWA, as in the ***2025 State Wage Case*** at [32], referred to non-wage incentives not captured by the WPI measure of wages growth, we maintain the view that components of remuneration such as sign-on bonuses and other incentive payments, are unlikely to form part of remuneration for low paid employees.

48 Inflation projections have been complicated by the impact of the Middle East conflict. As a result of a 32.7% increase in the cost of automotive fuel for the month of March 2026, this has pushed the CPI up to 3.7% over the year to March 2026 (excluding the electricity sub-index). This reflects a substantial jump from 2.8% for 2024-25. Mr Christmas referred to the forecast CPI for Perth of 5.5% for 2025-26, in year-end terms, or 4.0% in annual average terms (both excluding the electricity sub-index). Inflation is projected to ease to 3.75% for 2026-27 and to return to the RBA target range in the out years.

49 The 5.5% projected rate of inflation for Perth is higher than for the Commonwealth (5.0%) and the RBA projection (4.8% headline and 3.8% trimmed mean) as a result of the Western Australian Budget projections being finalised just prior to the ceasefire in the Middle East, and also taking into account the impact of some local factors.

50 The CPI figures to March 2026 are reflected in the below graph and bar chart, as contained in Mr Christmas's presentation at p 41. The spike in March due to the sharp rise in automotive fuel (transport) is evident from the bar chart for that month:




51 The updated CPI monthly figures released by the ABS on 27 May 2026, show an increase of 0.4% for Perth for the month of April, and growth in the CPI of 3.9% for the year April 2025 to April 2026.

52 Whilst noting the cut in the fuel excise, the direct impact of the spike in energy prices can be seen in the bowser cost of petrol and diesel fuel, as referred to in the Minister's submissions at [23]-[29] and in Figure 2 and Figure 3 which are as follows:

**Figure 2: Weekly average price of ULP and diesel in the Perth metropolitan region[4]**

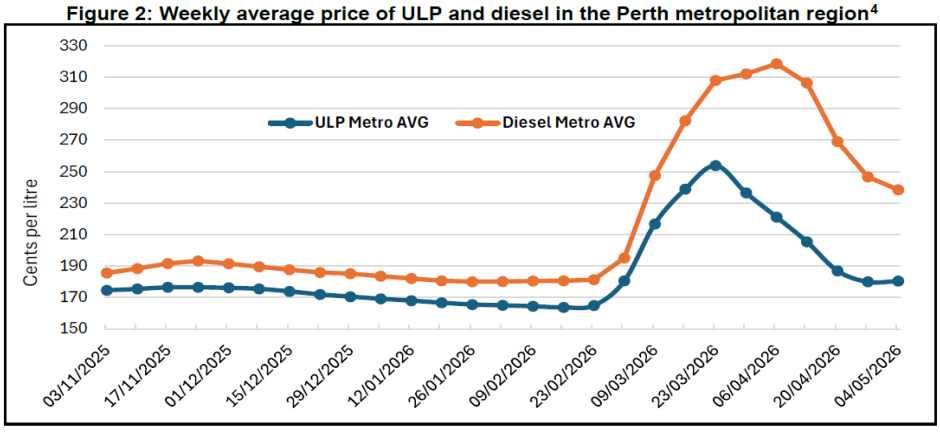
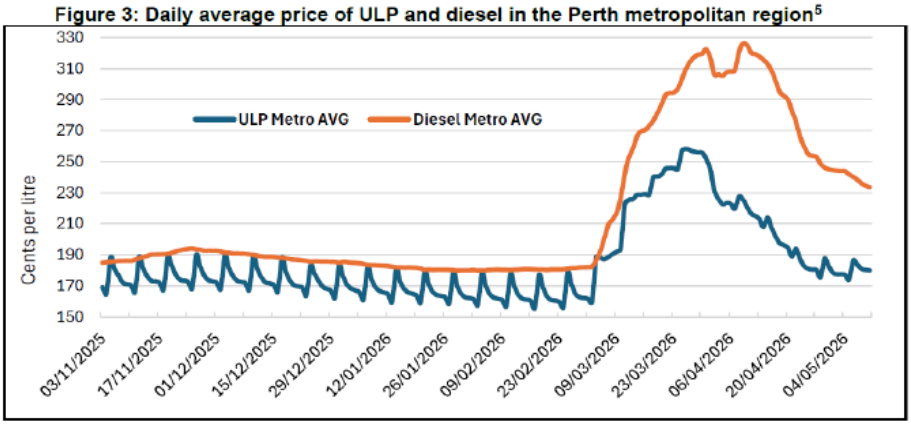


**Figure 3: Daily average price of ULP and diesel in the Perth metropolitan region[5]**




53 Whilst the flow through of fuel price increases on the CPI has been marked, it is to be noted that the CPI was becoming elevated in the latter half of 2025 and the earlier part of this year, as a result of domestic price pressures, leading to three 25 basis point increases to the cash rate by the RBA in February, March and May 2026. The uptick in inflation from the September quarter 2025, was noted by the CCIWA, and that in its view, inflationary pressures are likely to remain higher for longer. This was also the view of the WALGA, in emphasising capacity restraints placing upward pressure on inflation and prices.

54 In terms of productivity performance, whilst ABS data for the market sector at the State level is presently experimental, and some caution should be applied in relying on it, Western Australia has had weaker productivity growth than that nationally. Mr Christmas referred to the likely effect on this outcome of declining mining sector productivity over recent years, as large mining operations reach production capacity, while still growing their workforces. The productivity data is reflected in the following table in Mr Christmas's presentation at p 45:

**Market Sector Productivity Growth**

State level experimental measures

| | Multifactor Productivity | | Labour Productivity | |
|---|---|---|---|---|
| | 2024-25 | Past 5-years | 2024-25 | Past 5-years |
| | % | % | % | % |
| New South Wales | -0.1 | 0.6 | 0.6 | 0.8 |
| Victoria | -1.2 | -0.1 | -0.7 | 0.3 |
| Queensland | 1.0 | 0.9 | 1.4 | 0.2 |
| South Australia | -0.5 | 1.2 | 0.5 | 1.1 |
| **Western Australia** | **-2.3** | **-0.4** | **-4.4** | **-1.4** |
| Tasmania | -0.5 | 0.2 | 0.8 | 0.0 |
| NT | 1.9 | -0.9 | 4.1 | -0.7 |
| ACT | -3.3 | -0.2 | -4.4 | -0.4 |
| **Australia** | **-0.5** | **0.4** | **-0.2** | **0.2** |

Source: ABS

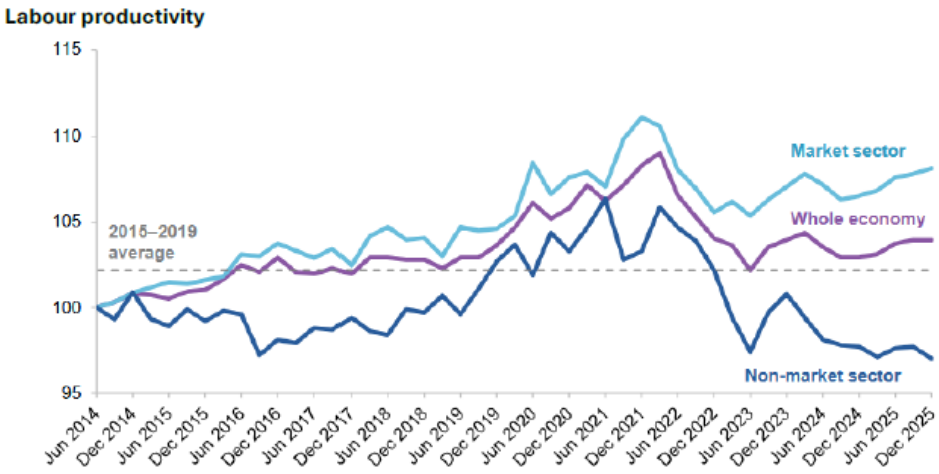
55 The CCIWA submitted, as with their approach in the ***2025 State Wage Case***, that productivity remains weak, despite having improved somewhat over the year to December 2025, by 1.0%. It was contended that wages growth over and above the rate of productivity growth, places upward pressure on inflation. Reference was again made to observations of the Fair Work Commission in its ***Annual Wage Review 2022-23*** decision ([2023] FWCFB 1255) to the effect that the medium to long term objective should be that minimum wages maintain their real value in line with the trend rate of productivity growth. Whilst this is desirable, we note however that in relation to this issue, the Fair Work Commission qualified their observations and said that such an objective will be subject to the particular circumstances evident in a review proceeding, with cost of living pressures being of particular importance: ***2025 State Wage Case*** at [43].

56 In reliance on the *RBA (2026) Statement of Monetary Policy, February 2026,* the CCIWA submitted that the anticipated return to the long run average rate of growth in productivity will be longer than expected by the Commonwealth Government in its Budget projections. The CCIWA maintained its view that productivity levels should be a moderating factor in the Commission's decision to increase minimum wages.

57 UnionsWA contended at [3.19] that:

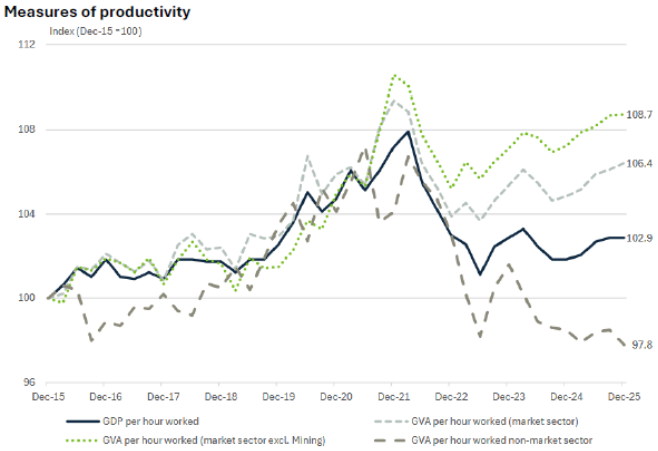
> At the aggregate level nationally, growth in GDP per hour worked picked up at the end of the year, rising 1.0 per cent over the year to December 2025. Gross value added in the market sector rose at a slightly faster pace, increasing 1.5 per cent over the year to December 2025.

58 The measure of labour productivity is captured in the following graph:




Source: Productivity Commission, March 2026 Quarterly Productivity Bulletin

59 UnionsWA also referred to Fair Work Commission statistical material for the ***Annual Wage Review 2026*** in relation to measures of productivity, taking into account the divergence between the market (including and excluding mining) and the non-market sectors as follows:




Source: Fair Work Commission, *Statistical Report – Annual Wage Review 2026*

60 In particular, as was submitted by UnionsWA in the ***2025 State Wage Case***, UnionsWA contended in their submissions at [3.20]:

> …there is a clear divergence between the growth in market sector and non-market sector productivity. The Productivity Commission has identified that the healthcare industry and its rapid expansion have been 'the single biggest contributor to Australia's measured productivity decline.' As the Productivity Commission notes, however, that this expansion has been critical to meet the changing needs of the population. Further, they note that the 'quality measurement challenge' is particularly pronounced in healthcare, with improvements in service quality and customer safety not included in measured output. Previous analysis by the Productivity Commission which studied healthcare for particularly diseases from 2011 to 2018, found that productivity when adjusted for quality changes increased by 3 per cent per annum.

61 We examined this issue in some detail in the ***2025 State Wage Case*** decision at [41]-[54]. We note there had been some improvement in national productivity to December 2025, although as we comment below, some of this has been given up as reflected in the most recent *ABS National Accounts* data published on 3 June 2026. We have taken into account these matters, as raised again in these proceedings. When balanced with the high level of business investment in Western Australia, especially in the non-mining sector, and the size of the mining industry contribution to the recorded level of productivity in the State, we consider it unlikely that any decision we make will have a significant negative effect on the level of productivity in Western Australia.

62 In terms of risks to the outlook, Mr Christmas noted the major risk to the global and domestic economies is the volatility and uncertainty flowing from the Middle East conflict. This risk is reflected in energy markets, and the direct and indirect impact on Western Australia and its key trading partners. Fuel, freight and fertiliser price rises are the primary direct impact. Slowing demand from Western Australia's key trading partners is the main indirect risk. The magnitude of these impacts will depend on the duration of the conflict.

63 The *ABS National Accounts* released in June 2026, reinforced the underlying strength of the Western Australian economy. State Final Demand increased by a solid 0.5% from the December 2025 to the March 2026 quarters, supported by significant household consumption.

64 From what is before the Commission, we conclude that the strength of the Western Australian economy can support a

sustainable increase in the SMW and minimum award wages. This must be one that, as emphasised by the Minister in her submissions in reply, does not come at the expense of jobs and reduced working hours for employees. We have consistently held that aggregate demand in the State economy will be a moderating factor as to the impact of increases in the SMW and minimum award wages: ***2023 State Wage Case*** [2023] WAIRC 00330; (2023) 103 WAIG 733 at [68]. There is no evidence before us on this occasion to suggest that prior increases, or any flowing from this decision, will overall, negatively affect the level of employment, inflation, or productivity in Western Australia.

***State of the national economy – s 50A(3)(c)***

65 The Commission in Court Session is required to have regard to the extent relevant, the state of the national economy. From the *Outlook*, the Australian economy grew strongly in 2025, and GDP is forecast to rise to 2.25% for 2025-26. The impact of the Middle East conflict is expected to trim growth to 1.75% for 2026-27. Inflation is expected to rise to 5.0% through the year to June 2026, reflecting the surge in fuel costs, before moderating to 2.5% for 2026-27. The April 2026 inflation rate as measured by the weighted average of the eight capital cities was an increase of 0.4% for April, and 4.2% for the year April 2025 to April 2026.

66 The RBA has noted that inflation is likely to remain elevated, with second round effects expected to put pressure on prices for goods and services. Despite these pressures, the labour market is expected to remain resilient, with increases in employment and continued low unemployment, in historical terms.

67 The *ABS National Accounts* published in June 2026, show a slowing of the national economy, with growth for the March quarter 2026 of 0.3%, seasonally adjusted, down from 0.9% growth to the December quarter 2025. As noted above, productivity as measured by GDP per hour worked, fell by 0.6% for the March quarter, giving up the gain to the December quarter 2025.

***Capacity of employers as a whole to bear the costs of increases in wages and conditions of employment – s 50A(3)(d)***

68 This criterion focusses on capacity as a whole, not individual businesses' capacity to pay. As there is an absence of data focussing on the performance of firms in the State industrial relations system, as a proxy, the Commission has looked to macroeconomic data in relation to overall industry performance, using the ABS Gross Operating Surplus plus Gross Mixed Income (see Minister's submissions at [67] and *ABS (2025) Australian National Accounts: State Accounts, 2024-25 financial year; Catalogue 5220.0* Table 6). The GOS plus GMI for 2024-25 is as follows:

**Table 6: Gross Operating Surplus (GOS) and Gross Mixed Income (GMI) by industry, WA, current prices, 2024 and 2025**

| Industry | GOS + GMI June 2024 ($m) | GOS + GMI June 2025 ($m) | Annual increase ($m) | Annual increase (%) |
|---|---|---|---|---|
| Agriculture, forestry and fishing | 4,960 | 6,112 | 1,152 | 23.2% |
| Mining | 168,802 | 151,192 | -17,610 | -10.4% |
| Manufacturing | 9,380 | 9,932 | 552 | 5.9% |
| Electricity, gas, water and waste services | 3,573 | 3,438 | -135 | -3.8% |
| Construction | 8,675 | 8,434 | -241 | -2.8% |
| Wholesale trade | 5,703 | 5,687 | -16 | -0.3% |
| Retail trade | 5,101 | 5,056 | -45 | -0.9% |
| Accommodation and food services | 2,961 | 2,946 | -15 | -0.5% |
| Transport, postal and warehousing | 6,645 | 6,230 | -415 | -6.2% |
| Information media and telecommunications | 1,998 | 2,117 | 119 | 6.0% |
| Financial and insurance services | 9,432 | 9,945 | 513 | 5.4% |
| Rental, hiring and real estate services | 3,903 | 4,120 | 217 | 5.6% |
| Professional, scientific and technical services | 5,278 | 4,398 | -880 | -16.7% |
| Administrative and support services | 742 | 624 | -118 | -15.9% |
| Public administration and safety | 2,531 | 2,762 | 231 | 9.1% |
| Education and training | 1,924 | 2,003 | 79 | 4.1% |
| Health care and social assistance | 2,965 | 3,618 | 653 | 22.0% |
| Arts and recreation services | 602 | 632 | 30 | 5.0% |
| Other services | 2,132 | 2,404 | 272 | 12.8% |
| **Total all industries** | **269,794** | **258,012** | **-11,782** | **-4.4%** |

69 In overall terms, as submitted by the Minister, the GOS plus GMI fell by 4.4%. A significant contribution to this overall fall was the 10.4% reduction in the mining industry, given its dominance of the overall GOS plus GMI performance. This latter point was picked up by the CCIWA which contended that the Western Australian economy is very largely impacted by the health of the mining sector, which contributes approximately 40% Gross Value Added to the overall State economy: (see CCIWA submissions at [62] and Figure 2). Due to this, the CCIWA submitted that the strength of the Western Australian economy is closely linked to the commodities cycle, given the State is a major exporter of iron ore and liquid natural gas.

70 From the GOS plus GMI, agriculture, forestry and fishing had a robust performance, having increased by 23.2%, followed by health care and social assistance, up by 22%. This follows a strong performance by the healthcare and social assistance sector for 2024, which increased by 12.2%: ***2025 State Wage Case*** at [87]-[88]. The retail trades fell by 0.9%, as did accommodation and food services, by 0.5%. This, however, is in contrast to the significant lift in full-time employment for the retail trades sector which, as noted above, was one of the leading performers for 2025 to February 2026.

71 A factor given significant prominence by the CCIWA in its submissions is the impact of the Middle East conflict on both business confidence and cost increases for small businesses. Increased cost pressures as a result of the conflict was also given

emphasis by the WALGA in its submissions on the impact of geopolitical events, especially as reflected in the Local Government Cost Index, and the limited capacity of Local Governments generally to respond to significant increases in its cost base.

72 The CCIWA submitted that its March 2026 business confidence survey has reflected a sharp fall of 14%. Of the respondents to the survey, some 40% are small firms (see CCIWA submissions at [63]-[65] and CCIWA (2026), *CCIWA Business Confidence Survey: March quarter 2026*). Mortgage interest cost increases are also weighing heavily on small businesses according to the CCIWA, in the same way they are impacting on households. This was referred to by the RBA in its *September 2024 Financial Stability Review,* to the effect that rising interest rates tend to have a larger impact on smaller businesses, a point acknowledged by the Minister in her submissions in reply.

73 A more specific indicator was a survey of members of the CCIWA dealing with the effect of the conflict on business operations. The CCIWA contended that about one half of respondents to the survey were impacted by fuel shortages, with fuel, freight and logistics costs increasing substantially (see CCIWA submissions at [64]-[65] and CCIWA (2026), *CCIWA Snap Survey on the Gulf Crisis March 2026*). Some of the responses to the survey were included in the CCIWA written submissions at [68] and they are set out as follows:

68.1. From a small country employer: "Freight costs have increased by 50%. Most of our goods are freighted from Perth so this is adding pressure on the cost of goods we have already quoted on. We travel throughout the south west to quote as well as install our products, again rising fuel costs add to our costs. We can pass this onto our customers but already we are seeing a drop in our conversion rates due to us raising our prices but also in customers not prioritising buying from us as they are struggling to pay for necessities."

68.2. From a family-owned mechanic workshop: "Between the cost of living going up again, rates increasing & now the cost of fuel going through the roof, our small mechanical repair business faces the very real prospect of going under."

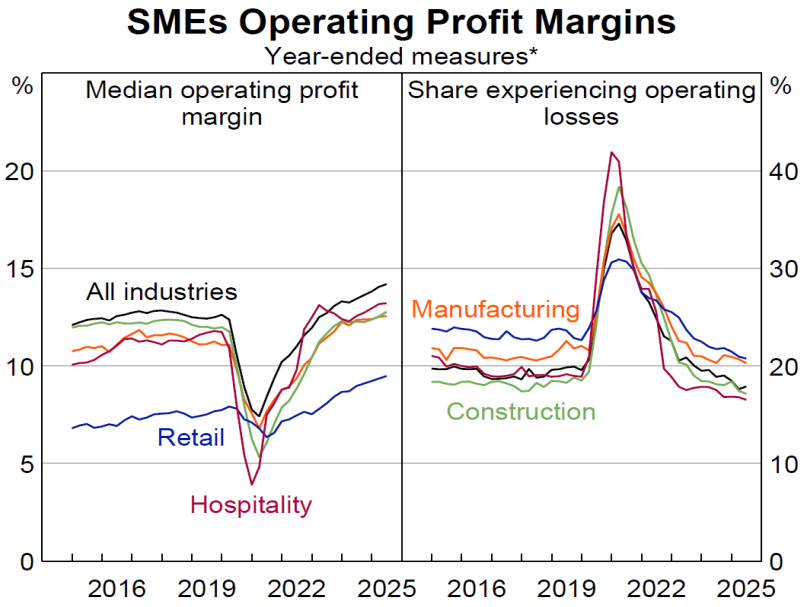
68.3. From a small childcare centre based in metropolitan Perth: "as a childcare centre, our families are starting to reduce days due to increase in costs, fuel is limited and prices are on the rise."

74 As with the WACOSS and UnionsWA case studies, these CCIWA survey reports provide the Commission with useful insight into the current assessment by businesses of their operating conditions.

75 Additionally, the CCIWA referred to cost increases also reflected in the PPI, in particular those impacting on the industry sectors of accommodation and food services and construction. Whilst we accept that small firms are facing cost pressures, especially in the current circumstances, business assistance measures announced in the recent Commonwealth Budget, as noted by UnionsWA in its submissions in reply, will provide some assistance.

76 As noted earlier, elevated small business insolvencies also remain a concern to the CCIWA, as reflected in the recent *RBA March 2026 Financial Stability Review* (section 2.2 Businesses). Whilst small and medium enterprise profit margins remain overall consistent with pre-pandemic levels, the CCIWA noted this is prior to the outbreak of the Middle East crisis, and the impact that it is having on business operating costs. In noting this concern, in the *RBA March 2026 Financial Stability Review*, the observation was made at p 28 that insolvencies have stabilised in the course of the last year, and have returned to long run average rates. The review did note however, that insolvency rates in industry sectors such as hospitality and construction remain elevated. This includes personal insolvency of owners of businesses in these sectors.

77 Overall business profitability was a matter taken up in the UnionsWA submissions. UnionsWA referred to the *RBA March 2026 Financial Stability Review* and its conclusion that for the period to the June quarter 2025, 'most firms had been able to slightly improve their operating margins, despite strong input cost growth over recent years. Whilst the data set is from small companies, rather than unincorporated businesses, as an indicator overall, small and medium enterprise operating profit margins are reflected in the following graph from the *RBA Financial Stability Review* as follows:



78 Additionally, UnionsWA referred to the level of business entries and exits in Western Australia for the period 2024-25. It contended that this shows a net increase to 10,877 new businesses compared to 8,707 for the year prior. This places Western Australia as having the highest level of new business entries of any other State or Territory (UnionsWA submissions at [3.17]-[3.18] and *ABS, Accounts of Australian Business, including Entries and Exits (26 August 2025)*.

79 Whilst on an aggregate basis, and in light of the overall strength of the Western Australian economy discussed above, it can be concluded that employers as a whole have the capacity to bear the cost of any increase in the SMW and minimum award wages arising from our decision, the impact of the Middle East conflict is a factor for the Commission to take into account. Elevated fuel costs affecting the transport of goods and services and cost increases in other petroleum based products are weighing on businesses and Local Government employers. The uncertainty of the duration of this situation is a complicating factor.

***Decisions of other industrial courts and tribunals – s 50A(3)(f)***

80 The Commission is required to take into account decisions of other industrial courts and tribunals when making a SWO. The decision of the Fair Work Commission in the ***Annual Wage Review 2026*** was delivered on 2 June 2026: ***Annual Wage Review 2026*** [2026] FWC 3500. In its decision, the Fair Work Commission increased modern award rates of pay by 4.75%.

81 Additionally, the 4.75% increase in modern award rates of pay was subject to a structural adjustment in modern award classification rates of pay to phase out the C13 classification rate to make the C12 classification rate the lowest classification rate in modern awards. The Fair Work Commission decided to do this in three stages. The first, to be implemented in this year's decision, increases the C13 classification rate by one third of the difference between it and the C12 classification rate, (a 1.2% compound increase) with the C14 classification rate to be increased by the same percentage amount as the increase in the C13 classification rate, to maintain its relativity.

82 As a consequence, the National Minimum Wage has increased to $1004.90 per week. This increase maintains the alignment between the NMW and the C13 modern award classification rate, as determined by the Fair Work Commission in its ***Annual Wage Review 2022-23*** [2023] FWCFB 3500. This results in the lowest modern award rate of $1004.90 per week for ongoing employment (the C13 classification rate) and the lowest entry level rate of pay for employment of no longer than six months (the C14 classification rate) of $978.10 per week. The Fair Work Commission indicated that the second and third stages of such a realignment, will be subject to consideration by the Expert Panels in subsequent Annual Wage Reviews.

83 In accordance with the Commission's usual practice, the SWO proceedings were re-listed to give the parties an opportunity to make submissions on the Fair Work Commission's decision.

84 The Minister submitted that the decision of the Fair Work Commission placed emphasis on the maintenance of the real value of wage rates in modern awards in light of the living standards of the low paid and their capacity to meet their needs. This led to a 4.75% increase in all modern award minimum rates of pay and additionally, the increase of a compounded 1.2% to the C13 classification level as a part of an incremental phasing out of the C13 rate and its replacement by the C12 classification rate.

85 The Minister noted the Fair Work Commission's consideration of the impact of the Middle East conflict and the uncertainty created for the national economy, at least in the near term. The Minister emphasised the consideration by the Fair Work Commission of the impact of the Middle East conflict as a moderating factor in its decision to increase wages. Whilst noting that the national economic performance during 2025 was solid, capacity constraints in the second half of 2025 has led to an uptick in inflation beyond the RBA target band of 2% to 3%.

86 Overall, the Minister, following the ***Annual Wage Review 2026*** decision, continues to support increases in the SMW and award rates of pay in these proceedings, that takes into account increases in the cost of living for those who are award reliant minimum wage employees, meets the need of the low paid and is sustainable for employers. The Minister submitted that the Commission should take into account the Fair Work Commission's decision as a part of ensuring that employees in this jurisdiction are afforded fair minimum rates of pay. A further consideration in the Minister's submission, is the overall strength of the Western Australian economy, with it remaining stronger overall than the national economy. This is reinforced on the Minister's submissions, by the *ABS National Accounts* published on 3 June 2026.

87 On behalf of the CCIWA, it was contended that the Commission in Court Session should, despite the Fair Work Commission decision, maintain a cautious approach, and an increase in minimum wages of 3.25% remains appropriate. In particular, the CCIWA pointed to the headwinds in the national economy identified by the Fair Work Commission, in particular inflation, not only caused by the Middle East conflict, but more sustained inflation evident in the economy prior to the outbreak of the conflict. In this respect, the CCIWA noted the Fair Work Commission's observations as to the uncertain and weakened economic outlook, and emphasised the need to be cautious regarding determinations by industrial tribunals of wage increases that may further drive inflationary pressures.

88 As small businesses are disproportionately impacted by increasing costs, the CCIWA contended that there is less capacity for small business to absorb increased wages compared to larger businesses. Additionally, the CCIWA noted that in its view, the Fair Work Commission conclusions that award wages have fallen in real terms since 2021, does not extend to State award employees based on the C10 rate, over the same time period, as set out in the CCIWA main submissions. As to the changes made by the Fair Work Commission in relation to the C13 and the C12 classification rates, the CCIWA contended that this matter is more appropriately addressed at a later time, in order that the issues may be properly examined.

89 UnionsWA maintained their reliance upon their original submissions that a 6.5% increase in award and minimum wages is necessary to ensure a real increase for the low paid. UnionsWA noted the Fair Work Commission's decision to increase the national modern award C13 classification rate of pay by a compounded 1.2%, as a part of phasing out the C13 level classification rate. To adopt such an approach in this jurisdiction, given the smaller differential between the rates of pay, a compounded increase of 1% to the C13 classification rate would be necessary to achieve the same outcome. Alternatively, UnionsWA's claim for a 6.5% increase across all minimum wages would achieve the same result.

90 As to inflation, UnionsWA noted that in determining the outcome before it, the Fair Work Commission relied upon the RBA forecast inflation projection of 4.8% for the year to June 2026. In contrast, the same projection in Western Australia is for inflation to rise to 5.5% to June 2026. Furthermore, in examining the recent CPI figures for Perth, for April 2026, it was noted that the April CPI figure was affected in part, by the temporary reduction of the fuel excise from 1 April 2026. When that expires at the end of June 2026, unless it is continued, this will contribute to inflation from that time.

91 The WALGA submitted that the Commission in Court Session should take the decision of the Fair Work Commission into account in determining an appropriate outcome. The WALGA in particular referred to the Fair Work Commission's identification of increasing inflation, a decline in business confidence and the effect on costs, of the Middle East conflict. These were said to be moderating factors in the Fair Work Commission's decision. It was contended that this Commission should also adopt a similar view. In particular, the WALGA submitted that the Commission should adopt a cautious approach in relation to cost increases on Local Government and its limited ability to absorb them.

**Conclusions**

92 The circumstances of these SWO proceedings have been complicated by the uncertainty and volatility created as a result of the Middle East conflict. Whilst, as we have concluded above, the Western Australian economy has performed strongly, rising costs, especially for fuel, have placed additional pressures on low paid employees and also on small businesses. The elevated level of inflation to April 2026 of 3.9%, is an increase from 3.7% to March 2026, and inflation is forecast to remain elevated into 2026-27, above the RBA target band of 2% to 3%. Despite these headwinds, the Western Australian labour market remains solid, and levels of business and dwelling investment, along with household consumption, have remained robust. The Western Australian economy is forecast to grow somewhat more strongly than the national economy, and wages growth is expected to be slightly higher.

93 A moderating factor in this year's consideration is the uncertainty in the economic outlook and the duration of any negative effects on the business sector, as a result of the Middle East conflict. This not only directly impacts employers through higher fuel costs, but also through second round effects through higher costs of goods and services. Business confidence has fallen substantially since the outbreak of the conflict, despite business investment remaining strong over 2025 and into the first quarter of this year.

94 It is accepted, as contended by UnionsWA in these proceedings, and as we concluded in last year's decision at [68]-[72], that in light of high inflation over 2022-2024, there have not been real, sustained increases in minimum wages over the period 2021-2024. We note that the re-alignment of the SMW with the C13 rate rather than the C14 rate in our 2024 decision, boosted the SMW relative to inflation. In 2025, the Commission awarded a substantial real wage increase by increasing the SMW and minimum award wages by 3.75% with the CPI for 2024-25 coming in at 2.8%. This had the effect of improving the position of the low paid and contributing to living standards of employees in the State industrial relations system. However, with the uptick in inflation in the second half of 2025, and the first part of this year, the benefit of our 2025 decision has been eroded.

95 There is some downside risk of a contraction in household spending if the Middle East conflict continues for longer than expected, coupled with the impact of the three interest rate rises to date, with the possibility of further interest rate increases in the latter part of this year. If this eventuates, then industries such as accommodation and food services, which are sensitive to decreases in discretionary spending, may be negatively impacted. Whilst some indicators of the overall performance of the accommodation and food services sector and the retail sector, such as GOS plus GMI for 2025 have shown some softening, others, such as employment growth, especially in the retail trades, point in the opposite direction, as noted earlier.

96 In terms of the contentions of the parties, the CCIWA's submission that the SMW and minimum award wages should be increased by 3.25%, would have the effect in the current climate, of a reduction in real wages for low paid employees. Given the current elevated level of inflation, the level of the WPI reflecting wages growth in the community generally, along with the uncertain prospects laying ahead, such an outcome would not be in line with our statutory obligation to take into account meeting the needs of the low paid and the need to contribute to improving living standards.

97 The position adopted by UnionsWA, of a flat increase of $61.95 per week in the SMW, and a 6.5% increase in minimum award wages, would be an outcome well in excess of wage movements generally in the community, as reflected in the WPI, the current CPI rate for Perth as at April 2026, and the forecast CPI rate for 2025-26, based upon the material before us. Whilst we appreciate the concerns expressed by UnionsWA in relation to the need to provide an outcome leading to real wages growth in a high cost of living environment, we must also be mindful of the impact of our decision on the small business sector, which is also facing cost pressures. This is especially so in the current volatile environment. We must balance these competing contentions. This is recognised by the Minister in her main submissions and submissions in reply, and those she made in response to the ***Annual Wage Review 2026*** decision.

98 In all of the circumstances, and taking into account the requirements of s 50A(3) of the *Act*, and balancing the interests of both employees and employers, we have decided the increase in the SMW, and minimum awards rate of pay will be 4.75%. The SMW will increase to $998.30 per week from 1 July 2026.

99 As to the decision of the Fair Work Commission in relation to the partial realignment of the NMW between the C13 and C12 modern award classification rates, the Commission does not have the ability to examine this issue in the depth that is required, given the time constraints imposed by the *Act* in these SWO proceedings. The Commission will, however, undertake a review of the circumstances applying to the relationship between the C13 and the C12 classification rates under State awards in the near term, as we did with the re-alignment of the SMW from the C14 classification rate to the C13 classification rate in the ***2024 State Wage Case*** [2024] WAIRC 00293; (2024) 104 WAIG 731. Consideration will also need to be given to relativities within relevant awards, as foreshadowed in our 2024 decision. The Commission will need to examine the best means by which these issues can be progressed, and we will revert to the s 50 parties in due course for this purpose.

**Employees with a disability**

100 Sections 50A(1)(a)(iii), (1A) and (1B) of the *Act*, require a rate to be set the same as that in s 285(2)(c) of the *FW Act*, for employees with a disability who have been assessed as having a reduced productive capacity under the SWS. Accordingly, the minute of proposed order arising from these proceedings will specify this rate, as will awards that prescribe a rate for an employee that contains a rate of pay specified for the purposes of the SWS.

**Statement of principles**

101 No party raised any issues in relation to the operation of the Commission's *Statement of Principles – July 2025* [2025] WAIRC 00365; (2025) 105 WAIG 1184.

**2026 WAIRC 00400**

**2026 STATE WAGE ORDER PURSUANT TO SECTION 50A OF THE ACT**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | COMMISSION'S OWN MOTION |
| | **APPLICANT** |
| | **-v-** |
| | (NOT APPLICABLE) |
| | **RESPONDENT** |
| **CORAM** | COMMISSION IN COURT SESSION |
| | CHIEF COMMISSIONER S J KENNER |
| | SENIOR COMMISSIONER R COSENTINO |
| | COMMISSIONER T B WALKINGTON |
| | COMMISSIONER C TSANG |
| **DATE** | WEDNESDAY, 17 JUNE 2026 |
| **FILE NO.** | CICS 1 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00400 |

**Result** 2026 State Wage order issued

**Representation**

Mr B Entrekin and with him Ms D Arntzen on behalf of the Hon. Minister for Industrial Relations

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

Ms R Hendon and with her Mr G Hansen on behalf of UnionsWA

Ms R Newbury Freeman on behalf of the Western Australian Council of Social Service Inc

Mr M Smith and with him Ms J Love on behalf of the Western Australian Local Government Association

*General Order*

THE COMMISSION IN COURT SESSION in accordance with section 50A(1) of the *Industrial Relations Act 1979* hereby makes the following General Order to be known as the 2026 State Wage order and thereby orders as follows:

1. THAT the 2026 State Wage order takes effect on 1 July 2026.
2. THAT the General Order which issued in matter No. CICS 1 of 2025 ([2025] WAIRC 00365; (2025) 105 WAIG 1184) is to be of no force and effect on and from the beginning of the first pay period commencing on or after 1 July 2026.
3. THAT the minimum weekly rate of pay applicable under section 12 of the *Minimum Conditions of Employment Act 1993* to an employee who has reached 21 years of age and who is not an apprentice shall be $998.30 per week from the beginning of the first pay period commencing on or after 1 July 2026.
4. THAT the minimum amount payable for each week worked applicable under section 17(2) of the *Minimum Conditions of Employment Act 1993* to an employee shall not be less than $113 per week.

Apprentices

5. THAT the minimum weekly rate of pay applicable under section 14 of the *Minimum Conditions of Employment Act 1993* to an apprentice whose training contract specifies they are undertaking an apprenticeship ("apprentice") shall be:
   (a) In relation to that class of apprentice to whom an award or a relevant order applies where an employer-employee agreement is in force, the minimum weekly rate of pay shall be the rate of pay that applies to that class of apprentice under the award where the award applies or the relevant order where an employer-employee agreement is in force.
   (b) In relation to that class of apprentice to whom an award does not apply and to whom there is no relevant order to apply if an employer-employee agreement is in force or is subsequently entered into, the minimum weekly rate of pay shall be the rate of pay determined by reference to

apprentices' rates of pay in the Manufacturing, Maintenance and Metal Trades Award which operate from the beginning of the first pay period commencing on or after 1 July 2026:

| | *Total Rate Per Week* |
|---|---|
| | 1 July 2026 |
| *Four Year Term* | |
| First year | $464.20 |
| Second year | $607.90 |
| Third year | $828.90 |
| Fourth year | $972.60 |
| *Three and a Half Year Term* | |
| First six months | $464.20 |
| Next year | $607.90 |
| Next year | $828.90 |
| Final year | $972.60 |
| *Three Year Term* | |
| First year | $607.90 |
| Second year | $828.90 |
| Third year | $972.60 |
| *Two Year Term* | |
| First year | $607.90 |
| Second year | $828.90 |

6. THAT the minimum weekly rate of pay applicable under section 14 of the *Minimum Conditions of Employment Act 1993* to an apprentice who has reached 21 years of age shall be $828.90 per week from the beginning of the first pay period commencing on or after 1 July 2026.

Trainees

7. THAT the minimum weekly rate of pay applicable under section 14 of the *Minimum Conditions of Employment Act 1993* to an apprentice whose training contract specifies they are undertaking a traineeship ("trainee") shall be:

(a) In relation to that class of trainee to whom an award applies or a relevant order applies where an employer-employee agreement is in force, the minimum weekly rate of pay shall be the rate of pay that applies to that class of trainee under the award where an award applies or the relevant order where an employer-employee agreement is in force.

(b) In relation to that class of trainee to whom an award does not apply and to whom there is no relevant order to apply if an employer-employee agreement is in force or is subsequently entered into, the minimum weekly rate of pay at the relevant Industry/Skill Level as determined by reference to Attachment A hereunder, shall be the rate of pay based on the Manufacturing, Maintenance and Metal Trades Award contained in Table 1 as follows:

Table 1

The following rates of pay apply from the beginning of the first pay period commencing on or after 1 July 2026:

| **Industry/Skill Level A** | | | |
|---|---|---|---|
| **School Leaver** | **Year 10 $** | **Year 11 $** | **Year 12 $** |
| | 338.00 | 402.00 | 493.00 |
| Plus 1 year out of school | 402.00 | 493.00 | 571.00 |
| Plus 2 years | 493.00 | 571.00 | 670.00 |
| Plus 3 years | 571.00 | 670.00 | 765.00 |
| Plus 4 years | 670.00 | 765.00 | |
| Plus 5 years or more | 765.00 | | |
| **Industry/Skill Level B** | | | |
| **School Leaver** | **Year 10 $** | **Year 11 $** | **Year 12 $** |
| | 338.00 | 402.00 | 484.00 |
| Plus 1 year out of school | 402.00 | 484.00 | 552.00 |
| Plus 2 years | 484.00 | 552.00 | 649.00 |
| Plus 3 years | 552.00 | 649.00 | 742.00 |
| Plus 4 years | 649.00 | 742.00 | |
| Plus 5 years or more | 742.00 | | |
| **Industry/Skill Level C** | | | |
| **School Leaver** | **Year 10 $** | **Year 11 $** | **Year 12 $** |
| | 338.00 | 402.00 | 482.00 |
| Plus 1 year out of school | 402.00 | 482.00 | 542.00 |
| Plus 2 years | 482.00 | 542.00 | 609.00 |
| Plus 3 years | 542.00 | 609.00 | 683.00 |

| | | | |
|---|---|---|---|
| Plus 4 years | 609.00 | 683.00 | |
| Plus 5 years or more | 683.00 | | |

(c) For any class of trainees under this subclause undertaking a traineeship that is not provided for in Attachment A, the minimum weekly rate of pay shall be the rate of pay in Industry/Skill Level C.

Australian Qualifications Framework (AQF)

(d) For a trainee in this class undertaking an AQF Level 4 traineeship the minimum weekly rate of pay shall be the weekly wage rate for an AQF Level 3 trainee at Industry/Skill Levels A, B or C as applicable with the addition of 3.8% of that wage rate.

Part-time and School-based Trainees

(e) This provision shall apply to trainees who undertake a traineeship on a part-time basis, or as a school-based trainee, by working less than full-time hours and by undertaking the approved training at the same or lesser training time than a full-time trainee.

(i) School-based trainees will receive the following minimum hourly rates of pay, as for school leavers:

| | Current year of schooling | |
|---|---|---|
| Industry/Skill level | Year 11 or lower | Year 12 |
| A | $10.58 | $12.97 |
| B | $10.58 | $12.74 |
| C | $10.58 | $12.68 |

(ii) The minimum hourly rate of pay for part-time trainees shall be calculated by taking the full-time rates expressed in clause 7(b) Table 1 and dividing that rate by 38 in accordance with section 10 of the *Minimum Conditions of Employment Act 1993*.

(iii) As per the requirement under 60E(1)(a)(iv) of the *Vocational Education and Training Act 1996*, any time spent by a trainee in performing his or her obligations under the training contract and in being trained and assessed under the contract, whether at the employer's workplace or not, is to be taken for all purposes (including the payment of remuneration) to be time spent working for the employer.

(f) In relation to that class of trainee to whom an award applies or a relevant order applies where an employer-employee agreement is in force and who has reached 21 years of age, the minimum weekly rate of pay is the rate of pay that applies to that class of trainee determined by reference to the highest weekly wage rate for the skill level relevant to the traineeship under the award or under the relevant order where an employer-employee agreement is in force.

(g) In relation to that class of trainee to whom an award does not apply and to whom there is no relevant order to apply if an employer-employee agreement is in force or is entered into and who has reached 21 years of age, the minimum weekly rate of pay shall be that determined by reference to the highest weekly wage rate for the skill level relevant to the traineeship set out below:

from the beginning of the first pay period commencing on or after 1 July 2026:

| | |
|---|---|
| Industry/Skill Level A | $765.00 per week |
| Industry/Skill Level B | $742.00 per week |
| Industry/Skill Level C | $683.00 per week |

8. THAT

(a) The rates of pay applicable to trainees under the following awards be adjusted in accordance with the formula outlined in sub-clause (b):

(i) AWU National Training Wage (Agriculture) Award 1994;
(ii) Farm Employees' Award;
(iii) Food Industry (Food Manufacturing or Processing) Award;
(iv) Furniture Trades Industry Award;
(v) Licensed Establishments (Retail and Wholesale) Award 1979;
(vi) Manufacturing, Maintenance and Metal Trades Award;
(vii) Motor Vehicle (Service Station, Sales Establishments, Rust Prevention and Paint Protection) Industry Award No. 29 of 1980;
(vii) Printing Award;
(viii) Sheet Metal Workers' Award No. 10 of 1973;
(ix) Soft Furnishings Award; and
(x) Vehicle Builders' Award 1971.

(b) Trainee rates be adjusted as follows:

(i) (aa) If the arbitrated safety net adjustment ordered is a flat dollar increase, Industry/Skill Level A, B and C top rates are increased by 80% of the arbitrated safety net adjustment. Each result is then rounded to the nearest dollar.

(bb) If the arbitrated safety net adjustment ordered is a percentage increase, Industry/Skill Level A, B and C top rates are increased by that percentage arbitrated safety net adjustment. Each result is then rounded to the nearest dollar.

(ii) All other Industry/Skill Level A, B and C rates are increased by a percentage of the unrounded result of the first step. Each result is then rounded to the nearest dollar.

(iii) However, if an existing rate in Industry/Skill Level B or C is the same as an existing rate in Industry/Skill Level A or B, the rates are adjusted in line with whichever is the highest rate

applicable, Industry/Skill Level A, B or C, in order to maintain consistency.

Award Rates of Pay

9. THAT weekly rates of pay for adults in the awards of the Commission, other than those set out in Schedule 1, be increased by 4.75% from the beginning of the first pay period commencing on or after 1 July 2026 and that this increase shall be subject to absorption in the same terms as previous State Wage orders.

Where wages are expressed as an hourly, fortnightly, annualised or other amount, that rate shall be increased by a relevant amount having regard to the 4.75% increase in pay for full-time employees pursuant to the relevant award.

10. THAT where an award rate other than an adult rate is determined by reference to a percentage of the adult rate or some other formula, those award rates shall be varied on the basis of that percentage or formula to take into account the application of this State Wage order increase of 4.75% to the adult award wage from the beginning of the first pay period commencing on or after 1 July 2026.

11. THAT increases under previous State Wage orders prior to 1 July 2026, except those resulting from enterprise agreements, are not to be used to offset the State Wage order increases herein.

12. THAT from the beginning of the first pay period commencing on or after 1 July 2026 all awards which contain a minimum adult award wage clause or provision be varied by deleting the text of that provision and replacing it with the following:

MINIMUM ADULT AWARD WAGE

No employee aged 21 or more shall be paid less than the minimum adult award wage unless otherwise provided by this clause.

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 $998.30 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 $998.30 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 2026.

The minimum adult award wage is deemed to include all State Wage order adjustments from State Wage Case decisions.

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.

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*.

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*.

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.

Subject to this clause the minimum adult award wage shall –

Apply to all work in ordinary hours.

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.

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 2026 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.

Adult Apprentices

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 $828.90 per week.

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 $828.90 by 38 and multiply by the number of ordinary hours prescribed for a full-time apprentice under the award.

The minimum adult apprentice wage is payable from the beginning of the first pay period commencing on or after 1 July 2026.

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.

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.

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.

13. THAT, where an award of the Commission incorporates the Supported Wage System (as defined in section 7(1) of the *Industrial Relations Act 1979*), the minimum amount payable for each week worked applicable under section 17(2) of the *Minimum Conditions of Employment Act 1993* to an instrument-governed employee with a disability (as defined in section 50A(1AA) of the *Industrial Relations Act 1979* and section 15 of the *Minimum Conditions of Employment Act 1993*) shall not be less than $113 per week.

Statement of Principles

14. THAT the Statement of Principles – July 2025 under the General Order in matter No. CICS 1 of 2025 ([2025] WAIRC 00365; (2025) 105 WAIG 1184) be replaced by the Statement of Principles – July 2026 in Schedule 2.

Publication

15. THAT the Registrar publish in the Western Australian Industrial Gazette and on the Commission's website the clauses of the awards varied by Clauses 9 – 13 of this State Wage order incorporating the amendments made.

(Sgd.) S J KENNER,
Chief Commissioner,
[L.S.] By the Commission in Court Session.

ATTACHMENT A

**INDUSTRY / SKILL LIST (2026)**

| **SKILL LEVEL A** | | |
|---|---|---|
| **CODE*** | **TRAINING PACKAGE TITLE** | **AQF CERTIFICATE LEVEL** |
| MEA | Aeroskills | II, IV, Diploma |
| AVI | Aviation | II, III |
| BSB | Business Services | II, III, IV, Diploma |
| PMA | Chemical, Hydrocarbons and Refining | II, III, IV, Diploma |
| CHC | Community Services | II, III, IV, Diploma |
| CPC | Construction, Plumbing and Services | II, III, IV |
| CSC | Correctional Services | III, IV |
| UEP | Electricity Supply Industry - Generation Sector | II, III, IV, Diploma |
| UEE | Electrotechnology | II, III, IV, Diploma, Advanced Diploma |
| FNS | Financial Services | II, III, IV, Diploma |
| SFL | Floristry | III, IV |
| FBP | Food, Beverage and Pharmaceutical | III, IV |
| UEG | Gas Industry | III, IV, Diploma |
| SHB | Hairdressing and Beauty Services | III, IV, Diploma |
| ICT | Information and Communications Technology | II, III, IV, Diploma, Advanced Diploma |
| MSL | Laboratory Operations | II, III, IV, Diploma, Advanced Diploma |
| LGA | Local Government (other than Operational Works Certificate II) | II, III, Diploma |
| MSA07 | Manufacturing | Diploma, Advanced Diploma |
| MSM | Manufacturing | II, III |
| MAR | Maritime | II, III, Diploma |
| MEM | Manufacturing and Engineering (Technical) | II, III, IV, Diploma, Advanced Diploma |
| NWP | National Water | III, IV |
| PMB | Plastics, Rubber and Cablemaking | III, IV |
| PSP | Public Sector | II, III, IV, Diploma |
| RII | Resources and Infrastructure Industry | II, III, IV, Diploma, Advanced Diploma |
| SIR | Retail Services | III, IV |
| MSS | Sustainability | III, IV, Diploma |
| MST | Textiles, Clothing and Footwear | III, IV |

| **SKILL LEVEL A** | | |
|---|---|---|
| **CODE*** | **TRAINING PACKAGE TITLE** | **AQF CERTIFICATE LEVEL** |
| SIT | Tourism, Travel and Hospitality | II, III, IV, Diploma |
| UET | Transmission, Distribution and Rail Sector | II, III, Advanced Diploma |
| TLI | Transport and Logistics | III, IV, Diploma |
| **SKILL LEVEL B** | | |
| **CODE*** | **TRAINING PACKAGE** | **AQF CERTIFICATE LEVEL** |
| ACM | Animal Care and Management | II, III, IV |
| AMP | Australian Meat Processing | II, III, IV, Diploma |
| AUR | Automotive Retail, Service and Repair | II, III, IV, Diploma |
| AUM | Automotive Manufacturing | III |
| CUA | Creative Arts and Culture | II, III, IV |
| SFL | Floristry | II |
| FBP | Food, Beverage and Pharmaceutical | II |
| FWP | Forest and Wood Products | II, III, IV |
| MSF | Furnishing | II, III, IV |
| SHB | Hairdressing and Beauty Services | II |
| HLT | Health | II, III, IV, Diploma |
| MEM | Manufacturing and Engineering (Production) | II, III, Diploma, Advanced Diploma |
| NWP | National Water | II |
| PMB | Plastics, Rubber and Cablemaking | II |
| ICP | Printing and Graphic Arts | II, III |
| CPP | Property Services | II, III, IV, Diploma |
| RII | Resources and Infrastructure Industry | I |
| SIR | Retail Services | II |
| SIS | Sport, Fitness and Recreation | II, III, IV |
| MST | Textiles, Clothing and Footwear | II |
| TLI | Transport and Logistics | II |
| **SKILL LEVEL C** | | |
| **CODE*** | **TRAINING PACKAGE** | **AQF CERTIFICATE LEVEL** |
| AHC | Agriculture, Horticulture and Conservation and Land Management | II, III, IV |
| SIF | Funeral Services | III, IV |
| RGR | Racing and Breeding | II, III, IV |
| SFI | Seafood Industry | II, III, IV |

*The training package code is the first three letters of the qualification (the National Qualification Code) as recorded in the Apprenticeship/Traineeship Training Contract, for example **SHB**30121 Certificate III in Beauty Services. This list has been updated to align with the Classification of Prescribed Vocational Education and Training Qualifications (dated 14 April 2026).

Schedule 1

LIST OF AWARDS NOT FULLY SUBJECT TO THIS GENERAL ORDER

**Awards that do not contain wages and are therefore excluded:**

Alcoa Long Service Leave Conditions Award, 1980
Catering Employees' (North West Shelf Project) Long Service Leave Conditions Award 1991
Catering Workers' (North Rankin A) Long Service Leave Conditions Award No. A 40 of 1987
The Contract Cleaning (F.M.W.U.) Superannuation Award 1988
Health Care Industry (Private) Superannuation Award 1987
Miscellaneous Government Conditions and Allowances Award No A 4 of 1992
Miscellaneous Workers' (Security Industry) Superannuation Award, 1987
Ngala Superannuation Award, 1989
Public Service Allowances (Fisheries and Wildlife Officers) Award 1990

Supported Employees Industry Award
The Swan Brewery Company Limited (Superannuation) Award 1987
West Australian Petroleum Pty Ltd Long Service Leave conditions Award 1991
Woodside Offshore Petroleum Pty. Ltd. Long Service Leave Conditions Award, 1984
Worsley Alumina Pty. Ltd. Long Service Leave Conditions Award, 1984

**Awards that have certain parts quarantined:**

Clerks (Racing Industry - Betting) Award 1978 **– Schedule C**
The Iron Ore Production & Processing (Locomotive Drivers) Award 2006 – **Clause 2.1**
Iron Ore Production & Processing (Locomotive Drivers Rio Tinto Railway) Award 2006 **– Clause 6**
Shearing Contractors' Award of Western Australia 2003 **– Clause 4.2**

**Awards containing transitional provisions to which the General Order does not apply:**

Clothing Trades Award 1973 **– Clause 18**
Department of Education (School Support Officers) Award **– Schedule I**
Egg Processing Award 1978 **– Appendix 4**
Electorate Officers Award 1986 **– Schedule G**
Family Day Care Co-Ordinators' and Assistants' Award, 1985 **– Schedule C**
Government Officers (Insurance Commission of Western Australia) Award, 1987 **– Schedule D**
Government Officers (Social Trainers) Award 1988 **– Schedule K**
Government Officers Salaries, Allowances and Conditions Award 1989 **– Schedule P**
Juvenile Custodial Officers' Award **– Schedule G**
Public Service Award 1992 **– Schedule M**

Schedule 2

## STATEMENT OF PRINCIPLES – July 2026

**1. Application of the Statement of Principles**

1.1 This Statement of Principles is to be applied and followed when the Commission is making or varying an award or making an order in relation to the exercise of the jurisdiction under the Act to set the wages, salaries, allowances or other remuneration of employees or the prices to be paid in respect of their employment.

1.2 In these Principles, wages, salaries, allowances or other remuneration of employees or the prices to be paid in respect of employment will be referred to as "wages".

1.3 In making a decision in respect of any application brought under these Principles, the primary consideration in all cases will be the merits of the application in accordance with equity, good conscience and the substantial merits of the case pursuant to section 26(1)(a) of the Act.

1.4 These Principles do not have application to Enterprise Orders made under section 42I of the Act or to applications made under section 40A of the Act to incorporate industrial agreement provisions into an award by consent.

1.5 This Statement of Principles will operate until reviewed under section 50A(1)(d) of the Act.

**2. (deleted)**

**3. When an Award may be varied or another Award made without the claim being regarded as above or below Minimum Award Conditions**

3.1 In the following circumstances wages in an award, may on application, be varied or another award made without the application being regarded as a claim for wages above or below the minimum award conditions:

3.1.1 To include previous State Wage Case increases in accordance with Principle 4.1.
3.1.2 To adjust wages for total minimum rates pursuant to Principle 4.2.
3.1.3 **(deleted)**
3.1.4 To adjust allowances and service increments in accordance with Principle 6.
3.1.5 To adjust wages pursuant to work value changes in accordance with Principle 7.
3.1.6 To make or vary an award or to make an order to provide for equal remuneration for men and women for work of equal or comparable value in accordance with Principle 8.
3.1.7 To vary an award to include the minimum wage in accordance with Principle 9.

**4. Previous State Wage Case Increases**

4.1 Wage increases available under previous State Wage Case decisions such as structural efficiency adjustments, and previous arbitrated safety net adjustments will, on application, still be accessible.

4.2 Minimum rates adjustments may also be progressed under this Principle.

**5. (deleted)**

5.1 **(deleted)**

**6. Adjustment of Allowances and Service Increments**

6.1 Existing allowances which constitute a reimbursement of expenses incurred may be adjusted from time to time where appropriate to reflect the relevant change in the level of those expenses.

6.2 **(deleted)**

6.3 Allowances which relate to work or conditions which have not changed and service increments may be adjusted as a result of the State Wage order, or, if an award contains another method for adjusting such allowances, in accordance with that other method.

6.4 In the absence of any other prescribed method, where the Commission has determined that it is appropriate to adjust existing allowances relating to work or conditions which have not changed or service increments for a monetary safety net increase, the method of adjustment shall be as follows: divide the monetary safety net increase by the rate of pay for the key classification in the award which applied immediately prior to the safety net increase, and multiply the resulting figure by 100.

6.5 Existing allowances for which an increase is claimed because of changes in the work or conditions will be

determined in accordance with the relevant provisions of Principle 7.

6.6 New allowances to compensate for the reimbursement of expenses incurred may be awarded where appropriate having regard to those expenses.

6.7 Where changes in the work have occurred or new work and conditions have arisen, the introduction of a new allowance, if any, is to be determined in accordance with the most appropriate Principles.

6.8 New service increments may only be awarded to compensate for changes in the work and/or conditions and will be determined in accordance with the relevant parts of Principle 7.

**(Principle 7 Work Value Changes is deleted and replaced with the following)**

**7. Work Value Changes**

7.1 Applications may be made for a wage increase under this Principle based on changes in work value.

7.2 Changes in work value may arise from significant changes in the nature of the work, skill and responsibility required or the conditions under which work is done. Changes in work by themselves may not lead to a change in wage rates.

7.3 The Commission may make a determination varying wage rates under this Principle if it is satisfied that the variation is necessary and justified by significant changes in work value related to any of the following:

7.3.1 the nature of the work;

7.3.2 the level of skill or responsibility involved in doing the work;

7.3.3 the conditions under which the work is done.

7.4 If the Commission varies the wage rates in an award on work value grounds, it must ensure that any new or changed rates of pay are confined to those employees whose work value has changed. Work value increases should not be flowed on to other awards to maintain relativities between awards or particular classifications in awards.

7.5 Where new or changed work justifying a higher rate is performed only from time to time by persons covered by a particular classification or where it is performed only by some of the persons covered by the classification, the new or changed work should be compensated by a special allowance which is payable only when the new or changed work is performed by an employee and not by increasing the rate for all employees working at that classification.

7.6 The time from which work value changes in an award should be measured is any date that on the evidence before the Commission is relevant and appropriate in the circumstances.

7.7 Care should be exercised to ensure that changes which were or should have been taken into account in any previous work value adjustments or in a structural efficiency exercise are not included in any work evaluation under this provision.

7.8 A past work value assessment which was not free of gender-based undervaluation would not constitute a proper assessment of work value.

7.9 Where the conditions specified in 7.2 and 7.3 are met, an assessment will have to be made as to how that alteration should be measured in money terms. The assessment should normally be based on the previous work and the nature and extent of the change in work.

7.10 The expression “the conditions under which the work is done” relates to the environment in which the work is done.

7.11 The Commission should guard against contrived classifications and over classification of jobs.

7.12 Any changes in the nature of the work, skill and responsibility required or the conditions under which the work is done, taken into account in assessing an increase under any other provision of these Principles, shall not be taken into account in any claim under this provision.

**8. Equal Remuneration for Men and Women for Work of Equal or Comparable Value**

8.1 Applications may be made under this Principle to implement equal remuneration for work of equal or comparable value.

8.2 The Commission must apply this principle when it:

8.2.1 hears applications to implement equal remuneration for work of equal or comparable value, including applications for an equal remuneration order made under Part II Division 3B of the *Industrial Relations Act 1979*;

8.2.2 arbitrates industrial disputes about equal remuneration; or

8.2.3 values or assesses the work of employees in ‘female dominated’ industries, occupations or callings.

8.3 In assessing the value of work, the Commission is required to examine the nature of work, skill and responsibility required and the conditions under which work is performed (which has the same meaning as it does for Principle 7 Work Value Changes) as well as other relevant work features.

8.4 The assessment is to be transparent, objective, non-discriminatory and free of assumptions based on gender.

8.5 The purpose of the assessment is to ascertain the current value of work. Changes in work value do not have to be demonstrated.

8.6 Prior work value assessments and/or the prior setting of pay rates for the work cannot be assumed to have been free of assumptions based on gender.

8.7 In assessing the value of the work, the Commission is to have regard to the history of the award including whether there have been any assessments of the work in the past and whether remuneration has been affected by the gender of the workers. Relevant matters to consider may include:

8.7.1 whether there has been some characterisation or labelling of the work as “female”;

8.7.2 whether there has been some underrating or undervaluation of the skills of female employees;

8.7.3 whether remuneration in an industry or occupation has been undervalued as a result of occupational segregation or segmentation;

8.7.4 whether there are features of the industry or occupation that may have influenced the value of the work such as the degree of occupational segregation, the disproportionate representation of women in part time or casual work, low rates of unionisation, limited representation by unions in workplaces covered by formal or informal work agreements, the incidence of consent awards or agreements and other considerations of that type; or

8.7.5 whether sufficient and adequate weight has been placed on the typical work performed and the skills and responsibilities exercised by women as well as the conditions under which the work is performed and other relevant work features.

8.8 Gender discrimination is not required to be shown to establish undervaluation of work, therefore there is no requirement for a male comparator.

8.9 Comparisons within and between occupations and industries are not required in order to establish undervaluation of work on a gender basis.

8.10 Such comparisons may be used for guidance in ascertaining appropriate remuneration. The proper basis for comparison is not restricted to similar work.

8.11 Where the Commission determines that there is not equal remuneration for work of equal or comparable value, the Commission is to make an assessment as to how equal remuneration is to be achieved. Outcomes may include but are not limited to the reclassification of work, the establishment of new career paths, changes to incremental scales, wage increases, the establishment of new allowances and the reassessment of definitions and descriptions of work to properly reflect the value of the work.

8.12 There will be no wage leapfrogging as a result of any changes in wage relativities arising from any adjustments under this principle.

8.13 The Commission will guard against contrived classifications and over classification of jobs.

8.14 The Commission may determine in each case whether any increases in wages will be absorbed into over award payments.

8.15 Equal remuneration will not be achieved by reducing current wage rates or other conditions of employment.

8.16 The Commission may decide to phase in any decision arising from this principle. Any affected employer may apply to have any decision phased in. The merit of such application will be determined in the light of the particular circumstances of each case and any related material will be rigorously tested.

8.17 Claims brought under this principle will be considered on a case by case basis.

**9. <u>Minimum Adult Award Wage</u>**

9.1 A minimum adult award wage clause will be required to be inserted in all new awards, including interim awards.

9.2 The minimum adult award wage clause will be as follows –

MINIMUM ADULT AWARD WAGE

No employee aged 21 or more shall be paid less than the minimum adult award wage unless otherwise provided by this clause.

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 $998.30 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 $998.30 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 2026.

The minimum adult award wage is deemed to include all State Wage order adjustments from State Wage Case decisions.

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.

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*.

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*.

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.

Subject to this clause the minimum adult award wage shall –

Apply to all work in ordinary hours.

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.

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 2026 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.

Adult Apprentices

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 $828.90 per week.

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 $828.90 by 38 and multiply by the number of ordinary hours prescribed for a full-time apprentice under the award.

The minimum adult apprentice wage is payable from the beginning of the first pay period commencing on or after 1 July 2026.

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.

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.

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.

**10. Making or Varying an Award or issuing an Order which has the effect of varying wages or conditions above or below the award minimum conditions**

10.1 An application or reference for a variation in wages which is not made by an applicant under any other Principle and which is a matter or concerns a matter to vary wages above or below the award minimum conditions may be made under this Principle.

10.2 Claims may be brought under this Principle irrespective of whether a claim could have been brought under any other Principle.

10.3 **(deleted)**

**11. (deleted)**

**12. Economic Incapacity**

12.1 Any respondent or group of respondents to an award may apply to reduce and/or postpone the variation which results in an increase in labour costs under this Statement of Principles on the ground of very serious or extreme economic adversity. The merit of such application shall be determined in the light of the particular circumstances of each case and any related material shall be rigorously tested. The impact on employment at the enterprise level of the increase in labour costs is a significant factor to be taken into account in assessing the merit of an application.

**13. (deleted)**

**2026 WAIRC 00399**

**RESCIND LOCATION ALLOWANCE GENERAL ORDER 2 OF 2025 AND ISSUE A NEW GENERAL ORDER**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | COMMISSION'S OWN MOTION |
| | **APPLICANT** |
| | **-v-** |
| | (NOT APPLICABLE) |
| | **RESPONDENT** |
| **CORAM** | COMMISSION IN COURT SESSION |
| | SENIOR COMMISSIONER R COSENTINO |
| | COMMISSIONER T EMMANUEL |
| | COMMISSIONER T B WALKINGTON |
| **DATE** | WEDNESDAY, 17 JUNE 2026 |
| **FILE NO.** | CICS 2 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00399 |

**Result** 2026 Location Allowance General Order issued

**Representation**

Mr J Jongeling and with him Mr B Entrekin on behalf of the Honourable Minister for Industrial Relations

Mr G Hansen on behalf of UnionsWA

Ms S Lyon on behalf of the Western Australian Local Government Association

*General Order*

HAVING heard from Mr J Jongeling and with him Mr B Entrekin on behalf of the Honourable Minister for Industrial Relations, Mr G Hansen on behalf of UnionsWA, and Ms S Lyon on behalf of the Western Australian Local Government Association, the Commission in Court Session, pursuant to the powers conferred on it by the *Industrial Relations Act 1979* (WA), hereby orders –

1. THAT each award cited in Schedule A of this General Order be varied by substituting the table within the first subclause of the location allowance provisions contained in each such award with the table at Schedule B of this General Order;
2. THAT each such variation shall have effect from the beginning of the first pay period to commence on or after the first day of July 2026; and
3. THAT this General Order replace the General Order in Matter No. CICS 2 of 2025 ([2025] WAIRC 00363) which hereby shall be rescinded.

(Sgd.) R COSENTINO,
Senior Commissioner,
[L.S.] By the Commission in Court Session.

SCHEDULE A

| **Title of Award or Order** | **Clause No.** |
|---|---|
| Aerated Water and Cordial Manufacturing Industry Award 1975 | 31 |
| Aged and Disabled Persons Hostels Award, 1987 | 28 |
| Animal Welfare Industry Award | 14 |
| Artworkers Award | 20 |
| The Australian Workers Union Road Maintenance, Marking and Traffic Management Award 2002 | 5.14 |
| Baking Industry Award | 18 |
| Building Trades and Labourers (Construction) Award | Appendix A |
| Building Trades and Labourers (General) Award | 24 |
| Child Care (Out of School Care - Playleaders) Award | 10 |
| Children's Services (Private) Award 2006 | 12 |
| Cleaners and Caretakers Award, 1969 | 3.6 |
| Cleaners and Caretakers (Car and Caravan Parks) Award 1975 | 22 |
| Clerks' (Accountants' Employees) Award 1984 | 23 |
| Clerks (Commercial, Social and Professional Services) Award No. 14 of 1972 | 27 |
| Clerks' (Customs and/or Shipping and/or Forwarding Agents) Award | 30 |
| Clerks' (Hotels, Motels and Clubs) Award 1979 | 22 |
| Clerks (Timber) Award | 31 |
| Clerks (Unions and Labor Movement) Award 2004 | 37 |
| Clerks' (Wholesale & Retail Establishments) Award No. 38 of 1947 | 28 |
| Clothing Trades Award 1973 | 22 |
| Contract Cleaners Award, 1986 | 24 |
| Contract Cleaners' (Ministry of Education) Award, 1990 | 21 |
| Crisis Assistance, Supported Housing Industry - Western Australian Interim Award 2011 | 17.6 |
| Dental Technicians' and Attendant/Receptionists' Award, 1982 | 27 |
| The Draughtsmen's, Tracers', Planners' and Technical Officers' Award 1979 | 32 |
| Dry Cleaning and Laundry Award 1979 | 22 |
| Earth Moving and Construction Award | 25 |
| Electrical Contracting Industry Award R 22 of 1978 | 22 |
| Electrical Trades (Security Alarms Industry) Award 1980 | 19 |
| Electronics Industry Award No. A 22 of 1985 | 24 |
| Engine Drivers' (Building and Steel Construction) Award No. 20 of 1973 | 25 |
| Engine Drivers' (General) Award | 20 |
| Enrolled Nurses and Nursing Assistants (Private) Award No. 8 of 1978 | 23 |

| | |
|---|---|
| Fast Food Outlets Award 1990 | 35 |
| Foremen (Building Trades) Award 1991 | 15 |
| Funeral Directors' Assistants' Award No. 18 of 1962 | 33 |
| Furniture Trades Industry Award | 46 |
| Golf Link and Bowling Green Employees' Award, 1993 | 28 |
| Hair and Beauty Industry (WA) Award | 25 |
| The Horticultural (Nursery) Industry Award No. 30 of 1980 | 6 |
| Independent Schools Administrative and Technical Officers Award 1993 | 22 |
| Independent Schools (Boarding House) Supervisory Staff Award | 22 |
| Independent Schools Psychologists and Social Workers Award | 21 |
| Independent Schools' Teachers' Award 1976 | 18 |
| Industrial Spraypainting and Sandblasting Award | 19 |
| Landscape Gardening Industry Award | 18 |
| Licensed Establishments (Retail and Wholesale) Award 1979 | 31 |
| Local Government Officers' (Western Australia) Award 2021 | 17.2 |
| Meat Industry (State) Award, 2003 | 21(1) |
| Manufacturing, Maintenance and Metal Trades Award | 5.6 |
| Motel, Hostel, Service Flats and Boarding House Workers' Award | 42 |
| Motor Vehicle (Service Station, Sales Establishments, Rust Prevention and Paint Protection), Industry Award No. 29 of 1980 | 17 |
| Municipal Employees (Western Australia) Award 2021 | 19.6 |
| Nurses' (Day Care Centres) Award | 22 |
| Nurses (Dentists Surgeries) Award 1977 | 23 |
| Nurses (Doctors Surgeries) Award 1977 | 22 |
| Nurses' (Independent Schools) Award | 20 |
| Nurses' (Private Hospitals) Award | 30 |
| Pest Control Industry Award | 14 |
| Photographic Industry Award, 1980 | 29 |
| Private Hospital Employees' Award, 1972 | 40 |
| Quarry Workers' Award, 1969 | 19 |
| Radio and Television Employees' Award | 23 |
| Restaurant, Café and Catering (WA) Award | 33 |
| Retail Pharmacists' Award, 2004 | 5.2 |
| The Rock Lobster and Prawn Processing Award 1978 | 26 |
| School Employees (Independent Day & Boarding Schools) Award, 1980 | 31 |
| Security Officers' Award | 20(3) |
| The Shop and Warehouse (Wholesale and Retail Establishments) State Award | 31.6 |
| Social and Community Services (Western Australia) Interim Award 2011 | 18.10 |
| Teachers' Aides' (Independent Schools) Award 1988 | 17 |
| Transport Workers (General) Award No. 10 of 1961 | 5.13 |
| Transport Workers' (North West Passenger Vehicles) Award, 1988 | 28 |
| Transport Workers' (Passenger Vehicles) Award No. R47 of 1978 | 24 |
| The Western Australian Surveying (Private Practice) Industry Award, 2003 | 8.4 |

SCHEDULE B

**Replacement Table of Weekly Location Allowances**

**The table below replaces the table of weekly allowances in each clause listed in Schedule A**

| TOWN | PER WEEK |
|---|---|
| Agnew | $26.60 |
| Argyle | $72.10 |

| | |
|---|---|
| Balladonia | $28.00 |
| Barrow Island | $46.90 |
| Boulder | $11.50 |
| Broome | $43.10 |
| Bullfinch | $12.40 |
| Carnarvon | $22.10 |
| Cockatoo Island | $47.10 |
| Coolgardie | $11.50 |
| Coral Bay | $39.60 |
| Cue | $27.50 |
| Dampier | $37.60 |
| Denham | $22.10 |
| Derby | $44.70 |
| Esperance | $7.60 |
| Eucla | $30.00 |
| Exmouth | $39.60 |
| Fitzroy Crossing | $54.50 |
| Halls Creek | $63.30 |
| Kalbarri | $9.70 |
| Kalgoorlie | $11.50 |
| Kambalda | $11.50 |
| Karratha | $45.40 |
| Koolan Island | $47.10 |
| Koolyanobbing | $12.40 |
| Kununurra | $72.10 |
| Laverton | $27.40 |
| Learmonth | $39.60 |
| Leinster | $26.60 |
| Leonora | $27.40 |
| Madura | $29.00 |
| Marble Bar | $70.30 |
| Meekatharra | $23.70 |
| Mount Magnet | $29.90 |
| Mundrabilla | $29.50 |
| Newman | $25.60 |
| Norseman | $24.00 |
| Nullagine | $70.20 |
| Onslow | $46.90 |
| Pannawonica | $34.90 |
| Paraburdoo | $34.80 |
| Point Samson | $43.20 |
| Port Hedland | $37.40 |
| Ravensthorpe | $14.00 |
| Roebourne | $52.30 |
| Sandstone | $26.60 |
| Shark Bay | $22.10 |
| Southern Cross | $12.40 |

| | |
|---|---|
| Telfer | $64.40 |
| Teutonic Bore | $26.60 |
| Tom Price | $34.80 |
| Whim Creek | $44.90 |
| Wickham | $43.20 |
| Wiluna | $26.90 |
| Wyndham | $67.30 |

# FULL BENCH—Appeals against decision of Commission—

**2026 WAIRC 00408**

**APPEAL AGAINST A DECISION OF THE COMMISSION IN MATTER NUMBER U 9 OF 2024 GIVEN ON 15 AUGUST 2025**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**FULL BENCH**

| | | |
|---|---|---|
| **CITATION** | : | 2026 WAIRC 00408 |
| **CORAM** | : | CHIEF COMMISSIONER S J KENNER |
| | | COMMISSIONER T EMMANUEL |
| | | COMMISSIONER T KUCERA |
| **HEARD** | : | FRIDAY, 20 MARCH 2026 |
| **DELIVERED** | : | FRIDAY, 19 JUNE 2026 |
| **FILE NO.** | : | FBA 7 OF 2025 |
| **BETWEEN** | : | MYANDRAN SUBRAYAN |
| | | Appellant |
| | | AND |
| | | LYNWOOD CHRISTIAN CHURCH |
| | | Respondent |

| | | |
|---|---|---|
| **ON APPEAL FROM:** | | |
| **Jurisdiction** | : | **WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION** |
| **Coram** | : | **COMMISSIONER T B WALKINGTON** |
| **Citation** | : | **[2025] WAIRC 00705** |
| **File No** | : | **U 9 OF 2024** |

| | | |
|---|---|---|
| Catchwords | : | Industrial Law (WA) – Appeal against the decision of the Commission – Unfair dismissal application referred out of time – Application dismissed under s 27(1)(a) without consideration whether referral should be accepted out of time under s 29(3) – Jurisdiction always at large – No jurisdiction to make order – Appeal upheld and order quashed |
| Legislation | : | *Industrial Relations Act 1979* (WA) s 23(1), s 27, s 27(1), s 27(1)(a), s 27(1)(n), s 28, s 29A, s 29(1)(c), s 29(2), s 29(2)(a), s 29(3), s 49, s 49(3), s 49(5)(b), s 55(3), s 72A(3), s 84(5) |
| Result | : | Appeal upheld |
| **Representation:** | | |
| Counsel: | | |
| Appellant | : | In person |
| Respondent | : | Mr L Davies SC of counsel |
| Solicitors: | | |
| Respondent | : | HHG Legal Group |

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

Brailey v Mendex Pty Ltd (1992) 73 WAIG 26

Coal and Allied Operations Pty Ltd v Australian Industrial Relations Commission (2000) 203 CLR 194 at 227; Re Patterson; Ex parte Taylor [2001] HCA 51

Cousins v YMCA of Perth [2001] WASCA 374; (2001) 111 IR 286

E.J. Richardson v Cecil Bros Pty Ltd (1994) 74 WAIG 1017

Malik v Director General Department of Education [2004] WASCA 51; (2004) 84 WAIG 683

Manescu v Baker Hughes Australia Pty Ltd [2022] WASCA 94; (2022) 102 WAIG 1113

Minister for Immigration and Multicultural Affairs v Bhardwaj [2002] HCA 11; (2002) 209 CLR 497

Myandran Subrayan v Lynwood Christian Church Inc [2025] WAIRC 00704; (2025) 105 WAIG 2256

SGS Australia Pty Ltd v Trevor Taylor (1993) 73 WAIG 1760

Swan Television and Radio Broadcasters Ltd Trading As STW Channel 9 Perth v Satie [1999] WASCA 79

*Reasons for Decision*

**THE FULL BENCH:**

**Brief background**

1 The appellant, Mr Subrayan, was employed by the respondent, the Lynwood Christian Church Inc, as a pastor and was so employed between 2 July 2023 and 3 December 2023, on which date his employment was terminated by the respondent. The appellant commenced a claim in the Commission, alleging that his dismissal was harsh, oppressive, and unfair. The appellant's unfair dismissal application was filed on 29 January 2024, some 57 days after the date of the termination of his employment. As a consequence, the application was filed some 29 days outside of the 28 day time limit as specified in s 29(2) of the *Industrial Relations Act 1979* (WA).

2 The Commissioner at first instance initially made programming directions to determine whether, under s 29(3) of the *Act*, the Commission should accept the referral of the appellant's claim out of time. Under s 29(3), the Commission has the power to accept an application out of time, if it considers that it would be unfair not to do so.

3 However, it appears that in the course of preparing for the hearing to determine whether the appellant's application should be accepted out of time, the respondent became aware of material that it asserted, evidenced a breach by the appellant of his contract of employment with the respondent, by the appellant engaging in secondary employment as a part time mathematics teacher with the Western Australian Department of Education. As a result of this, the respondent then made an application on 4 November 2024, for an order that the appellant's substantive unfair dismissal claim be dismissed under s 27(1)(a) of the *Act*.

4 The basis for the application was an assertion by the respondent, that in engaging in part time employment as a mathematics teacher with the Department of Education, the appellant breached his contract of employment. There was also an allegation made by the respondent that as a result of these matters, the appellant had engaged in misleading conduct before the Commission, and this was a further basis for an order dismissing the application under s 27(1)(a) of the *Act*.

5 As a result of these matters, the learned Commissioner vacated the hearing listed to determine whether the appellant's application should be accepted out of time under s 29(3), and instead, the hearing listed for 12 November 2024, was to hear the respondent's application for an order of dismissal under s 27(1)(a) of the *Act*. The learned Commissioner upheld the respondent's application to dismiss and orders were made accordingly: ***Myandran Subrayan v Lynwood Christian Church Inc*** [2025] WAIRC 00704; (2025) 105 WAIG 2256.

**The appeal**

6 The appellant has appealed against the order dismissing his unfair dismissal claim. The order dismissing the claim was deposited in the office of the Registrar on 15 August 2025. The notice of appeal was filed on 2 September 2025 therefore the appeal was instituted within 21 days of the date of the decision against which the appeal is brought: s 49(3) *Act*. The grounds of appeal are lengthy, and are as follows (original emphasis):

1. **FAILURE TO HEAR APPELLANT'S SUBSTANTIVE COMPLAINT** – The initial Form 2 unfair dismissal application has never been heard on its merits. The first hearing earlier in 2024 dealt only on why the matter should be heard as it was lodged after the 21-day period. The 12 November 2024 hearing was limited to determining the issue of "secondary employment," which was raised by the Respondent on 4/11/24 as per the Form 1A submitted. The secondary employment was not even known to the Respondent at the time of dismissal. The Commissioner erred in dismissing the matter under s 27(1)(a) without ever considering the substantive complaint, thereby denying the appellant natural justice.

2. **ERROR IN TREATMENT OF SECONDARY EMPLOYMENT** – The Commissioner wrongly concluded that the Appellant breached Clause 4.3 of his employment contract by not disclosing casual relief teaching. Under Australian employment law, secondary work is not unlawful unless it conflicts with the primary role. The evidence showed that the Appellant met his pastoral obligations, and the Respondent was unaware of this secondary work when they terminated the Appellant. It could not therefore have formed part of their decision to terminate the Appellant as they only lodged an objection based on the Appellant's secondary employment on 4/11/24 as per Form 1A. The secondary work was lawful, flexible, unknown to the Respondent at dismissal, and never raised during his tenure. Reliance on the "clean hands" principle was misplaced.

3. **MISINTERPRETATION OF "NORMAL WORKING HOURS"** – The Commissioner assumed that "normal hours" meant weekday, daytime hours, contrary to the wording of the Appellant's employment contract and accepted pastoral practice, which included evenings and weekends. The evidence demonstrated the Appellant fulfilled his 38-hours work week requirement through flexible scheduling, which was not properly considered.

4. **FAILURE TO APPLY THE CHURCH CONSTITUTION** – The Church Constitution required a Special Members' Meeting and 75% vote before termination of the Appellant. This was not followed by the Respondent. The Commissioner erred in law by disregarding these obligations and incorrectly applying the

"clean hands" principle to excuse the Respondent's breach of their constitution. The incident of the Appellant's removal was aggressive, improper, and not done according to the church constitution and his employment contract. The termination was also followed by slander to a subsequent employer, compounding the unfairness towards the Appellant's ability to get gainful employment.

**Relevant Clauses from Appellant's Employment Contract that were Ignored:**

1. **Clause 3 – Preamble (p.4)**

- States that the agreement must be applied **in conjunction with the Church constitution** and that any difficulties "will be brought to the attention of both parties as quickly as possible with a view to its effective resolution."

**Ignored**: Appellant was dismissed without reference to the Church constitution or attempts at resolution.

2. **Clause 4.2 – Hours of Work (p.4)**

- Normal work hours = **38 hours per week**, with flexibility for weekends and evenings.
- Pastor entitled to a **day off during the week** in place of Sundays.

**Ignored**: The Commissioner focused heavily on the Appellant's secondary work of casual relief teaching, but the contract already provided flexibility, which meant relief teaching outside your 38 hours was not a breach.

3. **Clause 5 – Performance Criteria & Review (p.5–6)**

- **Initial performance review required after 6 months.**
- Church must give **30 days' notice in writing** that a review is to be conducted.

**Ignored**: Appellant was terminated before the probation review process was ever conducted.

4. **Clause 9 – Termination Provisions (p.8–9)**

- **9.2 (Pastor's Default)**: Termination only allowed for *serious misconduct* or repeated failure to meet performance criteria, with written notice and a correction period of 3 months.

**Ignored**: Appellant was dismissed without written notice, without a correction process, and without misconduct being proven.

- **9.4 (Termination by Pastor)**: Pastor may resign with 4 weeks' notice; **probation allows the Pastor** to terminate after 6 months with 2 months' notice.

**Ignored**: Probation was written **for Appellant to exit**, not for the Church to bypass its obligations.

- **9.5 (Termination by Church: Any Reason):**
  - Requires **three months' written notice**;
  - Must comply with the **Church constitution** (which requires a 75% member vote);
  - Must pay severance of at least one-third of annual salary.

**Ignored**: None of these provisions were followed in Appellant's dismissal.

5. **Schedule, Item 9 – Termination Payments (p.14)**

- If terminated **other than under 9.1, 9.2 or probation**, the Church must pay **not less than one third of Appellant's salary plus accrued benefits**.

**Ignored**: Appellant was dismissed without severance pay.

**Summary for Appellant's Appeal**

The Commissioner's dismissal overlooked:

- The requirement to follow the **Church constitution** (75% vote, 3 months' notice).
- The requirement of a **6-month review process** before termination.
- The contract's allowance for **flexible working hours** (making the Appelleant's[sic] secondary work of relief teaching irrelevant).
- The **severance payment clause** in Schedule Item 9.
- That **probation rights applied to Appellant as Pastor**, not as a tool for the Church to terminate arbitrarily.

5. **FAILURE TO RECOGNISE WHISTLEBLOWER PROTECTIONS** – The Appellant raised governance, and accountability concerns in good faith. Shortly afterwards he was dismissed. The Commission failed to consider whether Appellant's dismissal constituted adverse action in reprisal for protected disclosures, which is contrary to law and public policy.

6. **FINDINGS CONTRARY TO EVIDENCE** – The Commissioner made speculative findings, such as assuming lengthy travel times and that Appellant's secondary work necessarily prevented church duties, without evidentiary basis. These findings were against the weight of the evidence Appellant provided, which showed he continued to fulfil his pastoral duties.

7. **BREACH OF CHURCH CONSTITUTION** - The Commissioner erred in failing to give proper consideration to the express provisions of Appellant's employment contract and the Lynwood Christian Church Constitution.

**RELEVANT CLAUSES IGNORED FROM THE CHURCH CONSTITUTION:**

**a) Clause 9.5 – Termination by Church (p.22–23)**

*"The Church, for any reason, may terminate the Pastor's employment in terms of this document, but only after*

*due observance of the provisions of the Church constitution in this regard, by giving to the Pastor three months' notice in writing … termination must be approved by a 75% majority vote of the members at a properly constituted Special Members' Meeting."*

**Ignored**: Appellant was terminated without:

- A **Special Members' Meeting**,
- A **75% majority member vote**,
- The required **three months' written notice**, or
- Payment in lieu of notice.

**b) Clause 8.3 – Governance & Oversight (p.18)**

Provides that the **Pastor is accountable to the Elders** and that any issues of performance or conduct must be addressed in that governance framework.

**Ignored**: The Elders bypassed constitutional processes, removing Appellant without accountability to the broader membership or due process.

**c) Clause 7.6 – Special Members' Meetings (p.15–16)**

Requires that a Special Members' Meeting be convened with notice to all members for significant decisions affecting the leadership or direction of the Church.

**Ignored**: No such meeting was convened prior to Appellant's dismissal.

**d) Clause 5.3 – Member Rights (p.9–10)**

Members have the right to participate in all major decisions concerning the Church, including voting on matters of leadership.

**Ignored**: Members were excluded from the termination decision, violating both their rights and your protections.

**e) Clause 2 – Statement of Purpose (p.3)**

Affirms that the Church will operate with integrity, accountability, and in accordance with its Constitution.

**Ignored**: The process used to remove Appellant was inconsistent with the stated values and governing rules of the Church.

**Summary**: The Church Constitution, which is expressly incorporated into Appellant's **employment contract**, required:

- **A 75% member vote at a Special Members' Meeting** for termination,
- **Three months' written notice** (or pay in lieu),
- **Proper governance oversight through the Elders**,
- **Respect for member rights** in decision-making.

None of these protections were observed. The Commissioner's decision to dismiss your application therefore:

- **Ignored binding constitutional provisions**,
- **Failed to consider the Church's own governance requirements**, and
- **Effectively validated an unlawful and procedurally invalid termination**.

**Ground 8 – Denial of Witness Testimony and Procedural Fairness**

- The Appellant had two witnesses available and willing to testify in support of his case. Their evidence was highly relevant to his pastoral hours, duties, and the circumstances of his unlawful dismissal.
- The Commissioner did not allow Appellant's witnesses to give evidence.
- This denial of testimony was a breach of procedural fairness and deprived the Appellant of the opportunity to have crucial evidence considered.
- Further, the incident in which the Appellant was removed from Lynwood Christian Church was carried out in an aggressive and violent manner, wholly inconsistent with fair treatment of an employee and pastor.
- Following the Appellant's removal, the Respondent continued to slander and malign him, including by contacting a subsequent employer to damage his reputation and employment prospects.
- These actions demonstrate ongoing victimisation and underscore the lack of procedural and substantive fairness afforded to the Appellant throughout.

**Ground 9 – Rebuttal of Respondent's Application to Dismiss (Form 1A – "Unclean Hands")**

The Commissioner erred by accepting the Respondent's arguments based on "unclean hands," which were irrelevant, legally flawed, and factually misplaced.

1. **Misuse of the Doctrine:** "Unclean hands" is an equitable doctrine and not part of the statutory test for unfair dismissal under the Industrial Relations Act 1979 (WA). Its application wrongly distracted from the core issue — whether the Appellant's dismissal was harsh, unjust, or unreasonable.
2. **Secondary Employment Not Known at Dismissal:** The Respondent only became aware of the Appellant's relief teaching after dismissal, via a summons to the Department of Education in October 2024. An employer cannot retroactively invent grounds for dismissal discovered nearly a year after termination.

3. **Contractual Terms Mischaracterised:** Clauses 4.2 and 4.3 did not prohibit secondary employment, provided pastoral duties were fulfilled. Casual relief teaching did not interfere with church responsibilities, and the Respondent produced no evidence of impaired performance.
4. **No Concealment or Dishonesty:** The Appellant was under no obligation to proactively disclose lawful, unrelated casual employment, and there was no pecuniary conflict with his pastoral duties.
5. **Failure of Due Process:** Even if concerns existed, the Respondent failed to investigate, notify, or allow the Appellant to respond. The Respondent also failed to follow binding termination procedures in both the Contract and Constitution.
6. **Unclean Hands in This Application:** The Respondent alleged dishonesty in failing to disclose secondary work to the Commission. However, a Form 2 unfair dismissal application does not require disclosure of unrelated concurrent employment. The burden of proof rests on the Respondent, not the Appellant.
7. **Public Interest:** The Respondent's claim that the matter was "out of time" was already addressed in a separate procedural hearing. The public interest lies in ensuring employers are held accountable for unlawful dismissals and not allowed to misuse equitable doctrines to avoid scrutiny.
8. **Procedural Unfairness and Witness Exclusion:** The Appellant's witnesses were not permitted to testify, denying him the opportunity to present crucial evidence of his compliance with contractual obligations.

Therefore, the Respondent's reliance on "unclean hands" was irrelevant in law, factually unfounded, and procedurally unfair. It represented a diversion from the real issue — the lawfulness of the dismissal. By relying on this argument, the Commission failed to properly apply the law and failed to ensure justice.

For these 9-reasons, the Appellant submits that the decision was in error in law and fact, was contrary to the evidence before the Commission, and resulted in a denial of procedural fairness and therefore appeals the decision to dismiss.

7 The appeal was listed for hearing by the Full Bench on 20 March 2026. The appellant initially requested the appeal be listed on a later date, as he informed the Chief Commissioner's Associate that he had to travel to South Africa to attend to an unwell relative. This was strongly opposed by the respondent. It maintained that there had been extensive delays in the hearing of the matter at first instance, due to the appellant's conduct. The appellant then indicated he would be available to appear at the hearing on 20 March 2026 and the listing remained. The appellant failed to appear at the hearing, provided no explanation prior to the hearing for his absence, and why the appeal ought not proceed to be heard and determined. In light of the appellant's failure to appear, the Full Bench determined that the appeal would be decided on the papers and no objection to this course was raised by the respondent.

**Preliminary issue**

8 The Full Bench raised a preliminary jurisdictional issue at the outset of the hearing. That issue is whether the Commission had the jurisdiction and power to determine an application to dismiss a claim of harsh, oppressive or unfair dismissal under s 27(1) of the *Act*, in circumstances where the application is filed out of time for the purposes of s 29(2)(a) of the *Act*, and no order has been made by the Commission to accept the referral out of time under s 29(3).

9 In order for the parties to be heard in relation to this issue, directions were made requiring the appellant and the respondent to file written submissions on this question within 14 days of the date of hearing. Both parties filed written submissions on 2 April 2026. The appellant's written submissions did not address the jurisdiction issue raised by the Full Bench.

10 On behalf of the respondent, in referring to ss 27 and 49 of the *Act*, it was submitted that it would be open to the Full Bench on the appeal to determine the out of time application itself, in the event that it found the Commissioner at first instance erred in not deciding to accept the application out of time, before determining the s 27(1)(a) application. It was submitted that this was consistent with the Full Bench's ability to rectify any oversight or omission in the conduct of a matter before the Commissioner at first instance. The respondent contended that this would be a preferable course to remitting the matter back to the Commissioner at first instance, due to time and expense of such a course.

11 Furthermore, if the Full Bench did decide to remit the matter back to the Commissioner at first instance, or decides that an extension of time should not be granted to the appellant to bring his unfair dismissal claim, then the appellant ought to be responsible for costs. It was submitted that the appellant's conduct has demonstrated a continuous disregard for the procedural requirements of the Commission, causing undue delay and costs in the determination of the proceedings.

12 The respondent referred to the appellant's conduct in relation to his assertion that the Full Bench hearing be adjourned, as the appellant was going to be in South Africa, when he was not; failing to appear before the Full Bench on the hearing of his appeal; and failing to comply with procedural directions at first instance which had the effect of significantly elongating the period of time that the matter was before the Commission at first instance. It was contended by the respondent that the appellant's conduct undermined the effective administration of justice and imposed unnecessary costs on the respondent. In this respect, the respondent referred to s 84(5) of the *Act*, and the decision of the Industrial Appeal Court in ***Manescu v Baker Hughes Australia Pty Ltd*** [2022] WASCA 94; (2022) 102 WAIG 1113 at [68].

**Consideration**

13 There can be no waiver of jurisdiction, and nor can parties consent to jurisdiction that a court or tribunal does not have. It is also the case that a matter of jurisdiction can be raised at any stage of a matter, even on appeal, regardless of whether the issue was taken at first instance: ***SGS Australia Pty Ltd v Trevor Taylor*** (1993) 73 WAIG 1760 at 1762.

14 In determining this issue, a number of provisions of the *Act* need to be considered. Section 27(1)(a) of the *Act* provides as follows:

(1) Except as otherwise provided in this Act, the Commission may, in relation to any matter before it —

> (a) at any stage of the proceedings dismiss the matter or any part of it or refrain from further hearing or determining the matter or part if it is satisfied —
>
> (i) that the matter or part is trivial; or
>
> (ii) that further proceedings are not necessary or desirable in the public interest; or
>
> (iii) that the person who referred the matter to the Commission does not have a sufficient interest in the matter; or
>
> (iv) that for any other reason the matter or part should be dismissed or the hearing of it discontinued, as the case may be;
>
> …

15 In relation to the referral of industrial matters to the Commission, s 29(1)(c) enables an employee to refer a claim alleging that the employee has been harshly, oppressively, or unfairly dismissed from the employee's employment. This provision is as follows:

> (1) An industrial matter may be referred to the Commission —
>
> …
>
> (c) in the case of a claim by an employee that the employee has been harshly, oppressively or unfairly dismissed from the employee's employment — by the employee; and
>
> …

16 There is a time limit which applies to a referral under s 29(1)(c) of the *Act*. It is provided in s 29(2)(a) which is as follows:

> (2) Subject to subsection (3) —
>
> (a) a referral under subsection (1)(c) must be made no later than 28 days after the day on which the employee's employment is terminated; and
>
> …

17 The Commission has the power to accept a referral outside of the 28 day time limit which is provided for in s 29(3) of the *Act* which states:

> (3) The Commission may accept a referral that is out of time under subsection (2) if the Commission considers that it would be unfair not to do so.

18 It is thus clear that the power to accept a referral out of time under s 29(3), is a discretionary power, which power is to be exercised in accordance with the circumstances of the particular case: ***Malik v Director General Department of Education*** [2004] WASCA 51; (2004) 84 WAIG 683.

19 The general jurisdiction of the Commission is set out in s 23(1) of the *Act*. This provides:

> (1) Subject to this Act, the Commission has cognizance of and authority to enquire into and deal with any industrial matter.

20 The Commission's power to enquire into and deal with an industrial matter under s 23(1) is, importantly, expressed as being 'Subject to this Act'.

21 Having regard to the statutory provisions set out above, it is clear that an industrial matter may only be enquired into and dealt with by the Commission, when the industrial matter is properly 'referred to the Commission'. In this case, the relevant industrial matter was the referral under s 29(1)(c) by the appellant that he had been harshly, oppressively, or unfairly dismissed by the respondent. As set out above, the ability for an employee to refer an industrial matter to the Commission that they have been unfairly dismissed under s 29(1)(c), is subject to s 29(2)(a), that the referral 'must be made no later than 28 days' after the day of an employee's dismissal.

22 This provision clearly conditions the referral of an industrial matter alleging that an employee has been unfairly dismissed. In the circumstances where a referral is made later than 28 days after an employee was dismissed, the Commission has the discretionary power, set out above, under s 29(3) of the *Act*, to 'accept a referral that is out of time'. The inclusion of the specific power to accept a referral out of time under s 29(3) of the *Act*, strongly suggests that the general power to extend any prescribed time in s 27(1)(n) of the *Act* is not intended to apply to applications alleging unfair dismissal (see generally DC Pearce, *Statutory Interpretation in Australia* (10th ed, LexisNexis Butterworths, 2023 at [4.73]). This is particularly so as the power in s 29(3) of the *Act* is subject to the express condition of fairness, unlike the general power in s 27(1)(n).

23 Given that it is the 'referral' of an industrial matter to the Commission that enlivens the Commission's jurisdiction, if an unfair dismissal application referred outside of the 28 day time limit has not been 'accepted' by the Commission under s 29(3) of the *Act*, then there is no valid 'referral' of an industrial matter before the Commission. If there is no valid referral of an industrial matter before the Commission, the Commission has no jurisdiction under s 23(1) to 'enquire into and deal with' that industrial matter. This general power to deal with industrial matters, is, as noted above, 'Subject to the *Act*'. This must include the statutory requirements under the *Act*, for a referral of an unfair dismissal claim within the time limit specified in s 29(2), or as accepted out of time in s 29(3) of the *Act*. Furthermore, the relevant 'matter' referred to in the introductory part of s 27(1) of the *Act,* must mean an 'industrial matter' before the Commission, in relation to which the various enumerated procedural powers in s 27(1) may be exercised.

24 In our view, an essential prerequisite in this case, for the Commission to have before it a matter 'referred' to the Commission, was for the learned Commissioner to decide to accept the application out of time under s 29(3) of the *Act*. The failure to take that first step meant, effectively, that the capacity for the Commission to accept the referral outside of the 28 day time limit imposed under s 29(2) of the *Act*, was not exercised. Accordingly, in the absence of the exercise of the power to accept the

referral out of time in favour of the appellant, then there was not a matter 'before the Commission' in the required sense under s 27(1), upon which the learned Commissioner could exercise powers under s 27(1)(a) of the *Act*. 'Section 27(1) does not extend the jurisdiction of the Commission but, rather, gives it powers incidental to the exercise of its established jurisdiction (see too: Robe River Iron Associates v. Federated Engine Drivers and Firemen's Union (1987) 67 WAIG 315; see too: Re Gas Employees (Victoria) Award (1948) 61 CAR 200)': ***E.J. Richardson v Cecil Bros Pty Ltd*** (1994) 74 WAIG 1017 per Fielding C at 1018.

25 Section 28 of the *Act* enables the Commission to exercise powers under s 27 of the *Act* 'after the matter has been "lodged" in the Commission…'. To 'lodge' means to 'lay (information, a compliant, etc) before a court or the like'. It is part of the process of referral and for a dispute to be referred to the Commission: ***Swan Television and Radio Broadcasters Ltd Trading As STW Channel 9 Perth v Satie*** [1999] WASCA 79 per Scott J (Anderson and Parker JJ agreeing) at [30]. It seems clear however from the terms of s 28, that this section deals with the ability of the Commission to exercise procedural powers in relation to a matter that is within its jurisdiction, despite non-compliance with procedural provisions under the *Act* to enable the matter to be heard and determined.

26 For example, s 28 would enable the Commission to list a matter for a preliminary directions hearing, or exercise another power under s 27(1), despite the required service not having been effected or a notice not having been published, to enable a matter to be listed for hearing and determination by the Commission (see for example ss 29A, 55(3) and 72A(3) of the *Act*). The general power in s 28 must be read as subject to the specific powers and requirements of ss 29(1)(c), 29(2)(a) and 29(3), in relation to unfair dismissal applications.

27 In the proceedings at first instance, there was no 'matter' before the learned Commissioner, as she did not accept the referral of the unfair dismissal application out of time. Accordingly, her decision, being made without jurisdiction, is a nullity. As was said by Gaudron and Gummow JJ in ***Minister for Immigration and Multicultural Affairs v Bhardwaj*** [2002] HCA 11; (2002) 209 CLR 497 at [51] '…A decision that involves jurisdictional error is a decision that lacks legal foundation and is properly regarded, in law, as no decision at all…' (see too ***Coal and Allied Operations Pty Ltd v Australian Industrial Relations Commission*** (2000) 203 CLR 194 at 227; ***Re Patterson; Ex parte Taylor*** [2001] HCA 51 at [189].

28 Whilst the respondent contended that under s 49(5)(b) of the *Act* it would be open for the Full Bench to vary the decision by dealing with the extension of time application itself, we do not consider that is an alternative that the Full Bench could entertain. Given our conclusion that the learned Commissioner's decision at first instance was a nullity, there is no 'decision', as a matter of law, which could be varied. A decision can only be varied if the decision is, in the first instance, validly made.

29 The order made at first instance must be quashed. This is regrettable, given the time that has elapsed since the application was filed. However, the question as to whether the appellant's unfair dismissal application ought to be accepted out of time, if it is to proceed, must be dealt with afresh. It should be dealt with by another Commissioner.

30 Finally, as noted above, the respondent referred to s 84(5) of the *Act* and sought costs against the appellant. Section 84(5) deals with appeals to the Full Bench from the Industrial Magistrates Court. It does not apply to appeals to the Full Bench from decisions of the Commission under s 49 of the *Act.* Appeals under s 49 attract the general power to award costs under s 27(1)(c) of the *Act.* The general rule is that such costs orders are only made in special and exceptional cases: ***Brailey v Mendex Pty Ltd*** (1992) 73 WAIG 26; ***Cousins v YMCA of Perth*** [2001] WASCA 374; (2001) 111 IR 286. There is no justification for such an order in relation to this appeal. Whether there is justification for such an order in relation to the conduct of the matter at first instance, will be for the Commissioner dealing with it.

31 Accordingly, the appeal must be upheld and the order made at first instance quashed.

[redacted]

**2026 WAIRC 00415**

**APPEAL AGAINST A DECISION OF THE COMMISSION IN MATTER NUMBER U 9 OF 2024 GIVEN ON 15 AUGUST 2025**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | MYANDRAN SUBRAYAN |
| | **APPELLANT** |
| | **-v-** |
| | LYNWOOD CHRISTIAN CHURCH |
| | **RESPONDENT** |
| **CORAM** | FULL BENCH |
| | CHIEF COMMISSIONER S J KENNER |
| | COMMISSIONER T EMMANUEL |
| | COMMISSIONER T KUCERA |
| **DATE** | TUESDAY, 23 JUNE 2026 |
| **FILE NO/S** | FBA 7 OF 2025 |
| **CITATION NO.** | 2026 WAIRC 00415 |

| | |
|---|---|
| **Result** | Appeal upheld |
| **Representation** | |
| **Appellant** | In person |
| **Respondent** | Mr L Davies SC of counsel |

*Order*

HAVING heard the appellant on his own behalf and Mr L Davies SC 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 –

(1) THAT the appeal be and is hereby upheld.

(2) THAT the order made by the Commission in application U 9 of 2024 on 15 August 2025 be and is hereby quashed.

By the Full Bench

(Sgd.) S J KENNER,
[L.S.] Chief Commissioner.

**2026 WAIRC 00371**

**APPEAL AGAINST A DECISION OF THE COMMISSION IN MATTER NUMBER PSACR 3 OF 2024 GIVEN ON 30 JANUARY 2026**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**FULL BENCH**

| | | |
|---|---|---|
| **CITATION** | : | 2026 WAIRC 00371 |
| **CORAM** | : | CHIEF COMMISSIONER S J KENNER<br>SENIOR COMMISSIONER R COSENTINO<br>COMMISSIONER T KUCERA |
| **HEARD** | : | ON THE PAPERS. WRITTEN SUBMISSIONS FILED ON THURSDAY, 30 APRIL 2026, TUESDAY, 5 MAY 2026 & TUESDAY, 12 MAY 2026 |
| **DELIVERED** | : | TUESDAY, 9 JUNE 2026 |
| **FILE NO.** | : | FBA 5 OF 2026 |
| **BETWEEN** | : | WESTERN AUSTRALIAN POLICE UNION OF WORKERS<br>Appellant<br>AND<br>COMMISSIONER OF POLICE, WESTERN AUSTRALIA POLICE FORCE<br>Respondent |

**ON APPEAL FROM:**

| | | |
|---|---|---|
| **Jurisdiction** | : | **WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION** |
| **Coram** | : | **PUBLIC SERVICE ARBITRATOR, COMMISSIONER T B WALKINGTON** |
| **Citation** | : | **[2026] WAIRC 00049** |
| **File No** | : | **PSACR 3 OF 2024** |

| | | |
|---|---|---|
| Catchwords | : | Industrial Law (WA) – Appeal against the decision of the Public Service Arbitrator – Extension of time to appeal – Relevant factors to consider – Full Bench not satisfied discretion to extend time should be exercised – Extension of time refused – Appeal dismissed |
| Legislation | : | *Industrial Relations Act 1979* (WA) s 44, s 44(9), s 49(3), s 49, s 27(1)(n)<br>*Police Force Regulations 1979* (WA) reg 1304(1) |
| Result | : | Application for an extension of time refused<br>Appeal dismissed |
| **Representation:** | | |
| Counsel: | | |
| Appellant | : | Ms A McNamara of counsel |

| | | |
|---|---|---|
| Respondent | : | Mr J Carroll of counsel |
| Solicitors: | | |
| Appellant | : | Slater and Gordon Lawyers |
| Respondent | : | State Solicitors' Office |

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

Arpad Security Agency Pty Ltd v The Federated Miscellaneous Workers Union of Australia, Hospital Service and Miscellaneous WA Branch [1989] 69 WAIG 1287

City of Canning v Avon Capital Estates (Australia) Ltd [2009] WASCA 120

Director General, Department of Justice v The Civil Service Association of WA (Inc.) [2025] WAIRC 00146

Doyle v The Roman Catholic Bishop of Bunbury [2022] WAIRC 00799; (2022) 102 WAIG 1533

Esther Investments Pty Ltd v Markalinga Pty Ltd [1989] WASC 174

Gallo v Dawson [1990] HCA 30; (1990) 64 ALJR 458

Jackamarra v Krakouer [1998] HCA 27; (1998) 195 CLR 519

Tu'uta Katoa v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor [2022] HCA 28; (2022) 403 ALR 604

*Reasons for Decision*

**THE FULL BENCH:**

**Brief background**

1 The West Australian Police Union of Workers sought a conference under s 44 of the *Industrial Relations Act 1979* (WA) to resolve an industrial dispute concerning its member. The industrial dispute arose in circumstances where regulation 1304(1) of the *Police Force Regulations 1979* (WA) enabled the Commissioner of Police to grant a police officer paid leave of absence in these terms:

> (1) Subject to regulations 1308(1) and 1309 and to compliance by the member with regulation 1303, the Commissioner may grant to a member in respect of the member's incapacity leave of absence with pay —
>
> (a) for up to 168 days in a calendar year; and
>
> (b) if so recommended by the Manager and subject to any terms or conditions recommended by the Manager, for a further period.

2 The appellant's member was granted and used paid sick leave from October 2022 to February 2024. The respondent then determined to cease paid leave, or not to extend the period of paid leave further, in February 2024. A medical retirement process then commenced, meaning the member was on unpaid leave between February 2024 to April 2024.

3 The appellant's position was that the cessation of the member's paid sick leave was industrially unfair, and that the respondent ought to have exercised his discretion to extend the member's paid sick leave.

4 One of the grounds on which the respondent objected to the Public Service Arbitrator granting the relief the appellant sought was that the claim made by the appellant was a contravention of the No Further Claims clause contained within the *Western Australian Police Force Industrial Agreement 2022* which was in force at the relevant time.

5 The matter did not resolve by conciliation and proceeded to a hearing under s 44(9) of the *Act*. The Arbitrator at first instance concluded that an arbitrated outcome would have the effect or consequence of modifying the basis on which the respondent may exercise its discretion to grant paid sick leave and would therefore involve the creation of rights prescribing at least some of the circumstances that the respondent must consider in granting paid sick leave. In effect, the scope of the respondent's discretion would be altered. The Arbitrator therefore concluded that an arbitrated outcome would accordingly result in a material variation to the terms of the 2022 Agreement by introducing criteria for the exercise of the discretion afforded to the respondent and accordingly would be a contravention of the No Further Claims clause.

6 Therefore, on 30 January 2026 the Arbitrator dismissed the application without further considering the substantive issues raised in the Memorandum of Matters Referred.

**The appeal to the Full Bench**

7 The appellant had 21 days to appeal from the Arbitrator's decision: s 49(3) *Act*. However, its notice of appeal was filed outside of the time prescribed.

8 The final date for lodging the notice of appeal was 20 February 2026. The notice of appeal was accepted for filing on 27 February 2026. The delay was five days.

9 The appellant and the respondent agreed that the question of whether the appellant should be granted an extension of time to appeal be determined on the papers. The Full Bench has received and considered written submissions from the appellant and the respondent including the appellant's written submissions in reply.

10 The Full Bench has power to extend time to institute an appeal under s 49 of the *Act*: s 27(1)(n) *Act*. The purpose of having this discretion is to do justice between the parties: ***Gallo v Dawson*** [1990] HCA 30; (1990) 64 ALJR 458. The appellant must show that strict compliance with the time prescribed by the *Act* would work an injustice on it: ***Gallo*** [459].

11 In ***Doyle v The Roman Catholic Bishop of Bunbury*** [2022] WAIRC 00799; (2022) 102 WAIG 1533 the Full Bench described four major but not exhaustive factors which are considered in the exercise of the discretion citing at [6] ***Esther Investments Pty Ltd v Markalinga Pty Ltd*** [1989] WASC 174 being:

> …
>
> (a) the length of the delay;
>
> (b) the reasons for the delay;
>
> (c) the prospects of success of the appeal; and
>
> (d) the extent of any prejudice to the respondent.

12 The fact that an appeal has some prospects of success is a factor which is to be taken into account, together with all other relevant factors. It is not the case that time must be extended if an appeal has some prospects of success. It may be outweighed by other factors: ***City of Canning v Avon Capital Estates (Australia) Ltd*** [2009] WASCA 120 per Wheeler JA at [17], Martin CJ agreeing.

13 The appellant needs to make out its case for the Full Bench to exercise its discretion to extend time in its favour: ***Doyle*** [8] citing ***Arpad Security Agency Pty Ltd v The Federated Miscellaneous Workers' Union of Australia, Hospital, Service and Miscellaneous WA Branch*** [1989] 69 WAIG 1287.

**Consideration**

***Length of delay***

14 The delay is not lengthy. This factor alone would not prevent an extension of time being granted.

***Reasons for delay***

15 The appellant says the reason for the delay in filing the notice of appeal was due to the appellant's mistaken assumption that the time for lodging an appeal was 28 days not 21 days. It says:

> 24. The Appellant held this mistaken belief because, since PSAC 3 of 2024 was commenced, and before the Decision was made, the *IR Act* was amended (by the *Industrial Relations Legislation Amendment Act 2024* (WA)) to abolish the PSA and repeal s 80E of the IR Act which conferred the avenue of appeal of certain matters to the PSA. This change in legislation contributed to some confusion from the Appellant. The relevant avenue of appeal of the Decision is now available to the Full Bench of the Commission pursuant to s 49 of the IR Act.
>
> 25. As such, the Appellant lacked an understanding regarding the timeframes under the new regime and mistakenly assumed the relevant timeframe to appeal a decision of the PSA to the Full Bench was 28 days, which is (and was) the relevant time limit in respect of various other applications that may be made before the Commission. For example, sub-sections 29(2)(a) to (d) of the IR Act impose deadlines of 28 days for various types of matters to be referred to the Commission.

16 The appellant further says by its written submissions that the 'Respondent's President was on extended leave'. Presumably this is intended to refer to the *appellant's* President being on extended leave. No evidence was produced concerning the nature of this leave, when it commenced, when it ended, the President's availability to attend to urgent matters during the period of leave, or what arrangements were in place to deal with urgent matters in the President's absence.

17 In its written submissions the appellant asserts that it had '*no* industrial officers available *with knowledge of the relevant timeframes* to appeal the matter to the Commission'. This submission is inconsistent with what is stated in the Notice of Appeal which says the appellant had '*limited* officers present to assist with preparing the appeal' (emphasis added).

18 No directions were sought or made for the appellant to file evidence in support of its application for an extension of time. On 16 April 2026 the Commission wrote to the parties on behalf of the Full Bench asking that proposed draft directions for determining the matter on the papers be provided. On 20 April 2026 the Commission was informed that the parties had conferred and agreed to programming orders for the filing of submissions. No proposal was made for the filing of evidence.

19 The discrepancy between the statement and the notice of appeal and the statement in the written submissions, has not been explained or clarified. The inconsistency, combined with the lack of any evidence, means that the Full Bench has absolutely no insight into the circumstances that led to the delay in filing the notice of appeal.

20 Even if the Full Bench was satisfied that the appellant had no industrial officers who had knowledge of the relevant time frames to appeal, this does not explain why those industrial officers did not seek to gain, that is, inform themselves, of the relevant time frames to appeal.

21 The appellant's purported explanation that the misunderstanding was due to a change in legislation goes nowhere. The appeal period prior to legislative amendments was 21 days. The appeal period post legislative amendments is 21 days. The abolition of the Public Service Arbitrator had no effect on the appeal period.

22 As the respondent highlights in its written submissions, in the hearing at first instance Mr Farrell appeared for the appellant as agent. At the time the Arbitrator delivered her reasons, Mr Farrell was the appellant's Secretary. There can be no doubt that Mr Farrell is an experienced industrial advocate with knowledge of the *Act* and detailed knowledge of this particular matter. What the appellant has not in any way attempted to do is explain why the appellant's mistake about the time for appealing was justifiable in light of Mr Farrell's role. There is no suggestion Mr Farrell either in his capacity as Secretary or industrial agent, was not available to the appellant to advise on the time for appealing or to attend to the filing of a notice of appeal.

23 The respondent's written submissions were filed on 5 May 2026. They squarely raised the appellant's lack of explanation

concerning Mr Farrell's involvement. Despite being on notice that the respondent put in issue the credibility and reliability of the appellant's assertions as to the explanations for delay, the appellant did nothing to address the evidentiary gaps. Its reply submissions simply state:

> 2. Although the appellant's Secretary is an experienced industrial agent and appeared as an industrial advocate for the appellant at first instance in respect of the matter, he was unaware of the time frame and avenue to appeal the decision due to the change in legislation effectively abolishing the Public Sector[sic] Arbitrator. As such it was not apparent to the Secretary or any other officer of the appellant as to where to commence the appeal and the relevant timeframe to bring the appeal.

24 The appellant was aware of the outcome of the matter when the decision was delivered on 30 January 2026. If the appellant's industrial officers and Secretary did not know the time limits for appealing, they had 21 days to either search the Commission's website which has a page dedicated to the process for appealing, including the time limits involved, or to consult the *Act*.

25 The explanations offered by the appellant are no explanation.

***Does the proposed appeal have any prospects of success?***

26 The Full Bench need not go into any elaborate detail on the merits of the appeal, but it should assess the merits in a rough and ready way: ***Jackamarra v Krakouer*** [1998] HCA 27; (1998) 195 CLR 519. However, there will be circumstances when it will be appropriate to engage in more than an impressionistic assessment of the merits. One example of where this is the case, is if the delay is unexplained, the appellant would need to show that their case is strong or evenly balanced: ***Tu'uta Katoa v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor*** [2022] HCA 28; (2022) 403 ALR 604 at 610.

27 The notice of appeal contains three grounds. They are:

> 1. The Commission erred in fact in:
>
> a. determining that the applicant at first instance (**WAPU**) sought an outcome that would "effectively improve upon the terms and conditions prescribed" in the applicable Industrial Agreement (**IA**);
>
> b. characterising the referral of the dispute by the WAPU for determination as the making of an "extra claim" by the WAPU.
>
> 2. The Commission erred in law in finding that:
>
> a. in bringing the dispute to the Commission, the WAPU was in breach of the undertaking not to make further claims under the IA;
>
> b. granting an arbitrated outcome would result in prescribing some of the circumstances that the respondent must consider in granting paid sick leave;
>
> c. the effect of an arbitrated outcome would be a material variation to the terms of the IA;
>
> d. the granting of the remedy sought by the WAPU would require the exercise of powers in a manner not consistent with sections 26 and 27 of the *Industrial Relations Act 1979* (WA);
>
> e. it was not in the public interest to grant an arbitrated outcome as sought by the WAPU;
>
> f. it was in the public interest to dismiss the application.
>
> 3. The Commission determined to dismiss the application on the basis of an objection by the respondent, and chose not to determine the other matters that the parties had agreed were required to be heard and determined in the "Memorandum of Matters". This was a substantial miscarriage of justice and a denial of procedural fairness. The Commission should have addressed each matter that the parties had agreed was required to be heard and determined in the Memorandum of Matters.

28 Despite the fact that this factor may be the only one that could weigh in favour of granting an extension of time, the appellant's submissions do little to persuade the Full Bench of the merits of the grounds of appeal.

29 The appellant's submissions assert that '[t]he Appeal raises significant issues of public interest in relation to the proper exercise of the powers under the IR Act by the former PSA in dealing with referrals of industrial matters'. This appears to be a reference to ground 3 of the appeal. Ground 3 alleges that there was a denial of procedural fairness. The no further claims clause objection to the claim was expressly referenced in the Memorandum of Matters Referred. The appellant was on notice that this issue was being advanced. That it was determinative of the matter does not amount to a miscarriage of justice or a denial of procedural fairness. As the respondent correctly submits, if the finding that is the claim was a contravention of the no further claims clause is not impeached, then the discretionary decision to dismiss the proceedings without determining the matters in the Memorandum of Matters is uncontroversial. Ground 3 could not result in the appeal being upheld.

30 As for ground 1, the appellant's submissions allege that the Arbitrator erred in determining that the outcome the appellant sought would effectively improve upon the terms and conditions prescribed in the 2022 Agreement because, had the appellant succeeded in its claim for its member to have a further period of paid sick leave, the terms of the 2022 Agreement would not have changed, and an arbitrated outcome would only impact on the individual circumstances of the relevant member, and no other individuals covered by the 2022 Agreement. The appellant asserts 'It would not impose a broader rule, term of [sic] condition on the Western Australian Police; or change the nature of the discretion in cl 29.5(b) of the 2022 Agreement'.

31 The appellant's submissions in reply clarify that the error the Arbitrator is said to have committed is an error of fact in determining that it 'sought an outcome in the 2022 Agreement that would effectively improve upon the terms and conditions prescribed by the 2022 Agreement'. The difficulty with this submission is that it misstates the Arbitrator's conclusion at paragraph 24 of her reasons.

32 The appellant's submissions overall, concerning ground 1 of the appeal are superficial and undeveloped. They do little more than assert that the claim it made was not a contravention of the no extra claims clause, because the exercise of the discretion which was the subject of the claim related only to one individual.

33 The appellant's submissions, including the submissions in reply, do not grapple with what was stated by the Full Bench in ***Director General, Department of Justice v The Civil Service Association of WA (Inc.)*** [2025] WAIRC 00146 at [94]-[98] the effect of which is that a claim made on behalf of an individual or only one union member can be caught by a no further claims clause.

34 The appellant submitted that in ***DOJ*** the claim made by the union concerning an individual member was found not to be a breach of the relevant no further claims clause. This submission however misses the critical point. The Full Bench so found because the claim did not seek to alter the operation of the agreement in any material way, or confer any additional benefit or entitlement on the member not conferred by the applicable industrial agreement: [100]. In this matter, the appellant appears to be asserting that the Arbitrator's error was because a no further claims clause could never preclude a claim that affects only one individual member and not employees covered by the agreement at large. That flies directly in the face of the Full Bench's reasons in ***DOJ*** at [94]-[98].

35 Ground 2 does not appear to be distinct from ground 1. Rather, it might be viewed as elaborating on or particularising ground 1. As the respondent submits, ground 2 lists various findings which the appellant seeks to challenge, but without identifying what error was involved in making the findings. Indeed, the appellant makes no written submissions specifically directed at ground 2.2.

36 In a general way, the issue raised in the appeal concerning the application of a no further claims clause may be a contentious one. Ultimately though, neither the grounds of appeal on their own, nor the appellant's submissions seeking to demonstrate they are arguable, get the appellant over the line. Without concluding that the grounds of appeal are hopeless, the grounds nevertheless have not been shown to be so strongly arguable that this factor weighs in favour of the grant of an extension of time.

***Prejudice to respondent***

37 The respondent does not rely on any particular prejudice to it arising out of the delay. This is a neutral factor.

**Conclusion and disposition**

38 The purpose of the power to extend time is to eliminate injustice that might be suffered by the imposition of a rigid time limit. There is a clear public interest in finality of decisions and the avoidance of delay in bringing appeals. It is not unjust, as a general rule, that severe consequences flow from a litigant's failure to comply with time limits: ***City of Canning*** [14]. Because the appellant has not demonstrated its appeal grounds are strong, and absent an adequate explanation for the delay, an extension of time is not warranted in the interests of justice.

39 The application for an extension of time and the appeal should be dismissed.

[redacted]

**2026 WAIRC 00384**

**APPEAL AGAINST A DECISION OF THE COMMISSION IN MATTER NUMBER PSACR 3 OF 2024 GIVEN ON 30 JANUARY 2026**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | WESTERN AUSTRALIAN POLICE UNION OF WORKERS |
| | **APPELLANT** |
| | **-v-** |
| | COMMISSIONER OF POLICE, WESTERN AUSTRALIA POLICE FORCE |
| | **RESPONDENT** |
| **CORAM** | FULL BENCH |
| | CHIEF COMMISSIONER S J KENNER |
| | SENIOR COMMISSIONER R COSENTINO |
| | COMMISSIONER T KUCERA |
| **DATE** | THURSDAY, 11 JUNE 2026 |
| **FILE NO/S** | FBA 5 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00384 |

| | |
|---|---|
| **Result** | Application for an extension of time refused |
| | Appeal dismissed |
| **Representation** | |
| **Appellant** | Ms A McNamara of counsel |
| **Respondent** | Mr J Carroll of counsel |

*Order*

HAVING heard Ms A McNamara of counsel on behalf of the appellant and Mr J Carroll 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 application to extend time to file the appeal and the appeal be and are hereby dismissed.

By the Full Bench

(Sgd.) S J KENNER,
[L.S.] Chief Commissioner.

**2026 WAIRC 00404**

**APPEAL AGAINST A DECISION OF THE COMMISSION IN MATTER NUMBER PSACR 2 OF 2024 GIVEN ON 30 JANUARY 2026**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**FULL BENCH**

| | | |
|---|---|---|
| **CITATION** | : | 2026 WAIRC 00404 |
| **CORAM** | : | CHIEF COMMISSIONER S J KENNER<br>COMMISSIONER T EMMANUEL<br>COMMISSIONER T KUCERA |
| **HEARD** | : | ON THE PAPERS. WRITTEN SUBMISSIONS FILED ON THURSDAY, 30 APRIL 2026, TUESDAY, 5 MAY 2026 & TUESDAY, 12 MAY 2026 |
| **DELIVERED** | : | FRIDAY, 19 JUNE 2026 |
| **FILE NO.** | : | FBA 6 OF 2026 |
| **BETWEEN** | : | WESTERN AUSTRALIAN POLICE UNION OF WORKERS<br>Appellant<br>AND<br>COMMISSIONER OF POLICE, WESTERN AUSTRALIA POLICE FORCE<br>Respondent |

| | | |
|---|---|---|
| **ON APPEAL FROM:** | | |
| **Jurisdiction** | : | **WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION** |
| **Coram** | : | **PUBLIC SERVICE ARBITRATOR, COMMISSIONER T B WALKINGTON** |
| **Citation** | : | **[2026] WAIRC 00047** |
| **File No** | : | **PSACR 2 OF 2024** |

| | | |
|---|---|---|
| Catchwords | : | Industrial Law (WA) – Appeal against the decision of the Public Service Arbitrator – Extension of time to appeal – Relevant factors to consider – Full Bench not satisfied discretion to extend time should be exercised – Extension of time refused – Appeal dismissed |
| Legislation | : | *Industrial Relations Act 1979* (WA) s 44, s 44(9)<br>*Police Force Regulations 1979* (WA) reg 1304(1) |
| Result | : | Application for an extension of time refused<br>Appeal dismissed |
| **Representation:** | | |
| Counsel: | | |
| Appellant | : | Ms A McNamara of counsel |
| Respondent | : | Mr J Carroll of counsel |
| Solicitors: | | |
| Appellant | : | Slater and Gordon Lawyers |
| Respondent | : | State Solicitors' Office |

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

West Australian Police Union of Workers v Commissioner of Police [2026] WAIRC 00371

*Reasons for Decision*

**THE FULL BENCH:**

**Background**

1 The substantive appeal in this matter is one of two brought by the West Australian Police Union of Workers arising from two applications before the Commission for conferences under s 44 of the *Industrial Relations Act 1979* (WA) to resolve industrial disputes concerning its members, Mr Chamberlain and Mr Murray. The industrial disputes arose in circumstances where reg 1304(1) of the *Police Force Regulations 1979* (WA) enabled the Commissioner of Police to grant a police officer paid leave of absence in these terms:

> (1) Subject to regulations 1308(1) and 1309 and to compliance by the member with regulation 1303, the Commissioner may grant to a member in respect of the member's incapacity leave of absence with pay —
>
> (a) for up to 168 days in a calendar year; and
>
> (b) if so recommended by the Manager and subject to any terms or conditions recommended by the Manager, for a further period.

2 The appellant's member Mr Murray was granted paid sick leave from 10 December 2023 to 21 March 2024. The respondent determined to cease paid leave, or not to extend the period of paid leave further, on 7 March 2024, on 14 days' notice.

3 The appellant's position was that the cessation of the member's paid sick leave was industrially unfair, and that the respondent ought to have exercised his discretion to extend the paid sick leave.

4 One of the grounds on which the respondent objected to the learned Public Service Arbitrator making the orders sought in both matters at first instance, was that the claims made by the appellant were a contravention of the No Further Claims clause contained within the relevant industrial agreement, the *Western Australian Police Force Industrial Agreement 2022*, which was in force at the relevant time.

5 The present matter involving Mr Murray, was not resolved by conciliation. It was referred for hearing and determination under s 44(9) of the *Act*. The learned Arbitrator at first instance concluded that the claim if granted, would modify the basis on which the respondent may exercise its discretion to grant paid sick leave and would therefore involve the creation of rights prescribing at least some of the circumstances that the respondent must consider in granting paid sick leave. In effect, the scope of the respondent's discretion would be altered. The learned Arbitrator, therefore, concluded that granting the claim would result in a material variation to the terms of the *Agreement*. This would involve the introduction of criteria for the exercise of the discretion afforded to the respondent. As a result, this would contravene the No Further Claims clause.

6 The learned Arbitrator dismissed the application without further considering the substantive issues raised in the Memorandum of Matters Referred.

**The appeals to the Full Bench**

7 The first appeal in FBA 5 of 2026 was handed down on 9 June 2026: ***West Australian Police Union of Workers v Commissioner of Police*** [2026] WAIRC 00371. That appeal being out of time, an application was made to extend the time for filing the appeal. The Full Bench dismissed both the application to extend time and the appeal. In the present appeal, the reasons for decision at first instance, and the grounds of appeal, are virtually identical to those considered in appeal FBA 5 of 2026.

8 As in FBA 5 of 2026, this appeal was lodged out of time on 27 February 2026. The final date for lodging the notice of appeal was 20 February 2026. The appeal was therefore five days out of time. As in appeal FBA 5 of 2026, the appellant and the respondent agreed that the question of whether the appellant should be granted an extension of time to appeal be determined on the papers. The parties filed written submissions in support of and in opposition to the extension of time. The submissions filed are virtually identical to those filed in the extension of time application in FBA 5 of 2026.

***Relevant principles***

9 The relevant principles in relation to extensions of time are well settled. In FBA 5 of 2026, the Full Bench set out them out at [10]-[13] as follows:

> [10] The power to extend time to institute an appeal under s 49 of the *Act,* and its exercise, is for the purpose of doing justice between the parties: ***Gallo v Dawson*** [1990] HCA 30; (1990) 64 ALJR 458. The burden is on the appellant to demonstrate that strict compliance with the time prescribed by the *Act* would work an injustice on it: ***Gallo*** [459].
>
> [11] In ***Doyle v The Roman Catholic Bishop of Bunbury*** [2022] WAIRC 00799; (2022) 102 WAIG 1533 the Full Bench referred to four major, but not exhaustive factors, which are considered in the exercise of the discretion to extend time to appeal, citing at [6] ***Esther Investments Pty Ltd v Markalinga Pty Ltd*** [1989] WASC 174. The four factors are:
>
> …
>
> (a) the length of the delay;
>
> (b) the reasons for the delay;
>
> (c) the prospects of success of the appeal; and

(d) the extent of any prejudice to the respondent.

[12] The fact that an appeal has some prospects of success is a factor which is to be taken into account, together with all other relevant factors. It is not the case that time must be extended if an appeal has some prospects of success. It may be outweighed by other factors: ***City of Canning v Avon Capital Estates (Australia) Ltd*** [2009] WASCA 120 per Wheeler JA at [17], Martin CJ agreeing.

[13] The appellant needs to make out its case for the Full Bench to exercise its discretion to extend time in its favour: ***Doyle*** [8] citing ***Arpad Security Agency Pty Ltd v The Federated Miscellaneous Workers' Union of Australia, Hospital, Service and Miscellaneous WA Branch*** [1989] 69 WAIG 1287.

**Consideration**

***Length of delay***

10 The length of the delay, that of five days, is relatively short. This factor is not decisive against the exercise of the discretion.

***Reasons for delay***

11 The reasons for the delay in filing the appeal are the same as those in FBA 5 of 2026, along with virtually the same submissions in support of and in opposition to the extension of time application, as noted above. There is little to be gained from narrating the issues and submissions again. The Full Bench in FBA 5 of 2026, in its reasons for decision, set out the arguments, issues and its conclusions in relation to this issue at [15]-[25] as follows:

[15] The appellant says the reason for the delay in filing the notice of appeal was due to the appellant's mistaken assumption that the time for lodging an appeal was 28 days not 21 days. It says:

24. The Appellant held this mistaken belief because, since PSAC 3 of 2024 was commenced, and before the Decision was made, the IR Act was amended (by the *Industrial Relations Legislation Amendment Act 2024* (WA)) to abolish the PSA and repeal s 80E of the IR Act which conferred the avenue of appeal of certain matters to the PSA. This change in legislation contributed to some confusion from the Appellant. The relevant avenue of appeal of the Decision is now available to the Full Bench of the Commission pursuant to s 49 of the IR Act.

25. As such, the Appellant lacked an understanding regarding the timeframes under the new regime and mistakenly assumed the relevant timeframe to appeal a decision of the PSA to the Full Bench was 28 days, which is (and was) the relevant time limit in respect of various other applications that may be made before the Commission. For example, sub sections 29(2)(a) to (d) of the IR Act impose deadlines of 28 days for various types of matters to be referred to the Commission.

[16] The appellant further says by its written submissions that the 'Respondent's President was on extended leave'. Presumably this is intended to refer to the appellant's President being on extended leave. No evidence was produced concerning the nature of this leave, when it commenced, when it ended, the President's availability to attend to urgent matters during the period of leave, or what arrangements were in place to deal with urgent matters in the President's absence.

[17] In its written submissions the appellant asserts that it had 'no industrial officers available *with knowledge of the relevant timeframes* to appeal the matter to the Commission'. This submission is inconsistent with what is stated in the Notice of Appeal which says the appellant had '*limited* officers present to assist with preparing the appeal' (emphasis added).

[18] No directions were sought or made for the appellant to file evidence in support of its application for an extension of time. On 16 April 2026 the Commission wrote to the parties on behalf of the Full Bench asking that proposed draft directions for determining the matter on the papers be provided. On 20 April 2026 the Commission was informed that the parties had conferred and agreed to programming orders for the filing of submissions. No proposal was made for the filing of evidence.

[19] The discrepancy between the statement and the notice of appeal and the statement in the written submissions, has not been explained or clarified. The inconsistency, combined with the lack of any evidence, means that the Full Bench has absolutely no insight into the circumstances that led to the delay in filing the notice of appeal.

[20] Even if the Full Bench was satisfied that the appellant had no industrial officers who had knowledge of the relevant time frames to appeal, this does not explain why those industrial officers did not seek to gain, that is, inform themselves, of the relevant time frames to appeal.

[21] The appellant's purported explanation that the misunderstanding was due to a change in legislation goes nowhere. The appeal period prior to legislative amendments was 21 days. The appeal period post legislative amendments is 21 days. The abolition of the Public Service Arbitrator had no effect on the appeal period.

[22] As the respondent highlights in its written submissions, in the hearing at first instance Mr Farrell appeared for the appellant as agent. At the time the Arbitrator delivered her reasons, Mr Farrell was the appellant's Secretary. There can be no doubt that Mr Farrell is an experienced industrial advocate with knowledge of the Act and detailed knowledge of this particular matter. What the appellant has not in any way attempted to do is explain why the appellant's mistake about the time for appealing was justifiable in light of Mr Farrell's role. There is no suggestion Mr Farrell either in his capacity as Secretary or industrial agent, was not available to the appellant to advise on the time for appealing or to attend to the filing of a notice of appeal.

[23] The respondent's written submissions were filed on 5 May 2026. They squarely raised the appellant's lack of explanation concerning Mr Farrell's involvement. Despite being on notice that the respondent put in issue the

credibility and reliability of the appellant's assertions as to the explanations for delay, the appellant did nothing to address the evidentiary gaps. Its reply submissions simply state:

> 2. Although the appellant's Secretary is an experienced industrial agent and appeared as an industrial advocate for the appellant at first instance in respect of the matter, he was unaware of the time frame and avenue to appeal the decision due to the change in legislation effectively abolishing the Public Sector[sic] Arbitrator. As such it was not apparent to the Secretary or any other officer of the appellant as to where to commence the appeal and the relevant timeframe to bring the appeal.

[24] The appellant was aware of the outcome of the matter when the decision was delivered on 30 January 2026. If the appellant's industrial officers and Secretary did not know the time limits for appealing, they had 21 days to either search the Commission's website which has a page dedicated to the process for appealing, including the time limits involved, or to consult the Act.

[25] The explanations offered by the appellant are no explanation.

12 We adopt and apply the above for the purposes of considering this application and this factor. We agree with them. We are satisfied that the reasons advanced by the appellant for the delay in filing the appeal are not persuasive.

***Does the proposed appeal have any prospects of success?***

13 As noted above, the grounds of appeal in this appeal are identical to those considered by the Full Bench in FBA 5 of 2026. The grounds are:

> 1. The Commission erred in fact in:
>
> a. determining that the applicant at first instance (**WAPU**) sought an outcome that would "effectively improve upon the terms and conditions prescribed" in the applicable Industrial Agreement (**IA**);
>
> b. characterising the referral of the dispute by the WAPU for determination as the making of an "extra claim" by the WAPU.
>
> 2. The Commission erred in law in finding that:
>
> a. in bringing the dispute to the Commission, the WAPU was in breach of the undertaking not to make further claims under the IA;
>
> b. granting an arbitrated outcome would result in prescribing some of the circumstances that the respondent must consider in granting paid sick leave;
>
> c. the effect of an arbitrated outcome would be a material variation to the terms of the IA;
>
> d. the granting of the remedy sought by the WAPU would require the exercise of powers in a manner not consistent with sections 26 and 27 of the *Industrial Relations Act 1979* (WA);
>
> e. it was not in the public interest to grant an arbitrated outcome as sought by the WAPU;
>
> f. it was in the public interest to dismiss the application.
>
> 3. The Commission determined to dismiss the application on the basis of an objection by the respondent, and chose not to determine the other matters that the parties had agreed were required to be heard and determined in the "Memorandum of Matters". This was a substantial miscarriage of justice and a denial of procedural fairness. The Commission should have addressed each matter that the parties had agreed was required to be heard and determined in the Memorandum of Matters.

***Ground 1***

14 In relation to this ground, in FBA 5 of 2025 it was said at [30]-[34]:

> [30] As for ground 1, the appellant's submissions allege that the Arbitrator erred in determining that the outcome the appellant sought would effectively improve upon the terms and conditions prescribed in the 2022 Agreement because, had the appellant succeeded in its claim for its member to have a further period of paid sick leave, the terms of the 2022 Agreement would not have changed, and an arbitrated outcome would only impact on the individual circumstances of the relevant member, and no other individuals covered by the 2022 Agreement. The appellant asserts 'It would not impose a broader rule, term of [sic] condition on the Western Australian Police; or change the nature of the discretion in cl 29.5(b) of the 2022 Agreement'.
>
> [31] The appellant's submissions in reply clarify that the error the Arbitrator is said to have committed is an error of fact in determining that it 'sought an outcome in the 2022 Agreement that would effectively improve upon the terms and conditions prescribed by the 2022 Agreement'. The difficulty with this submission is that it misstates the Arbitrator's conclusion at paragraph 24 of her reasons.
>
> [32] The appellant's submissions overall, concerning ground 1 of the appeal are superficial and undeveloped. They do little more than assert that the claim it made was not a contravention of the no extra claims clause, because the exercise of the discretion which was the subject of the claim related only to one individual.
>
> [33] The appellant's submissions, including the submissions in reply, do not grapple with what was stated by the Full Bench in ***Director General, Department of Justice v The Civil Service Association of WA (Inc.)*** [2025] WAIRC 00146 at [94]-[98] the effect of which is that a claim made on behalf of an individual or only one union member can be caught by a no further claims clause.
>
> [34] The appellant submitted that in ***DOJ*** the claim made by the union concerning an individual member was found not to be a breach of the relevant no further claims clause. This submission however misses the critical point.

> The Full Bench so found because the claim did not seek to alter the operation of the agreement in any material way, or confer any additional benefit or entitlement on the member not conferred by the applicable industrial agreement: [100]. In this matter, the appellant appears to be asserting that the Arbitrator's error was because a no further claims clause could never preclude a claim that affects only one individual member and not employees covered by the agreement at large. That flies directly in the face of the Full Bench's reasons in ***DOJ*** at [94]-[98].

15 There is little that we can add to that conclusion. The decision of the Full Bench in ***DOJ*** works against the appellant's contentions as to this ground.

***Ground 2***

16 The Full Bench in FBA 5 of 2026 concluded that this ground and ground 1 appeared to be largely one and the same, with ground 2 constituting further particularisation of ground 1. It was noted at [35] of the Full Bench reasons, that whilst asserting error in various findings by the learned Arbitrator, the appellant failed to particularise what errors were made in making those findings.

17 In an overall sense, when dealing with the issue raised as to the effect of a no extra claims clause in an industrial instrument, the Full Bench said at [36]:

> In a general way, the issue raised in the appeal concerning the application of a no further claims clause may be a contentious one. Ultimately though, neither the grounds of appeal on their own, nor the appellant's submissions seeking to demonstrate they are arguable, get the appellant over the line. Without concluding that the grounds of appeal are hopeless, the grounds nevertheless have not been shown to be so strongly arguable that this factor weighs in favour of the grant of an extension of time.

18 We agree with this view. Given the absence of a sound reason for the delay, this means the grounds of appeal must have considerable strength, which they do not.

***Ground 3***

19 This ground asserted that the appellant was denied procedural fairness and that the dismissal of the application by the learned Arbitrator, based on the No Extra Claims clause issue, without determining the remaining matters in the Memorandum of Matters Referred, constituted a substantial miscarriage of justice. There is no substance to these contentions. First, the question of the effect of the No Extra Claims clause was placed in issue by the respondent at [3]-[10] of its written submissions (see AB 47-49). It was contended that the application should be dismissed without proceeding to deal with the merits of the appellant's claim.

20 Second, the determination of this matter against the appellant was dispositive of the claim. There was no necessity to deal with the merits in these circumstances, and this could not give rise to a denial of natural justice or constitute a miscarriage of justice. This ground has no merit.

***Prejudice to respondent***

21 There was no assertion of prejudice raised by the respondent.

**Conclusion**

22 The appellant has not demonstrated its appeal is strongly arguable on the merits. Given there is no adequate explanation for the delay, to refuse an extension of time is not contrary to the interests of justice. The application for an extension of time, and the appeal, should be dismissed.

[redacted]

**2026 WAIRC 00409**

**APPEAL AGAINST A DECISION OF THE COMMISSION IN MATTER NUMBER PSACR 2 OF 2024 GIVEN ON 30 JANUARY 2026**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | WESTERN AUSTRALIAN POLICE UNION OF WORKERS |
| | **APPELLANT** |
| | **-v-** |
| | COMMISSIONER OF POLICE, WESTERN AUSTRALIA POLICE FORCE |
| | **RESPONDENT** |
| **CORAM** | FULL BENCH |
| | CHIEF COMMISSIONER S J KENNER |
| | COMMISSIONER T EMMANUEL |
| | COMMISSIONER T KUCERA |
| **DATE** | FRIDAY, 19 JUNE 2026 |
| **FILE NO/S** | FBA 6 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00409 |

| | |
|---|---|
| **Result** | Application for an extension of time refused<br>Appeal dismissed |
| **Representation** | |
| **Appellant** | Ms A McNamara of counsel |
| **Respondent** | Mr J Carroll of counsel |

*Order*

HAVING heard Ms A McNamara of counsel on behalf of the appellant and Mr J Carroll 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 application to extend time to file the appeal and the appeal be and are hereby dismissed.

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

# COMMISSION IN COURT SESSION—Unions—Application for Alteration of Rules—

**2026 WAIRC 00477**

**APPLICATION FOR ALTERATION OF REGISTERED RULES**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**COMMISSION IN COURT SESSION**

| | | |
|---|---|---|
| **CITATION** | : | 2026 WAIRC 00477 |
| **CORAM** | : | CHIEF COMMISSIONER S J KENNER<br>SENIOR COMMISSIONER R COSENTINO<br>COMMISSIONER T B WALKINGTON |
| **HEARD** | : | MONDAY, 6 JULY 2026 |
| **DELIVERED** | : | TUESDAY, 7 JULY 2026 |
| **FILE NO.** | : | CICS 3 OF 2026 |
| **BETWEEN** | : | WESTERN AUSTRALIAN HOTELS AND HOSPITALITY ASSOCIATION INCORPORATED (UNION OF EMPLOYERS)<br>Applicant<br>AND<br>(NOT APPLICABLE)<br>Respondent |

| | | |
|---|---|---|
| Catchwords | : | Industrial Law (WA) – Application pursuant to s 62(2) - Alteration of registered rules – Rule 5 Membership – No objections – Relevant rules and Act complied with – Application granted |
| Legislation | : | *Industrial Relations Act 1979* (WA) s 55, s 56, s 58(3), s 62(2)<br>*Industrial Relations Commission Regulations 2005* (WA) reg 77A |
| Result | : | Order issued |
| **Representation:** | | |
| Applicant | : | Mr A Vlahov and with him Ms B Grubor of counsel |

*Reasons for Decision*

**THE COMMISSION IN COURT SESSION:**

1 The Western Australian Hotels and Hospitality Association Incorporated (Union of Employers) is an organisation registered under the *Industrial Relations Act 1979* (WA). It has made application under s 62(2) of the *Act* by which it seeks an order that the Registrar be authorised to register an alteration to its Rules in r 5 – Membership. The effect of the proposed alteration is in essence, to align the applicant's membership rule with the Rules of its federal counterpart, the Australian Hotels Association, Western Australian Branch.

2 The applicant also seeks to widen its eligibility for membership to include non-licensed accommodation venues in Western Australia. This reflects the existing coverage of the federal Branch rules. It is intended that if the application is granted, there will be an application to the Registrar to approve further alterations to the Rules, and subsequently, the seeking of a s 71

certificate under the *Act*.

3 The application is supported by a statutory declaration made by Mr Bradley Brian Woods, the Chief Executive Officer of the applicant, on 16 December 2025. Mr Woods declared, relevantly, the following:

(a) On 26 August 2025 the State Council of the applicant determined that the applicant's rules required change. One of those proposed was r 5 – Membership, to align it with the federal Branch membership rule, and to also extend coverage to unlicenced accommodation establishments in the State;

(b) As required by r 16(b) of the applicant's Rules, a notice of the Annual General Meeting of the applicant was sent to members. Notice of the proposed change to the Rules was included;

(c) As required by r 15(c) of the applicant's Rules, on 22 September 2025 members were sent an email containing a notice of the proposed alterations to the Rules. This notice enabled members to inspect on the applicant's website the proposed rule alterations and the reasons for the changes proposed. Annexure A1 to Mr Woods' declaration is that email;

(d) Members were provided 21 days from the date of the notice in which to notify the Registrar of any written objection, as required by r 15(c)(iii) of the applicant's Rules. No objections were received by 13 October 2025;

(e) In accordance with the requirements of the Rules, on 14 October 2025 the Annual General Meeting was held. In accordance with r 16(h) of the applicant's Rules, the proposed alteration to r 5 was passed unanimously by a quorum of 10 financial members present at the meeting. The relevant minutes and resolution are Annexure A2 to Mr Woods' statutory declaration; and

(f) On 21 November 2025 members of the applicant were notified by email of the resolution of the Annual General Meeting that r 5 be altered. This included a link to the applicant's website with a marked up copy of the proposed alteration, an explanation thereof and the confirmation that the alteration had been endorsed at the Annual General Meeting. Members were notified that an application would be made to the Industrial Relations Commission to give effect to the proposed rule alteration. A period of 21 days was given to members to notify the Registrar of any objections, and no such objection was received by 12 December 2025.

4 We find accordingly.

5 Having regard to the material before the Commission in Court Session we are satisfied that the alteration to r 5 – Membership of the applicant's Rules has been made in accordance with r 15 – Alteration of Constitution and r 16 – General Meetings. We are satisfied that relevantly, as modified, ss 55, 56 and 58(3) of the *Act,* to the extent applicable, have been met. Similarly, we are satisfied that the requirements of reg 77A of the *Industrial Relations Commission Regulations 2005* (WA) have also been met. On the basis of the material in evidence and otherwise before us we find and conclude that:

(a) the application made under section 62(2) of the *Act* by the applicant has been authorised in accordance with the Rules of the applicant;

(b) reasonable steps have been taken by the applicant to inform its members of the proposed alterations to r 5 – Membership, and that an application would be made to the Commission in Court Session to approve the alteration, and that an objection may be made by members in writing to the Registrar; and

(c) having due regard to the structure of the applicant, there has been no objection to the proposed alteration to the Rules or that an application would be made to the Commission to give effect to it.

6 Accordingly, the Commission in Court Session will authorise the proposed alteration to r 5 – Membership of the applicant's rules and we now so order.

**2026 WAIRC 00480**

**APPLICATION FOR ALTERATION OF REGISTERED RULES**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

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|---|---|
| **PARTIES** | WESTERN AUSTRALIAN HOTELS AND HOSPITALITY ASSOCIATION INCORPORATED (UNION OF EMPLOYERS) |
| | **APPLICANT** |
| | **-v-** |
| | (NOT APPLICABLE) |
| | **RESPONDENT** |
| **CORAM** | COMMISSION IN COURT SESSION |
| | CHIEF COMMISSIONER S J KENNER |
| | SENIOR COMMISSIONER R COSENTINO |
| | COMMISSIONER T B WALKINGTON |
| **DATE** | TUESDAY, 7 JULY 2026 |
| **FILE NO/S** | CICS 3 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00480 |

| | |
|---|---|
| **Result** | Order issued |
| **Representation** | |
| **Applicant** | Mr A Vlahov and with him Ms B Grubor of counsel |

*Order*

THIS MATTER having come on for hearing before the Commission in Court Session on 6 July 2026, and having heard Mr A Vlahov and with him Ms B Grubor of counsel on behalf of the applicant, the Commission in Court Session, pursuant to the powers conferred on it under the *Industrial Relations Act 1979* (WA), hereby orders –

THAT the Registrar is hereby authorised to register the alterations to rule 5 of the Rules of the applicant as published in the Western Australian Industrial Gazette on 25 February 2026: [2026] WAIRC 00081; (2026) 106 WAIG 366 and as published on the Commission's website by Notice dated 6 February 2026.

(Sgd.) S J KENNER,
Chief Commissioner,
[L.S.] By the Commission in Court Session.

# AWARDS/AGREEMENTS AND ORDERS—Variation of—

**2026 WAIRC 00450**

**CITY OF CANNING INDUSTRIAL AGREEMENT 2025**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | CITY OF CANNING |
| | **APPLICANT** |
| | **-v-** |
| | WESTERN AUSTRALIAN MUNICIPAL, ADMINISTRATIVE, CLERICAL AND SERVICES (WASU) |
| | **FIRST RESPONDENT** |
| | THE LOCAL GOVERNMENT, RACING AND CEMETERIES EMPLOYEES UNION (WA) |
| | **SECOND RESPONDENT** |
| **CORAM** | SENIOR COMMISSIONER R COSENTINO |
| **DATE** | WEDNESDAY, 1 JULY 2026 |
| **FILE NO/S** | APPL 42 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00450 |

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| **Result** | Agreement varied |
| **Representation** | (on the papers) |
| **Applicant** | City of Canning |
| **First Respondent** | Western Australian Municipal, Administrative, Clerical and Services Union (WASU) |
| **Second Respondent** | The Local Government, Racing and Cemeteries Employees Union (WA) |

*Order*

WHEREAS on 23 June 2026 the City of Canning filed an application seeking to vary the *City of Canning Industrial **Agreement** 2025* pursuant to s 43 of the *Industrial Relations **Act** 1979* (WA);

AND WHEREAS the application sought to vary the Agreement to reflect a new classification and salary structure to apply to the City of Canning's Outside Workforce;

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

AND WHEREAS all parties to the Agreement consent to this application for the variation of an industrial agreement being determined on the papers;

AND WHEREAS all the parties to the Agreement consent to its variation in accordance with the City of Canning's application;

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

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

(Sgd.) R COSENTINO,
[L.S.] Senior Commissioner.

**2026 WAIRC 00492**

**GOVERNMENT OFFICERS SALARIES, ALLOWANCES AND CONDITIONS AWARD 1989**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

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|---|---|
| **PARTIES** | AGRICULTURAL PRODUCE COMMISSION & OTHERS |
| | **APPLICANT** |
| | **-v-** |
| | THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED |
| | **RESPONDENT** |
| **CORAM** | SENIOR COMMISSIONER R COSENTINO |
| **DATE** | WEDNESDAY, 8 JULY 2026 |
| **FILE NO/S** | APPL 45 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00492 |

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|---|---|
| **Result** | Award varied |
| **Representation** | |
| **Applicants** | Ms M Bendotti from the Department of Local Government, Industry Regulation And Safety, Government Sector Labour Relations acting on behalf of the applicants |
| **Respondent** | Ms K Boey (of counsel) on behalf of the Civil Service Association of Western Australia Incorporated |

*Order*

WHEREAS this is an application filed on 25 June 2026 by employer parties to the *Government Officers Salaries, Allowances and Conditions **Award** 1989* pursuant to s 40 of the *Industrial Relations Act 1979* (WA) (**IR Act**);

AND WHEREAS the application sought to vary the Award by substituting a new Schedule M to correct minor errors in the existing Schedule M;

AND WHEREAS the respondent, being the union party to the Award, consents to the proposed variations as contained in the application;

AND WHEREAS the applicants are employers bound by the Award and so have standing to bring the application under s 40(2) of the IR Act;

AND WHEREAS the parties consent to this application for variation of the Award being determined on the papers;

AND OTHERWISE BEING satisfied that the IR Act's requirements for varying the Award are met;

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

THAT the *Government Officers Salaries, Allowances and Conditions Award 1989* be varied by substituting Schedule M with the attached schedule.

(Sgd.) R COSENTINO,
[L.S.] Senior Commissioner.

SCHEDULE

SCHEDULE M – TRAVEL CONCESSIONS FOR RECREATIONAL LEAVE

| | APPROVED MODE OF TRAVEL | TRAVEL CONCESSION | TRAVELLING TIME |
|---|---|---|---|
| (A) | AIR | Air fare for the Officer and their dependants. They will receive a concession for their airfare up to the value of a return airfare to Perth. | One (1) day of travelling time each way. |
| (B) | ROAD | Where the Officer and their dependants travel by motor vehicle, they will receive reimbursement for full motor vehicle allowance rates up to the value of a return airfare to Perth. | Where headquarters are 1,400km or more from Perth GPO, two and one half (2.5) days of travelling time each way.<br>All other areas, two (2) days of travel time will be provided each way. |

**2026 WAIRC 00490**

**PUBLIC SERVICE AWARD 1992**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

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|---|---|
| **PARTIES** | CHEMISTRY CENTRE (WA) & OTHERS |
| | **APPLICANT** |
| | **-v-** |
| | THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED |
| | **RESPONDENT** |
| **CORAM** | SENIOR COMMISSIONER R COSENTINO |
| **DATE** | WEDNESDAY, 8 JULY 2026 |
| **FILE NO/S** | APPL 43 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00490 |

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| **Result** | Award varied |
| **Representation** | (on the papers) |
| **Applicants** | Ms M Bendotti from the Department of Local Government, Industry Regulation And Safety, Government Sector Labour Relations acting on behalf of the applicants |
| **Respondent** | Ms K Boey (of counsel) on behalf of the Civil Service Association of Western Australia Incorporated |

*Order*

WHEREAS this is an application filed on 25 June 2026 by employer parties to the *Public Service **Award** 1992* pursuant to s 40 of the *Industrial Relations Act 1979* (WA) (**IR Act**);

AND WHEREAS the application sought to vary the Award by substituting a new travel concessions table in sub-clause 23(10)(b)(i) in Clause 23 - Annual Leave to correct minor errors in the existing table;

AND WHEREAS the respondent, being the union party to the Award, consents to the proposed variations as contained in the application;

AND WHEREAS the applicants are employers bound by the Award and so have standing to bring the application under s 40(2) of the IR Act;

AND WHEREAS the parties consent to this application for variation of the Award being determined on the papers;

AND OTHERWISE BEING satisfied that the IR Act's requirements for varying the Award are met;

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

THAT the *Public Service Award 1992* be varied by substituting the table in sub-clause 23(10)(b)(i) with the table in the attached schedule.

(Sgd.) R COSENTINO,
[L.S.] Senior Commissioner.

SCHEDULE

| | Mode of Travel | Travel concession | Travelling time |
|---|---|---|---|
| (aa) | Air | Where the Officer and their dependants travel by Air, they will receive a concession for their airfare up to the value of a return airfare to Perth. | One (1) day of travelling time each way. |
| (bb) | Road | Where the Officer and their dependants travel by motor vehicle, they will receive reimbursement for full motor vehicle allowance rates, up to the value of a return airfare to Perth. | Where headquarters are 1,400km or more from Perth GPO, two and one half (2.5) days of travelling time each way.<br>All other areas, two (2) days of travel time will be provided each way. |

**2026 WAIRC 00398**

**TIMBER INDUSTRY (CFMEU) STATE AWARD**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | | |
|---|---|---|
| **CITATION** | **:** | 2026 WAIRC 00398 |
| **CORAM** | **:** | SENIOR COMMISSIONER R COSENTINO |
| **HEARD** | **:** | FRIDAY, 12 JUNE 2026 |
| **DELIVERED** | **:** | TUESDAY, 16 JUNE 2026 |
| **FILE NO.** | **:** | APPL 23 OF 2026 |
| **BETWEEN** | **:** | CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION OF WORKERS<br>Applicant<br>AND<br>(NOT APPLICABLE)<br>Respondent |

| | | |
|---|---|---|
| CatchWords | **:** | Industrial Law (WA) - Application to vary award - Section 40B of the *Industrial Relations Act 1979* (WA) - *Timber Yard Workers Award No. 11 of 1951* - To consolidate four separate awards into a single award - Application of Statement of Principles - Principle 10 - Equity and substantial merits - Award varied |
| Legislation | **:** | *Equal Opportunity Act 1984* (WA)<br>*Industrial Relations Act 1979* (WA)<br>*Minimum Conditions of Employment Act 1993*(WA) |
| Result | **:** | Award varied |

**Representation:**

Counsel:

Mr R Cardinal on behalf of the Construction, Forestry, Mining and Energy Union of Workers

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

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

***Commission's own motion*** [2007] WAIRC 00517; (2007) 87 WAIG 1487

***Local Government, Racing and Cemeteries Union (WA) v Western Australian Municipal, Administrative, Clerical and Services Union*** [2024] WAIRC 00349; (2024) 104 WAIG 835

***Robe River Iron Associates v The Amalgamated Metal Workers & Shipwrights' Union of Western Australia*** (1993) 73 WAIG 1993

***The Breweries and Bottleyards Employees' Industrial Union of Workers of Western Australia v Kirin Australia Pty Ltd*** [2002] WAIRC 05011; (2002) 82 WAIG 412

*Reasons for Decision*

1 The Construction, Forestry, Mining and Energy Union of Workers (**CFMEUW**) has applied to vary the *Timber Yard Workers **Award** No 11 of 1951* to:

(a) rename the *Award* the *Timber Industry (CFMEU) State Award.*

(b) vary the area of the Award to rectify anomalous geographical gaps between existing awards including the *Timber Workers Award No. 36 of 1950**,*** the *Particle Board Industry Award No 10 of 1978* and the *Plywood and Veneer Workers Award,* to which the The Australian Workers Union, West Australian Branch, Industrial Union of Workers (**AWU**) is a party.

(c) vary the scope of the *Award* to cover (and replace) four other timber industry awards to which the CFMEUW is party, effectively consolidating all five awards; and

(d) rectify the terms and conditions contained in the *Award* that are obsolete, discriminatory or need updating.

2 Section 40 of the *Industrial Relations Act 1979* (WA) (**IR Act**) empowers the Western Australian Industrial Relations **Commission** to vary an award.

3 The CFMEUW is a party bound by the Award and, therefore, has standing to bring the application: s 40(2) of the IR Act.

4 As the application is made outside the term specified in clause 5 of the Award, s 40(3) of the IR Act is no barrier to the variations sought.

5 Section 37C of the IR Act imposes limits on varying private sector awards. Section 37C is not engaged as the application does not seek to vary the Award to extend and bind a class of employees who has not been traditionally covered by awards due to the seniority of their role, or who otherwise perform work that is not of a similar nature to work traditionally regulated by such

awards; nor to fix the scope of the Award by reference to an industry carried on by an employer; nor to extend the scope of the Award to bind employees or employers who are covered by a public sector award or enterprise award.

6 The amendments proposed affect a substantive change to the scope of the Award. The application, therefore, attracts the requirements of s 29A of the IR Act for publication of the proposed amendments and service on the s 29A parties. A notice of the application was published in the Industrial Gazette on 27 May 2026 and on the Commission's website on 7 May 2026 and served on the s 29A parties accordingly.

7 The application was served on three of the named respondents to the Award. At my direction, it was also served on the Australian Forest Products Association. The remaining four named respondents were identified as being companies that are now deregistered.

8 The Private Sector Labor Relations division of the Department of Local Government, Industry Regulation and Safety on behalf of the Minister for Industrial Relations (**PSLR**), advised the Commission it supported the variations sought by the CFMEUW. PSLR have provided significant assistance to the CFMEUW in drafting the proposed variations.

9 No other respondent or party sought to be heard or filed any response to the application. The application is unopposed.

10 The application was prompted by the Commission having, of its own motion under s 40B of the IR Act, commenced APPL 50 of 2023 to vary the *Award* for the purposes set out in s 40B. The variations sought by the CFMEUW are more comprehensive than variations that can be made to an Award under s 40B. The variations would supersede APPL 50 of 2023, making further variations under s 40B unnecessary because the variations would ensure that the *Award* does not contain outdated, obsolete or discriminatory provisions to which s 40B is directed.

11 I must apply and follow the Statement of Principles published by the Commission in Court session as part of the State Wage Case in the exercise of my jurisdiction under the IR Act to set wages, salaries, allowances or other remuneration of employees: ***Robe River Iron Associates v The Amalgamated Metal Workers & Shipwrights' Union of Western Australia*** (1993) 73 WAIG 1993, 1998-1999; IR Act s 50A(1)(d). The Statement of Principles ensures that there is consistency and equity in relation to the variation of awards. It sets out for the Commission, and the parties appearing before it, the approach under s 26(1) to be followed: ***Commission's own motion*** [2007] WAIRC 00517; (2007) 87 WAIG 1487 (**2007 State Wage Order**) [124]. A failure to apply the Statement of Principles is a jurisdictional error: ***The Breweries and Bottleyards Employees' Industrial Union of Workers of Western Australia v Kirin Australia Pty Ltd*** [2002] WAIRC 05011; (2002) 82 WAIG 412 [132].

12 The current Statement of Principles in ***Commission's Own Motion*** [2025] WAIRC 00365; (2025) 105 WAIG 1184 provides:

> **1. Application of the Statement of Principles**
>
> 1.1 This Statement of Principles is to be applied and followed when the Commission is making or varying an award or making an order in relation to the exercise of the jurisdiction under the Act to set the wages, salaries, allowances or other remuneration of employees or the prices to be paid in respect of their employment.
>
> 1.2 In these Principles, wages, salaries, allowances or other remuneration of employees or the prices to be paid in respect of employment will be referred to as "wages".
>
> 1.3 In making a decision in respect of any application brought under these Principles, the primary consideration in all cases will be the merits of the application in accordance with equity, good conscience and the substantial merits of the case pursuant to section 26(1)(a) of the Act.
>
> 1.4 These Principles do not have application to Enterprise Orders made under section 42I of the Act or to applications made under section 40A of the Act to incorporate industrial agreement provisions into an award by consent.
>
> 1.5 This Statement of Principles will operate until reviewed under section 50A(1)(d) of the Act.
>
> …
>
> **10. Making or Varying an Award or issuing an Order which has the effect of varying wages or conditions above or below the award minimum conditions**
>
> 10.1 An application or reference for a variation in wages which is not made by an applicant under any other Principle and which is a matter or concerns a matter to vary wages above or below the award minimum conditions may be made under this Principle.
>
> 10.2 Claims may be brought under this Principle irrespective of whether a claim could have been brought under any other Principle.

13 The CFMEUW makes this application pursuant to Principle 10.

14 In ***Local Government, Racing and Cemeteries Union (WA) v Western Australian Municipal, Administrative, Clerical and Services Union*** [2024] WAIRC 00349; (2024) 104 WAIG 835, I observed that:

> 17 Principle 10 has been described as 'the procedural gateway for award increases that fall outside the scope of other principles': 2007 State Wage Order [91], [93].
>
> 18 The Full Bench has also described Principle 10 in ***Western Australian Municipal, Administrative, Clerical and Services Union of Employees v Aboriginal Alcohol and Drug Service (AADS) (Inc)*** [2013] WAIRC 00795; (2013) 93 WAIG 1380 at [13] as a principle 'of deliberately broad application':
>
> > It is not easy to anticipate in advance the many different kinds of circumstances which may warrant

> consideration of a wage increase to an award beyond that prescribed in State Wage Case proceedings. The Commission in Court Session has deliberately chosen not to be prescriptive, in case so a circumstance which deserves consideration on merit is unable to be considered because it does not meet criteria set out in Principle 10.

19 In ***Western Australian Prison Officers' Union of Workers v The Minister for Corrective Services [2009] WAIRC 01361; (2009) WAIG 94***, Chief Commissioner Beech observed at [32]:

> Principle 10 is to be read in the context of the Principles as a whole; although Principle 10 permits a matter to be considered irrespective of whether it could have been brought under any other Principle, it does not mean that those other Principles are irrelevant. The strict test in Principle 7.2 for an alteration in wage rates cannot be avoided by invoking Principle 10.

15 In support of the application, the CFMEUW submits:

> 16. Principle 10 has broad application by design and is the appropriate gateway for an application of this nature which falls outside the scope of the other principles. This application falls outside the scope of the other principles because:
>
> a. The primary purposes of the Application identified in paragraph [12] above do not fall within the scope of any other Principle.
>
> b. The rectification of the issues identified in this application is best achieved by completely substituting the terms of the CFMEUW Awards. This is therefore not an application that seeks to vary individual expenses related allowances by reference to the changes in those expenses,16 or to vary particular pay rates due to changes in work value. Notably, this application seeks to replace, rather than update, the current scheme of allowances or classifications.
>
> 17. Notwithstanding the above, the fact that several of the rates under the CFMEUW Awards are wholly inadequate is a relevant consideration that goes to the merits of replacing the CFMEUW Awards.
>
> 18. The Replaced Awards contain provisions that are:
>
> a. obsolete and need updating for the purposes of s 40B(1)(d) of the Act; and
>
> b. do not advance the Act's objects, in particular the object of the Act to "*provide a system of fair wages and conditions of employment*".
>
> 19. The Proposed Award remedies the abovementioned deficiencies in the Replaced Awards, and is otherwise consistent with the objects of the Act for the reasons that follow.
>
> 20. First, the Proposed Award is modelled extensively on the national *Timber Industry Award 202*0 (**National Award**), incorporating its contemporary classification structure and sectoral definitions. This alignment promotes industrial efficiency by providing a clear and consistent framework for employers and employees who navigate both state and federal jurisdictions.
>
> 21. Second, it is necessary to adopt the variation proposed in this Application to ensure award-covered employees are provided a fair and relevant safety net. For example, the Plywood Award and Particle Board Employees' Award peg all classifications to the minimum weekly rates of pay applicable under section 12 of the ***M**inimum **C**onditions of **E**mployment **A**ct 1993* (WA). Moreover, these two awards compress wages by applying an identical flat minimum weekly rate across all 5 classifications, irrespective of skill or responsibility.
>
> 22. The Replaced Awards also contain allowances and conditions that have not been adjusted for decades and are consequently wholly inadequate or obsolete. For example, the meal allowance provided in clause 13 of the *Plywood and Veneer Workers' Award* and clause 14 of the *1952 Particle Board Employees' Award 1964* was last updated on 12 June 1990 and equates the cost of a meal to $4.70. The Proposed Award remedies this issue and prevents its reemergence by incorporating allowances contained in the National Award.
>
> 23. Third, the Proposed Award has been drafted to ensure consistency with the Application by The Australian Workers Union, West Australian Branch, Industrial Union of Workers (**AWU**) in *APPL 60 of 2025 t*o vary the *Timber Workers Award No. 36 of 1950* (**AWU Award**). This consistency ensures a uniform and logical safety net for the timber industry across Western Australia, ensures certainty of application and scope, and prevents "leap-frogging" between different regional award structures.
>
> 24. Fourth, the scope clause in the Proposed Award has been amended to ensure the geographical area of exclusion is standardised to "*that portion of the South West Land Division situated outside a radius of 45 kilometres from the G.P.O. Perth*". This standardisation will remove an "award free zone" created by discrepancies existing in the Replaced Awards, which contain, variously, either a 14-mile radius exclusion or a 45-kilometre radius exclusion.
>
> 25. Fifth, through the inclusion of Schedule D (No Reduction), the Proposed Award ensures that the modernisation process does not disadvantage current employees, maintaining industrial stability and fairness during the transition to a consolidated instrument.
>
> (citations omitted, original emphasis)

16 It is not known how many employees or employers are covered by the Award, nor by the four awards which would be replaced by the variations. It is safe to say that the Award's coverage is likely to be relatively limited, as most businesses operating in the timber industry will be national system employers. In light of the limited coverage, consolidation of the awards would be beneficial because:

(a) there will be fewer State awards that cover workers in the timber industry in the State industrial relations system;

(b) the award consolidation will likely make things easier for employers and employees to find the applicable terms and conditions of employment; and

(c) the variations will be of particular benefit to businesses that are involved in activities that span more than one of the awards.

17 The variations will ensure that the Award:

(a) does not contain wages that are less than the minimum award wage as ordered by the Commission under s 50A;

(b) 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) 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) does not contain provisions that are obsolete or need updating; and

(e) 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.

18 It is appropriate that the terms and conditions of employment of workers engaged in the timber industry in the State system have conditions aligned with timber industry workers generally in the State. As I said in ***Local Government, Racing and Cemeteries Union (WA) v Western Australian Municipal, Administrative, Clerical and Services Union*** [27], significant disparities in terms and conditions for workers engaged in the same work, across the State and national systems, and within the State system, is inimical to equity and the substantial merits of the case.

19 I am satisfied that the variations sought are consistent with the primary consideration of the merits of the application in accordance with equity, good conscience and the substantial merits of the case in accordance with s 26(1)(a) of the IR Act and Principle 1.3 of the Statement of Principles.

20 I am therefore satisfied that it is appropriate to make the variations sought.

21 An order will issue in the following terms:

(a) THAT the *Timber Yard Workers Award No 11 of 1951* be varied in accordance with the following schedule and that the variations shall have effect from 1 July 2026

SCHEDULE

Delete the entire contents of the following of the *Timber Yard Workers Award No. 11 of 1951* (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:

**Timber Industry (CFMEU) State Award**

**Table of Contents**

**Part 1 - Application and Operation of this Award**

1. Title

2. Definitions

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## Part 1 - Application and Operation of this Award

**1. Title**

1.1 This award is the Timber Industry (CFMEU) State Award.

**2. Definitions**

2.1 In this award, unless the contrary intention appears:

**adult apprentice** means an apprentice 21 years of age or over.

**all purposes** means the payment will be included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties or loadings or payment while they are on annual leave.

**casual employee** means an employee engaged and paid as such, applying section 7B of the *Industrial Relations Act 1979*.

**Commission** means the Western Australian Industrial Relations Commission.

**continuous work** means work carried on with consecutive shifts of persons throughout the 24 hours of each of at least 6 consecutive days without interruptions except during breakdowns or meal breaks or due to unavoidable causes beyond the control of the employer.

**engine driver** means any person who operates or drives any engine or engines, the motive power of which is either steam, gas, oil, water, compressed air or electricity, and includes any person who is called upon in the ordinary course of their duty to do engine driver's work other than simply stopping or starting an engine under the supervision of an engine driver.

**estimator** means an employee who has served an apprenticeship to any of the building trades or as a draughtsperson who is engaged in preparing cutting lists of timber for use in the manufacture of building components from builders, architects, or other plans.

**examiner** (Timber tradesperson - Level 5 or above) means an employee who is capable of using all measuring equipment and who is sufficiently versatile to examine and check any kind of product normally produced. They may be called upon to work under supervision but are not expected to exercise discretion and are only required to accept or reject those articles which conform or fail to conform to clearly defined standards.

**greaser or oiler** means any person substantially engaged in greasing or oiling any engine, machinery or shafting.

**head faller** means an employee who selects timber for falling, exercises supervision over 2 or more other fallers and/or who sharpens fallers' saws used in bush operations.

**inspector** (Timber tradesperson—Level 6 or above) means a tradesperson who is engaged to inspect components or finished products whilst in production or upon completion as to their conformity with a specific standard of quality and accuracy and who is authorised to exercise and does exercise discretion to pass components which may not conform to that standard.

**leading hand** means an employee who, while working, has charge or control of any adult person or persons not apprentices and who has been appointed by the employer to take charge or control. This definition does not apply to engine drivers, firemen or greasers.

**machinist A grade** (Timber tradesperson - Level 5) means a tradesperson wood machinist who has served the prescribed apprenticeship to wood machining as set out in this or previous awards, or an adult by reason of training for 4 years or more and experience is, at the time of engagement or subsequent thereto, deemed by the employer to be capable and is willing to perform the work of a tradesperson wood machinist. Work which will include the work of operating and setting up and/or grinding the knives and cutters of any of the following machines upon which the employee is employed notwithstanding that the employee may not be called upon to perform all such work:

(a) automatic profile sander;

(b) shaper who works freehand or automatic shaper (other than grooving and/or slotting in box and case making);

(c) boult's carver;

(d) buzzer and/or jointer (using other than straight knives and cutters);

(e) crossgrainer;

(f) computerised automatic 2 dimensional dividing and squaring saw;

(g) double edgebander and/or double ended tenoner;

(h) edgebander;

(i) dowel machine (multiple type);

(j) drum sander (4 or more drums);

(k) general joiner;

(l) lindemann gluer and jointer;

(m) longitudinal grooving machine;

(n) lock angle machine;

(o) mosaic flooring machine (other than assembling machine);

(p) moulder;

(q) multi-headed boring machine, with 3 or more bits;

(r) panel line machine;

(s) planer—3 heads or more (other than box);

(t) planer, box (4 heads or more);

(u) polisher including a person who is responsible for the setting up and operation of a curtain coating machine;

(v) sets up and operates any programmed and/or computerised high output wood machine not mentioned herein;

(w) responsible person in charge of radio frequency gluing equipment and radio frequency gluing operations;

(x) router, working freehand;

(y) shaper (other than grooving and/or slotting in box and case making);

(z) spoke throater;

(aa) tenoner (using scribing irons, other than an automatic tenoner);

(bb) upholsterer who is capable of and does spring canvas, first and second stuff cover finish;

(cc) trusser or crozier;

(dd) variety turning on lathes other than automatic lathes;

(ee) v-grooving machine;

(ff) v-line folding machine;

(gg) vinyl or melamine laying machine;

(hh) wood chipper;

(ii) wood carver; and

(jj) wood turner who grinds cutters and/or sets up and operates or who works freehand and a turner who sets up and operates a copying or automatic lathe.

An employee operating any of the following machines: automatic shaper; boult's carver; buzzer and/or jointer; general joiner; lindeman gluer and jointer; and a router will be a **machinist A grade** notwithstanding the employee does not set up and/or grind the knives and cutters.

**machinist B grade** means an adult employee other than a tradesperson, operating and setting up and/or grinding the knives or cutters of any of the following machines:

(a) automatic lathe;

(b) band and/or jig saw (other than sawmilling);

(c) belt sander and bobbin sander;

(d) belt sander on veneers;

(e) borer (3 or more spindles);

(f) buzzer and/or jointer (using straight knives or cutters);

(g) circular saw;

(h) copying lathe;

(i) dovetailer;

(j) dowel machine (single type);

(k) drum sander (double or triple drums);

(l) end matcher, finger jointer and all other male and female profile machines;

(m) glue jointer and/or automatic dowel driving machine;

(n) mechanical cutting veneer guillotine and veneer press

(o) microplaner;

(p) morticer (chain or hollow chisel of any kind or any other);

(q) panel line machine;

(r) planer (one or 2 heads) other than box;

(s) planer, box (less than 4 heads);

(t) pole scarfing (including operator of such machine who also operates a pole boring or pole capping machine);

(u) radial head using saws or cutters in the making of component parts for pre-cut buildings or of roof trusses or any other form of trusses;

(v) relisher;

(w) router (working from templates, dies, jigs or fences);

(x) sets up and operates a tenoner, other than double ended tenoner;

(y) shaper (grooving and/or slotting in box and case making);

(z) slicer (box);

(aa) spiking machine (incisor);

(bb) thicknesser;

(cc) timber bending machine;

(dd) v-grooving machine;

(ee) v-line folding machine;

(ff) vinyl or melamine laying machine;

(gg) wood chipping machine (other than log chipper); and

(hh) wood wool machine.

**measurer** means an employee who measures and records dimensions and number of pieces of sawn timber.

**millwright** means a tradesperson engaged in installing and/or maintaining machinery.

**on-hire** means the on-hire of an employee by their employer to a client, where the employee works under the general guidance and instruction of the client or a representative of the client.

**order** means the demand of a customer or of the employer, or someone on the employer's behalf, to the orderperson for an expressed size and class or expressed sizes and classes of timber.

**ordinary hourly rate** means the minimum hourly rate for an employee's classification specified in clause 17 – Minimum

rates (excluding any casual loading), plus any allowances specified as being included in the employee's ordinary hourly rate or payable for all purposes.

**rostered shift** means a shift of which the employee concerned has had at least 48 hours' notice.

**saw benches classifications:**

(a) **breaking down bench** includes a circular saw, a band saw, twin saws, horizontal saw or vertical frame saw when any of the saws are used for the purposes of reducing a log to flitches;

(b) **no. 1 bench** means any bench which takes flitches from the breaking down bench;

(c) **no. 2 bench** means any bench which is fed directly from a no. 1 bench or an edger sawbench, and which is not being used as a picket bench within no. 4 bench;

(d) **no. 3 bench** means any bench which is fed directly from a no. 2 bench and which is not being used as a picket bench within no. 4 bench; and

(e) **no. 4 bench** means a bench on which timber is cut into pickets, lathes, droppers, palings, staves or other small sizes which do not exceed 7.6 cm by 3.8 cm by 2.7 metres or the equivalent in section by 2.7 metres.

**saw doctor** means an employee who may be required to manufacture from blank ribbon steel band saws of varying widths and who punches teeth, grinds teeth, swages and sets, hard tips teeth, tensions and levels circular saws, grinds, sharpens and sets circular saws, maintains chainsaw chains, hand saws and frame saws and who when required, is responsible for the training of other employees.

**saw sharpener** means an employee who sharpens, sets and tensions saws only, using either hand or automatic grinding equipment, file setting lever and setting gauge saw sharpener.

**standard rate** means the 'Minimum weekly rate (full-time) employee' for a Level 5 in clause 17 – Minimum rates.

**timber tradesperson millwright—special class** means an employee who installs, repairs and maintains complex machinery and equipment including machinery which utilises hydraulic or pneumatic principles and who in the course of that work is required to read and understand hydraulic and pneumatic circuitry which controls fluid power systems; who has completed appropriate training as described in the classification descriptions of this award.

**training agreement** means a traineeship or apprenticeship agreement that is registered with the Department of Training and Workforce Development under the provisions of the *Vocational Education and Training Act 1996*.

**3. The *Minimum Conditions of Employment Act 1993* and this award**

3.1 The *Minimum Conditions of Employment Act 1993* (MCE Act) and this award contain the minimum conditions of employment for employees covered by this award.

3.2 Where this award refers to a condition of employment provided for in the MCE Act, the MCE Act applies.

3.3 The employer must ensure that copies of this award and the MCE Act are available to all employees to whom they apply, either on a notice board which is conveniently located at or near the workplace or through accessible electronic means.

**4. Area and Scope**

4.1 This award applies throughout Western Australia, excluding that portion of the South West Land Division situated outside a radius of 45 kilometres from the G.P.O. Perth.

4.2 This award covers employers in the Timber Industry, as defined in clause 4.3, and to the work and persons performing that work as listed in the skill grade structures, as described in clause 2 - Definitions. Without limiting the scope of this award, it applies to the types of work listed in clause 4.3 in the forest and building products, manufacturing and merchandising, and pulp and paper sectors and persons performing that work or employed in connection with the following work, to the exclusion of any other award.

4.3 **Timber Industry** means any of the following industry sectors, but does not include any work covered by the awards specified in clause 5(b). In reality each sector may overlap and include any or all activities from other sectors.

(a) **Harvesting and forestry management sector**

(i) Harvesting timber, processing of harvested timber, operating any machinery or vehicle in connection with harvesting, lifting, processing and transporting timber.

(ii) Routine maintenance of equipment or vehicle.

(iii) Preparation of forest for harvesting operations, maintenance of forest during harvesting and activities associated with the rejuvenation of forest during and after harvesting operations, where carried out by employers engaged in harvesting operations.

(iv) General forestry and forest management work where carried out by employers engaged in harvesting operations.

(b) **Milling and processing sector**

(i) Processing of logs and other forms of raw timber into building timber and other value-added products in timber mills, factories, merchant's premises and other locations.

(ii) Processing includes lifting, sorting, stacking, storing, warehousing transporting, debarking, sawing, dressing, drying, machining, laminating, jointing, chipping, treating and carrying out any grading and labelling functions associated with processing.

(iii) Operation of any machinery used in processing or in connection with processing including plant and infrastructure and any maintenance associated with that machinery, plant or infrastructure.

(iv) Assembling and construction of products from processed timber.

(v) Supervision, co-ordination and planning of the processing activities and processing infrastructure.

(c) **Panel products sector**

(i) Manufacturing of boards, panels or veneer from timber and timber products.

(ii) Handling, sorting, stacking, lifting, treating, cutting, pressing, gluing, edging, trimming, painting, laminating and processing in any manner, board, panel or veneer.

(iii) Transporting and storing board, panels or veneer.

(iv) Operating and maintaining any or all machinery associated with board, panel or veneer manufacture including manufacturing plant and infrastructure.

(v) Planning, setting-up and assembling products from board, panel or veneer and associated components.

(d) **Manufacturing sector**

(i) All activities listed in the milling and processing sector in clause 4.3(b).

(ii) Machining timber in any manner to produce components and articles.

(iii) Planning, setting-up and assembling wood components and associated attachments into products.

(iv) Manufacturing frames, trusses and doors.

(v) Measuring, estimating, designing and manufacturing products for building and other purposes.

(vi) Manufacturing wooden sporting goods including for cricket, hockey, lacrosse, polocrosse, and/or badminton.

(vii) Wood machining, wood turning, wood carving, finishing, polishing, upholstering and other work carried out in or in connection with preparing, packing, assembling, manufacturing repairing or fixing, whether new or second hand, musical instruments and toys; where any of them are made of wood or timber, manufactured wood or timber products; and any other product made from wood other than furniture.

(e) **Merchandising and retailing sector**

(i) All activities listed in the manufacturing sector in clause 4.3(d).

(ii) Displaying, demonstrating, preparing, handling, providing advice and selling timber and timber related products, hardware and building products in wholesale and timber merchant/retail outlets.

(iii) Activities associated with the importing and wholesaling of timber products.

(iv) Calculating and processing customer orders and dealing with customers generally.

(f) **Pulp and paper sector**

The manufacture, process and supply of: pulp and recycled pulp; plastic materials where obtained from the wood and cooking chemicals derived from the manufacture, processing and supply of pulp and recycled pulp; paper, including paper board, strawboard, paper bags or any similar commodity, brown papers, copy paper, envelope grade paper, hardboard paper, kraft paper, linerboard, publication and printing papers, sackcraft, security papers, watermark papers, fruit trays, egg cartons, wine trays, paper towel, facial tissue, toilet tissue, paper napkins, printed tissue products (including printed and laminated) where printing and conversion occurs in conjunction with the processing of pulp for tissue manufacture.

4.4 Reference to timber and/or wood in this award without in any way limiting the ordinary meaning of the words, will also include any artificial, laminated or manufactured material now in existence or hereafter coming into existence from whatever materials made or constructed or manufactured, which is or can be used in the place of wood or timber and worked in a similar manner as wood or timber.

4.5 This award covers any employer which supplies labour on an on-hire basis in the industry sectors described in clause 4.3 in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in those industry sectors. Clause 4.5 operates subject to the exclusions from coverage in this award.

4.6 This award covers employers which provide group training services for apprentices and/or trainees engaged in the industry sectors and/or parts of those industry sectors set out at clause 4.3, and those apprentices and/or trainees engaged by a group training service hosted by a business to perform work at a location where the activities described in clause 4.3 are being performed. Clause 4.6 operates subject to the exclusions from coverage in this award.

4.7 This award replaces the:

(a) Particle Board Employees' Award, 1964;

(b) Plywood and Veneer Workers' Award, 1952;

(c) Saw Servicing Establishments Award No. 17 of 1977; and

(d) Case and Box Makers' Award, 1952.

**5. Exclusions**

This award does not apply to:

(a) employers and employees who are subject to the national industrial relations system;

(b) employees who are covered by another award of the Commission, including the:

(i) Building Trades and Labourers (Construction) Award;

(ii) Building Trades and Labourers (General) Award;

(iii) Commercial Sales Representatives' Award;

(iv) Furniture Trades Industry Award;

(v) Shop and Warehouse (Wholesale and Retail Establishments) State Award; and

(vi) Timber Industry (AWU) State Award.

**6. Requests for flexible working arrangements**

Requests for flexible working arrangements are provided for in Part 4A of the *Minimum Conditions of Employment Act 1993*.

**Part 2 - Types of Employment and Classifications**

**7. Types of employment**

7.1 Employees under this award will be employed in one of the following categories:

(a) full-time;

(b) part-time;

(c) piecework (see clause 11 - Piecework - General Timber Stream); or

(d) casual.

**8. Full-time employees**

8.1 A full-time employee is engaged to work an average of 38 hours per week.

8.2 Full-time employees are employed by the week.

**9. Part-time employees**

9.1 A part-time employee:

(a) is engaged to work less than an average of 38 ordinary hours per week; and

(b) has a regular pattern of hours.

9.2 Before commencing part-time employment, the employee and employer must agree upon the hours to be worked by the employee, the days upon which they will be worked and the starting and finishing times for the work.

9.3 The terms of the part-time work and any agreed variation will be recorded in writing and retained by the employer. The employer will provide a copy of the agreement and any variation to it to the employee.

9.4 An employer is required to roster a regular part-time employee for a minimum of 3 consecutive hours on any shift.

9.5 A part-time employee will be paid at the minimum hourly rate for the grade of work performed.

9.6 Subject to this clause, all of the provisions of this award will apply to a part-time employee.

**10. Casual employees**

10.1 A casual employee engaged for a part of any day will be entitled to a minimum of 4 hours' pay per day whether the casual employee is required to work for 4 hours or less than 4 hours.

10.2 **Casual loading**

For each hour worked, a casual employee must be paid:

(a) the ordinary hourly rate; and

(b) a loading of 25% of the ordinary hourly rate,

(c) for the classification in which they are employed.

10.3 A casual employee who works overtime will be paid at the appropriate overtime rate provided in clause 25 - Overtime based on the casual rate of pay (including the casual loading provided for in clause 10.2).

**11. Piecework - General Timber Stream**

11.1 **Definition**

A **pieceworker** is an employee who is not a weekly employee but who is engaged to work away from the employer's mill, yard or other place of business in or in connection with felling, snigging, hauling or other obtaining of logs, billets, chips or other timber at rates of remuneration depending only on the amount of work performed, irrespective of the hours or times concerned.

11.2 **Remuneration**

The remuneration payable to a pieceworker will be fixed by agreement between the employee and the employer at rates which would enable an employee of average capacity to earn, for an ordinary week's work, not less than **25%** above the

appropriate weekly base rate for the class of work performed.

11.3 **Chainsaw and other additional costs**

(a) Pieceworkers who, with the agreement of the employer, supply, operate and maintain their own chainsaws will be reimbursed for the supply of that equipment as per clause 11.3(b).

(b) Pieceworkers will be reimbursed for all costs incidental to and directly connected with piecework in one of the following methods as agreed between the employer and the employee concerned:

(i) incorporating the costs into the piecework rate;

(ii) by calculating the costs and applying an additional flat rate or percentage rate to the piecework rate; or

(iii) by reimbursement of the actual amount involved.

11.4 The following clauses of this award do not apply to pieceworkers:

| Clause title | Clause number |
|---|---|
| Ordinary hours of work | 14 |
| Rostering arrangements | 15 |
| Breaks | 16 |
| Minimum rates | 17 |
| Wage-related allowances | 21 |
| Expense related allowances (except for Protective clothing, footwear and covering) | 22 |
| Accident Pay | 23 |
| Overtime | 25 |
| Penalty rates and shiftwork arrangements | 26 |

11.5 **Shifting haulers**

Pieceworkers will be paid at the award rate plus **25%** for time occupied shifting haulers from one landing to another except in cases where the piecework rates are arranged to include time occupied in shifting haulers.

11.6 **Sleepers—loading and turning**

When sleepers are being inspected whilst they are being loaded into trucks by pieceworkers and, at the request of the employer or of a government inspector or of the buyer, the sleepers are turned for inspection or reinspection, the loaders will receive turning rates whilst turning sleepers and loading rates whilst loading those sleepers.

11.7 **Measurement of logs**

All logs felled or hauled at piecework rates will be measured or weighed at the mill landing or elsewhere by agreement. Particulars of the logs so measured or weighed will be given to the pieceworker at least once a fortnight unless otherwise agreed upon by the employer and employee. These particulars will set out the name of the mill supplied, the name of the employee, the date, the brand, the length, the girth or the weight or the cubic meterage of those logs scaled according to the prevailing practice.

11.8 **Subsistence allowance**

(a) The employer will make every reasonable effort to ensure that the logs are not unduly delayed by stockpiling in the bush. Where logs are stockpiled in excess of 14 days in the bush the pieceworkers affected may be paid, by agreement, a subsistence allowance based on the estimated tonnage of the logs in the pieceworkers' pile agreed to between the pieceworkers and the employer.

(b) If the actual tonnage turns out to be greater than or less than the estimated tonnage after weighing, an adjustment will be made for the differences in the employee's next pay or otherwise as agreed to between the employer and the employee concerned.

11.9 **Royalty payment**

Where the employee obtaining the timber pays royalty on behalf of the employer, the employer will reimburse the royalty to the employee in addition to piecework rates.

11.10 **Payslips**

The employer must provide a payslip to piecework employees in accordance with section 49DA of the *Industrial Relations Act 1979*. In addition to the requirements of section 49DA of the *Industrial Relations Act 1979*, the payslip must include the following information:

(a) tonnes cut—saw log—pulp log;

(b) classification;

(c) adjustments;

(a) conversion factor tonnes/metre.

11.11 **Pieceworker reimbursement**

All pieceworkers will be reimbursed for all costs incidental to and directly connected with piecework in one of the following methods as agreed between the employee and employer concerned:

(a) incorporating the costs into the piecework rate;

(b) by calculating the costs and applying an additional flat rate or percentage rate to the piecework rate; or

(c) by reimbursement of the actual amount involved. The amount will be a minimum of **9.6%** of the standard rate.

**12. Apprentices**

12.1 **Supervision and training**

An employer will ensure that each apprentice has appropriate arrangements made at an enterprise level to meet the apprentices' training requirements and adequate access to and supervision from tradespersons has been arranged.

12.2 **Apprenticeship arrangements**

Apprenticeship arrangements will be as per the requirements of the Department of Training and Workforce Development (or any successor organisation) and/or the *Vocational Education and Training Act 1996*. This includes form and registration of indenture.

12.3 **Period of apprenticeship**

The term of apprenticeship is determined by the rate by which an apprentice gains the required competence and the starting level of competence of the apprentice. An apprenticeship will end once an apprentice displays the competency required under the apprenticeship agreement.

12.4 **Overtime and public holiday rates**

(d) An employer requiring an apprentice to work overtime will pay the apprentice double time for all overtime. No apprentice will be required to work overtime for more than 8 hours in any one week, or more than 16 hours in any 4 weeks, and the overtime must not prevent the apprentice attending any technical school.

(e) An employer may roster an apprentice to work on a public holiday if the apprentice willingly agrees to work that day, in which case the apprentice must be paid double time and one half for the shift. The work on the public holiday will not exceed the ordinary hours of work and will not be included in the calculation of 8 and 16 hours in clause 12.4(a).

12.5 **Travel payment for block release training**

(a) Where an apprentice is required to attend block release training for training identified in or associated with their training contract, and the training requires an overnight stay, the employer must pay for the excess reasonable travel costs incurred by the apprentice in the course of travelling to and from the training. Provided that clause 12.5 will not apply where the apprentice could attend an alternative Registered Training Organisation (RTO) and the use of the more distant RTO is not agreed between the employer and the apprentice.

(b) For the purposes of clause 12.5(a) above, excess reasonable travel costs include the total costs of reasonable transportation (including transportation of tools where required), accommodation costs incurred while travelling (where necessary) and reasonable expenses incurred while travelling, including meals, which exceed those incurred in travelling to and from work. Excess travel costs do not include payment for travelling time or expenses incurred while not travelling to and from block release training.

(c) The amount payable by an employer under clause 12.5(a) may be reduced by an amount the apprentice is eligible to receive for travel costs to attend block release training under a Government apprentice assistance scheme. This will only apply if an apprentice has either received that assistance or their employer has advised them in writing of the availability of the assistance.

12.6 **Payment of fees and textbooks**

(a) All training fees charged by an RTO for prescribed courses and the cost of all prescribed textbooks (excluding those textbooks which are available in the employer's technical library) for the apprenticeship, which are paid by an apprentice, shall be reimbursed by the employer within 6 months of the commencement of the apprenticeship or the relevant stage of the apprenticeship, or within 3 months of the commencement of the training provided by the RTO, whichever is the later, unless there is unsatisfactory progress.

(b) An employer may meet its obligations under clause 12.6(a) by paying any fees and/or cost of textbooks directly to the RTO.

12.7 **Other apprentice conditions of employment**

(a) An apprentice is entitled to be released from work without loss of continuity of employment and to payment of the appropriate wages to attend any training and assessment specified in, or associated with, the training contract.

(b) Time spent by an apprentice in attending any training and/or assessment specified in, or associated with, the training contract is to be regarded as time worked for the employer for the purposes of calculating the apprentice's wages and determining the apprentice's employment conditions. Clause 12 operates subject to the provisions of Schedule C - School-based Apprentices.

(c) No apprentice will, except in an emergency, work or be required to work overtime or shiftwork at times which would prevent their attendance at training consistent with their training contract.

**13. Classifications**

The definitions of the classification levels in clause 17 – Minimum rates, are contained in Schedule A – Classification Definitions – General Timber Stream and Schedule B – Classification Definitions – Pulp and Paper Stream.

**Part 3 - Hours of Work**

**14. Ordinary hours of work**

14.1 **Ordinary hours and roster cycles - day workers**

(a) Ordinary hours of work for a full-time employee shall be an average of 38 per week and will be worked between the hours of 6.00 am and 6.00 pm Monday to Friday in one of the following manners:

(i) 38 hours within a work cycle of one week;

(ii) 76 hours within a work cycle of 2 weeks;

(iii) 114 hours within a work cycle of 3 weeks; or

(iv) 152 hours within a work cycle of 4 weeks.

(b) Different methods of implementation of a 38 hour week may apply to various groups or sections of employees in the establishment concerned.

(c) (i) By agreement between the employer and the majority of affected employees, the ordinary hours of work can be worked on any day of the week, Saturday and Sunday inclusive.

(ii) Notwithstanding clause 14.1(c)(i), where the ordinary hours of work in a particular workplace or part thereof were already being performed on Saturdays and/or Sundays before 1 July 2026, those arrangements may continue to operate.

(d) The ordinary hours of work for a part-time employee will be in accordance with clause 9 – Part-time employees. The ordinary hours of work for a casual employee will be in accordance with clause 10 - Casual employees.

14.2 **Ordinary hours and roster cycles - shiftworkers**

(a) The ordinary hours of work for a full-time shiftworker are an average of 38 hours per week.

(b) Different methods of working shifts may apply to various groups or sections of employees in the establishment concerned.

(c) (i) Where agreement exists between the employer and the majority of affected employees, ordinary hours can be worked on any day of the week, including Saturday and/or Sunday.

(ii) Notwithstanding clause 14.2(c)(i), where the ordinary hours of work in a particular workplace or part thereof were already being performed on Saturdays and/or Sundays before 1 July 2026, those arrangements may continue to operate.

(d) Clause 26 - Penalty rates and shiftwork arrangements provides for shiftwork arrangements.

14.3 **Ordinary hours - watchpersons**

(a) A watchperson may be employed on the basis of 152 hours in a 4 week cycle provided that not more than 48 hours may be worked in any one week or 80 hours in a fortnight without payment for overtime.

(b) Clause 14.1 will not apply to a watchperson.

**15. Rostering arrangements**

15.1 **Rostered days, or shifts, off**

(a) Notwithstanding provisions elsewhere in this award and subject to clause 34 – Consultation about major workplace change and rosters, the employer and the majority of affected employees may agree to establish a system of rostered days off to provide that an employee may elect, with the consent of the employer to:

(i) take a rostered day, or shift, off at any time;

(ii) take rostered days, or shifts, off in part day amounts; or

(iii) accrue some or all rostered days off for the purpose of creating a bank to be drawn upon by the employee at times mutually agreed by the employer, or subject to reasonable notice by the employee or the employer.

(b) Clause 15.1(a) is subject to the employer informing each union which has members employed at the particular enterprise of its intention to introduce an enterprise system of rostered day off flexibility and providing a reasonable opportunity for the union to participate in negotiations.

(c) Once a decision has been taken to introduce a system of rostered day off flexibility in accordance with this clause 15.1(a) its terms must be set out in the time and wages records.

(d) An employer must record rostered day off arrangements in the time and wages record each time this provision is used.

15.2 **Notice of rostered days, or shifts, off**

In cases where, by virtue of the arrangement of the ordinary hours of work, an employee is entitled to a rostered day, or shift, off during the work cycle, the employee must be advised by the employer at least 4 weeks in advance of the day, or shift, to be taken off.

15.3 **Flexibility in relation to rostered days, or shifts, off**

By agreement between the employer and an employee, rostered days or shifts, off may be accumulated up to a maximum of 5 days or shifts, and may be taken in a manner agreed upon between the employer and the employee.

15.4 **Rostered days or shifts off - substitute days or shifts**

(a) **Rostered day off not to coincide with public holiday**

(i) Rostered days off must not be scheduled to coincide with a public holiday observed in accordance with clause 32 - Public holidays.

(ii) An employee working continuous shiftwork who by the arrangement of ordinary hours of work is entitled to a rostered shift off which falls on a public holiday prescribed by clause 32 - Public holidays will at the discretion of the employer, receive an additional day's pay or have an additional day added to their annual leave entitlement. This provision will not apply when the public holiday on which the employee is rostered off falls on a Saturday or Sunday.

(b) **Substitute days**

(i) An employer and an individual employee, or the employer and a majority of affected employees, may agree to substitute the day the employee or affected employees are to take off during a work cycle for another day.

(ii) An apprentice who is required to attend trade school on a rostered day off will be entitled to a substitute day as soon as practicable following the attendance at trade school.

(c) **Work on a rostered day, or shift, off**

Unless a rostered day off is substituted for another day off in accordance with clause 15.4(b), work performed on the rostered day off will be paid in accordance with clause 25 - Overtime.

15.5 **Rostered days off and averaging of pay**

For enterprises implementing a system of rostered days off based on a 19 day, 4 week cycle or in an enterprise where rostered days off based on a 19 day, 4 week cycle exist the following system of averaging pay will apply:

(a) Averaging of pay over 4 weeks for all ordinary hours worked so that in the week during which an employee takes a rostered day off there is no reduction in pay.

(b) Under this system each person works 8 ordinary hours of work each day for 19 days in any 4 week cycle. An amount of pay equivalent to 0.4 hours of pay is held over for each day an employee is at work or absent from work on paid leave such as personal leave, workers compensation, bereavement leave, jury service or public holidays. This amount will be used to pay for the rostered day off during the week the employee takes a rostered day off.

**16. Breaks**

16.1 **Meal breaks - ordinary hours**

(a) Employees will be allowed an unpaid meal break of one hour or other time as may be agreed.

(b) An employee must not be required to work more than 5 ordinary hours without a meal break.

16.2 **Alteration of meal breaks**

In any establishment where the ordinary hours of work are worked on the basis of 4 days of 8 ordinary hours each and one day of 6 ordinary hours in a weekly work cycle, the employer and the majority of affected employees may agree that the 6 ordinary hour day may be worked without a meal break.

16.3 **Payment for work done during meal breaks**

(a) All work done during an employee's meal break must be paid for at double time.

(b) All work done after the time for the meal break until a meal break is allowed must be paid at:

(i) for employees in the Pulp and Paper Stream—double time; or

(ii) for all other employees – time and one half.

16.4 **Crib breaks during overtime**

(a) **Overtime on weekdays**

(i) An employee working overtime on a weekday will be allowed a paid crib break as follows, provided the employee continues to work after the crib break:

| Stream | Number of continuous hours of overtime worked | Length of crib break |
|---|---|---|
| Pulp and Paper Stream employees | Up to 4 hours | No break |
| | After 4 hours | 20 minutes |
| All other employees | Up to 4.5 hours | No break |
| | After 4.5 hours | 20 minutes |

(ii) Unless the period of overtime is 2 hours or less, an employee must be allowed a meal break after working ordinary hours and before starting overtime, which will be paid for at ordinary rates. The

length of the meal break is:

| Stream | Length of meal break |
|---|---|
| Pulp and Paper Stream employees | 30 minutes |
| All other employees | 20 minutes |

(iii) An employer and an employee may agree to any variation of this provision to meet the circumstances of the work in hand; provided that the employer will not be required to make any payment in respect of any time allowed in excess of 20 minutes, or 30 minutes in the case of an employee in the Pulp and Paper Stream.

(b) **Saturdays, Sundays and public holidays**

(i) An employee working overtime on a Saturday, Sunday or public holiday will be allowed a paid crib break as follows, provided the employee continues to work after the crib break:

**Saturdays**

| Stream | Number of continuous hours of overtime worked | Length of crib break |
|---|---|---|
| Pulp and Paper Stream employees | Up to 4 hours | No break |
| | After 4 hours | 20 minutes |
| All other employees | Up to 4.5 hours | No break |
| | After 4.5 hours | 20 minutes |

**Sundays and public holidays**

| Stream | Number of continuous hours of overtime worked | Length of crib break |
|---|---|---|
| Pulp and Paper Stream employees | Up to 4 hours | No break |
| | After 4 hours | 30 minutes |
| All other employees | Up to 4.5 hours | No break |
| | After 4.5 hours | 20 minutes |

16.5 **Paid crib breaks—continuous work**

Where a shift roster provides for continuous work over 24 hours of the day, a 20 minute paid crib break will be allowed to shiftworkers each shift and will be counted as time worked. The crib break will be taken at a time and in a method agreed upon between the employer and the individual employee or majority of affected employees so as to meet the needs of the establishment.

16.6 **Determination of next meal break**

A meal break will not be regarded as time worked for the purpose of determining when the next meal break falls due.

16.7 **Minimum break after overtime**

Breaks after overtime will be provided in accordance with clause 25.9.

**Part 4 - Wages and Allowances**

**17. Minimum rates**

17.1 An employer must pay adult employees the following minimum rates for ordinary hours worked by the employee (not including penalties and allowances):

(a) **General Timber Stream**

| Employee classification | Minimum weekly rate (full-time employee) | Minimum hourly rate |
|---|---|---|
| | **$** | **$** |
| Level 2 | 998.30 | 26.27 |
| Level 3 | 1029.10 | 27.08 |
| Level 4 | 1062.90 | 27.27 |
| Level 5 | 1119.10 | 29.45 |
| Level 6 | 1154.30 | 30.38 |
| Level 7 | 1221.10 | 32.13 |

(b) **Pulp and Paper Stream**

| Employee classification | Minimum weekly rate (full-time employee) | Minimum hourly rate |
|---|---|---|
| | **$** | **$** |

| Employee classification | Minimum weekly rate (full-time employee) | Minimum hourly rate |
|---|---|---|
| | $ | $ |
| Level 1 | 1013.50 | 26.67 |
| Level 2 | 1046.90 | 27.55 |
| Level 3 | 1067.30 | 28.09 |
| Level 4 | 1087.40 | 28.62 |
| Level 5 | 1119.10 | 29.45 |
| Level 6 | 1154.30 | 30.38 |
| Level 7 | 1189.40 | 31.30 |
| Level 8 | 1221.10 | 32.13 |
| Level 9 | 1256.20 | 33.06 |

17.2 **Apprentices (other than saw doctor apprentices)**

(a) The minimum rates for ordinary hours worked by apprentices (other than saw doctor apprentices) are as follows:

(i) **Apprentices that have completed year 12**

| 4 year term | 3.5 year term | 3 year term | % of award rate for Level 5 |
|---|---|---|---|
| 1st year | 0 – 6 months | | 55 |
| 2nd year | 7 – 18 months | 1st year | 65 |
| 3rd year | 19 – 30 months | 2nd year | 75 |
| 4th year | 31 – 42 months | 3rd year | 90 |

(ii) **Apprentices that have not completed year 12**

| 4 year term | 3.5 year term | 3 year term | % of award rate for Level 5 |
|---|---|---|---|
| 1st year | 0 – 6 months | | 50 |
| 2nd year | 7 – 18 months | 1st year | 60 |
| 3rd year | 19 – 30 months | 2nd year | 75 |
| 4th year | 31 – 42 months | 3rd year | 90 |

(b) Where an apprentice is under the age of 21 years on the expiry of the apprenticeship, the apprentice will be paid at not less than the adult ordinary hourly rate prescribed for the skill level on which the employee is employed.

17.3 **Saw doctor apprentices**

(a) The minimum rates for ordinary hours worked by saw doctor apprentices are as follows:

(i) **Apprentices that have completed year 12**

| 4 year term | 3.5 year term | 3 year term | % of award rate for Level 6 |
|---|---|---|---|
| 1st year | 0 – 6 months | | 55 |
| 2nd year | 7 – 18 months | 1st year | 65 |
| 3rd year | 19 – 30 months | 2nd year | 75 |
| 4th year | 31 – 42 months | 3rd year | 90 |

(ii) **Apprentices that have not completed year 12**

| 4 year term | 3.5 year term | 3 year term | % of award rate for Level 6 |
|---|---|---|---|
| 1st year | 0 – 6 months | | 50 |
| 2nd year | 7 – 18 months | 1st year | 60 |
| 3rd year | 19 – 30 months | 2nd year | 75 |
| 4th year | 31 – 42 months | 3rd year | 90 |

(b) Where an apprentice is under the age of 21 years on the expiry of the apprenticeship, the apprentice will be paid at not less than the adult ordinary hourly rate prescribed for the skill level on which the employee is employed.

17.4 **Adult apprentices**

(a) The minimum rate of an adult apprentice who is in the first year of their apprenticeship must be **80%** of the relevant Level 5 rate, or the relevant rate prescribed by clauses 17.2 or 17.3 for the relevant year of the apprenticeship, whichever is the greater.

(b) The minimum rate of an adult apprentice who is in the second and subsequent years of their apprenticeship must be the rate for the lowest relevant adult classification in clause 17.1, or the relevant rate prescribed by clauses 17.2 or 17.3 for the relevant year of the apprenticeship, whichever is the greater.

(c) A person employed by an employer under this award immediately prior to entering into a training agreement as

an adult apprentice with that employer must not suffer a reduction in their minimum rate by virtue of entering into the training agreement, provided that the person has been an employee in that enterprise for at least 6 months as a full-time employee or 12 months as a part-time or regular casual employee immediately prior to commencing the apprenticeship. For the purpose only of fixing a minimum rate, the adult apprentice must continue to receive the minimum rate that applies to the classification specified in clause 17 in which the adult apprentice was engaged immediately prior to entering into the training agreement.

17.5 **Unapprenticed juniors**

The minimum rates for ordinary hours worked by unapprenticed juniors are the following percentages of the ordinary hourly rate for the applicable adult classification of Level 2, for the classification stream in which the junior is employed.

| Age | % of Level 2 award rate |
|---|---|
| | % |
| 16 years and under | 50 |
| 17 years | 60 |
| 18 years | 70 |
| 19 years and over | 100 |

17.6 **School based apprentices**

For school-based apprentices, see Schedule C – School-based Apprentices.

17.7 **Higher duties**

(a) An employee engaged for more than 2 hours during one day or shift on duties carrying a higher rate than the ordinary classification of that employee, will be paid the higher rate for that day or shift. If engaged for 2 hours or less during one day or shift the employee will be paid the higher rate for the time so worked.

(b) For the purpose of clause 17.7(a), the work carrying a higher rate need not be performed during a continuous period but will be based on the aggregate of the time worked during a particular day or shift.

(c) Where an employee is transferred, without having received at least 7 days' written notice, to a grade of work carrying a lower rate than that at which the employee is usually employed, the employee will be paid at the higher rate until the 7 day notice period if provided would have expired.

17.8 **National training wage**

(a) Schedule E to the Miscellaneous Award 2020 sets out minimum wage rates and conditions for employees undertaking traineeships.

(b) This award incorporates the terms of Schedule E to the Miscellaneous Award 2020. Provided that any reference to "this award" in Schedule E to the Miscellaneous Award 2020 is to be read as referring to the Timber Industry (CFMEU) State Award and not the Miscellaneous Award 2020.

Note: The Miscellaneous Award 2020 is a modern award that applies to employers and employees in the national industrial relations system. The rates of pay for trainees are usually adjusted from 1 July each year.

**18. Minimum Adult Award Wage**

18.1 No employee aged 21 or more shall be paid less than the minimum adult award wage unless otherwise provided by this clause.

18.2 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 $998.30 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 $998.30 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 2026.

18.3 The minimum adult award wage is deemed to include all State Wage order adjustments from State Wage Case decisions.

18.4 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.

18.5 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*.

18.6 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*.

18.7 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.

18.8 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.

18.9 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 2026 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.

18.10 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 $828.90 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 $828.90 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 2026.

(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.

**19. Supported Wage System**

19.1 In this clause:

**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.

**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.

**disability support pension** means the Commonwealth 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.

**relevant minimum wage** means the minimum wage prescribed in this award for the class of work for which an employee is engaged.

**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.

**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.

19.2 **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 schedule 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 employment.

19.3 **Supported wage rates**

(a) Employees to whom this clause applies will be paid the applicable percentage of the relevant minimum wage 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 be not less than the amount set by the Commission under section 50A(1)(a)(iii) of the *Industrial Relations Act 1979*.

(c) Where an employee's assessed capacity is **10%**, they must receive a high degree of assistance and support.

19.4 **Assessment of capacity**

(a) For the purpose of establishing the percentage of the relevant minimum wage, 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, a union which the employee is eligible to join.

(b) All assessments made under this schedule must be documented in a SWS wage assessment agreement, and retained by the employer as a time and wages record.

19.5 **Lodgement of SWS wage assessment agreement**

(a) All SWS wage assessment agreements under the conditions of this clause, including the appropriate percentage of the relevant minimum 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.

19.6 **Review of assessment**

The assessment of the applicable percentage should be subject to annual or more frequent review on the basis of a reasonable request for such a review. The process of review must be in accordance with the procedures for assessing capacity under the SWS.

19.7 **Other terms and conditions of employment**

Where an assessment has been made, the applicable percentage will apply to the relevant minimum wage only. Employees covered by the provisions of this clause will be entitled to the same terms and conditions of employment as other employees covered by this award on a pro rata basis.

19.8 **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 re-design of job duties, working time arrangements and work organisation in consultation with other employees in the area.

19.9 **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 that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage 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 Commission under section 50A(1)(a)(iii) of the *Industrial Relations Act 1979*.

(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 clause 19.4.

**20. Payment of wages**

20.1 Section 49DA of the *Industrial Relations Act 1979* sets out the requirements for pay slips and the content of pay slips.

20.2 **Period of payment**

Wages will be paid either weekly or fortnightly, either according to the:

(a) actual ordinary hours worked each week or fortnight; or

(b) average number of ordinary hours worked each week or fortnight.

20.3 **Method of payment**

Wages must be paid by cash, cheque or electronic funds transfer into the employee's bank or other recognised financial

institution account.

20.4 **Day off coinciding with pay day**

Where an employee is paid wages by cash or cheque and the employee is, by virtue of the arrangement of their ordinary hours, to take a day off on a day which coincides with pay day, the employee must be paid no later than the working day immediately following pay day. However, if the employer is able to make suitable arrangements, wages may be paid on the working day preceding pay day.

20.5 **Wages to be paid during work hours**

(a) Where an employee is paid wages by cash or cheque, the wages are to be paid during ordinary working hours.

(b) If an employee is paid wages by cash and is kept waiting for their wages on pay day after the usual time for ceasing work, the employee is to be paid at overtime rates for the period they are kept waiting.

20.6 **Absences from duty under an average system**

Where a full-time employee's ordinary hours in a week are greater or less than 38 hours and the employee's pay is averaged to avoid fluctuating wage payments, the following is to apply:

(a) the employee will accrue a credit for each day they work ordinary hours in excess of the daily average;

(b) the employee will not accrue a credit for each day of absence from duty, other than on paid leave; and

(c) an employee absent for part of a day, other than on paid leave, accrues a proportion of the credit for the day, based on the proportion of the working day that the employee was in attendance.

20.7 **Payment on termination of employment**

(a) (i) When an employee is dismissed (other than for misconduct) or lawfully terminates their employment, the employee will be paid all moneys that are owing to them on the day of termination, unless that payment is prevented because of circumstances beyond the control of the employer.

(ii) For termination in circumstances other than in clause 20.7(a)(i), payment of moneys owing must be made no later than 7 days after the day of termination. Where an employee is paid by cash or cheque, moneys due shall be sent by registered post to the employee's last known address.

(b) In the case of an employee who is paid average pay and who has not taken time off due to them during the work cycle in which their employment is terminated, the wages due shall include a total of credits accrued during the work cycle. Provided that where the employee has taken time off during the work cycle in which their employment is terminated, the wages due shall be reduced by the total of credits which have not accrued during the work cycle.

**21. Wage-related allowances**

21.1 Employers must pay to an employee the wage-related allowances the employee is entitled to under this clause.

21.2 **All-purpose allowances**

Allowances paid for **all purposes** are included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties or loadings or payment while they are on annual leave. The following allowances are paid for all purposes under this award:

(a) forest work allowance; and

(b) low loader allowance.

21.3 **Forest work allowance**

(a) A forest work allowance equal to the amount prescribed in clause 22.3(a) of the Timber Industry Award 2020 is payable to an employee (other than a pieceworker) who is working in forests.

Note: The Timber Industry Award 2020 is a modern award that applies to employers and employees in the national industrial relations system. The forest work allowance contained in clause 22.3(a) of the Timber Industry Award 2020 is usually adjusted from 1 July each year.

(b) This allowance will be paid for all purposes of this award.

(c) This allowance compensates for all disabilities encountered in this type of work (including difficult terrain and dense undergrowth) whilst so engaged.

21.4 **Low loader allowance**

(a) An allowance equal to the amount prescribed in clause 22.4(a) of the Timber Industry Award 2020 per each additional complete tonne over 43 tonnes GCM is payable to an employee when driving a low loader.

Note: The Timber Industry Award 2020 is a modern award that applies to employers and employees in the national industrial relations system. The low loader allowance contained in clause 22.4(a) of the Timber Industry Award 2020 is usually adjusted from 1 July each year.

(b) This allowance will be paid for all purposes of this award.

21.5 **Leading hands**

A leading hands allowance equal to the amount prescribed in clause 22.5 of the Timber Industry Award 2020 is payable to a leading hand.

Note: The Timber Industry Award 2020 is a modern award that applies to employers and employees in the national industrial relations system. The leading hands allowance contained in clause 22.5 of the Timber Industry Award 2020 is usually adjusted from 1 July each year.

21.6 **Other wage related allowances**

The following allowances as set out in clause 22 of the Timber Industry Award 2020 (as varied from time to time) are incorporated into this award and must be provided to employees who qualify for the allowance:

- Cleaning of boilers and associated equipment allowance (clause 22.6)
- Repairs inside boilers and associated equipment allowance (clause 22.7)
- Additional allowances for engine drivers/firemen (clause 22.8)
- First aid allowance (clause 22.9)
- Charred timber (clause 22.10)
- Dirty work allowance (clause 22.11)
- Wet places allowance (clause 22.12)
- Hot work allowance (clause 22.13)
- Cold places allowance (clause 22.14)
- Confined spaces allowance (clause 22.15)
- Height money allowance (clause 22.16)

Note: The Timber Industry Award 2020 is a modern award that applies to employers and employees in the national industrial relations system. The wage related allowances contained in clause 22 of the Timber Industry Award 2020 are usually adjusted from 1 July each year.

**22. Expense-related allowances**

22.1 The following allowances as set out in clause 23 of the Timber Industry Award 2020 (as varied from time to time) are incorporated into this award and must be provided to employees who qualify for the allowance:

- Vehicle allowance (clause 23.2)
- Meal allowance - overtime (clause 23.3)
- Tool allowances (clause 23.4)
- Camping allowance (clause 23.5)
- Damage to clothing, tools and other items (clause 23.6)
- Protective clothing, footwear and covering allowance (clause 23.7)
- Travelling expenses (clause 23.8)
- Work away from usual place of employment allowance (clause 23.9)
- Travelling allowance - daily travel (clause 23.10)
- Travelling allowance - change of residence (clause 23.11)
- Travelling allowance - distant work (clause 23.12)
- Travelling allowance - bushworkers other than pieceworkers (clause 23.13)
- Training and skill development allowances (clause 23.14)

Note: The Timber Industry Award 2020 is a modern award that applies to employers and employees in the national industrial relations system. The expense related allowances contained in clause 23 of the Timber Industry Award 2020 are usually adjusted from 1 July each year.

**23. Accident Pay**

23.1 Should an employee, in either the General Timber Stream or the Pulp and Paper Stream of this Award, experience an accident at the place of employment and weekly payments of compensation are paid to the employee under the *Workers Compensation and Injury Management Act 2023*, the employee shall have the amount of compensation increased by the employer to the employee's usual weekly rate of pay under this Award (not including over award payments, shift loadings or overtime).

23.2 The payment made by the employer shall be limited to a maximum period of 39 weeks in the case of an employee in the General Timber Stream, and 52 weeks in the case of an employee in the Pulp and Paper Stream.

23.3 For the purpose of this clause, **place of employment** shall include travelling directly from or to their place of employment.

23.4 Casual employees' accident pay shall be based on the number of hours worked per week over the last month, with the present employer, or if less than one month the average for the time worked. The amount to be paid is the usual weekly rate of pay including the casual loading prescribed by clause 10.2 of this Award but not including over award payments, shift loadings or overtime.

23.5 If an employee entitled to accident pay under this clause returns to work on reduced hours or modified duties, the amount of accident pay due will be reduced by any amounts paid for the performance of that work.

**24. Superannuation**

24.1 **Superannuation legislation**

The Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth) and the *Superannuation Industry (Supervision) Act 1993* (Cth), deals with the superannuation rights and obligations of employers and employees.

24.2 **Employer contributions**

(a) An 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.

(b) Contributions must be paid into one of the following funds:

(i) any complying fund nominated by the employee; or

(ii) the employee's stapled fund; or

(iii) AustralianSuper, which will become the "nominated fund" if no fund is nominated by the employee and there is no stapled fund.

24.3 **Employee's options**

(a) Within 14 days of commencing employment, the employer must notify the employee of the employee's entitlement to nominate a complying fund.

(b) Any failure by the employee to nominate a fund will not affect the employee's eligibility to receive contributions.

(c) The employee and employer will 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.

(d) The employer must not unreasonably refuse to agree to a change of complying fund requested by an employee.

24.4 **Voluntary employee contributions**

(a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 24.2.

(b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee.

(c) The employer must pay the amount authorised under clauses 24.4(a) or 24.4(b) at the same time the employer makes their compulsory superannuation contributions on behalf of the employee.

24.5 **Absence from work**

Subject to the governing rules of the relevant superannuation fund, the employer must also make the superannuation contributions provided for in clause 24.2 and pay the amount authorised under clauses 24.4(a) or 24.4(b):

(a) **Paid leave**—while the employee is on any paid leave;

(b) **Work-related injury or illness**—for the period of absence from work (subject to a maximum of 52 weeks) of the employee due to work-related injury or work-related illness provided that:

(i) the employee is receiving workers' compensation payments or is receiving regular payments directly from the employer in accordance with the statutory requirements; and

(ii) the employee remains employed by the employer.

**Part 5 - Overtime and Penalty Rates**

**25. Overtime**

25.1 **Definition of overtime**

(a) All time worked by employees in excess of, or outside of, the ordinary hours of work as prescribed by this award will be overtime.

(b) A part-time employee who works in excess of the daily hours fixed by agreement between the employer and the employee will be paid at overtime rates.

25.2 **Payment for working overtime – day workers**

(a) All overtime worked by day workers between Monday and Saturday will be paid for at the rate of time and one half for the first 2 hours and double time after 2 hours.

(b) All overtime worked by day workers on Sunday will be paid for at double time.

(c) When computing overtime each day's work will stand alone.

(d) When computing overtime the hourly rate will be determined by dividing the appropriate weekly rate by 38.

25.3 **Shiftwork payments for overtime (excluding the pulp and paper stream)**

All overtime worked by shiftworkers (excluding pulp and paper shiftworkers) will be paid as follows:

(a) Monday to Saturday

(i) If on continuous work - at double time for all hours.

(ii) If on other than continuous work - time and one half for the first 2 hours on any one day and double time after 2 hours.

(b) Sunday

All overtime worked by shiftworkers (whether continuous or otherwise) on a Sunday will be paid for at double time.

(c) Shiftwork payments for overtime do not apply when the time is worked:

by arrangement between the employees themselves; or

for the purpose of effecting the customary rotation of shifts.

(d) When not less than 8 hours' notice has been given to the employer by a reliever that the employee will be absent from work and the employee who should be relieved is not relieved and is required to continue to work on a rostered day off, the unrelieved employee will be paid at double time.

25.4 **Pulp and Paper Stream—payment for shiftworkers working overtime**

For all work outside the ordinary hours, or in excess of the normal duration of the shift, overtime will be paid to a shiftworker in the pulp and paper stream at the rate double time, except in cases where that time is worked by arrangement between the employees themselves. Provided that:

(a) Where an employee is given notice to work on the employee's rostered day off and the notice is cancelled within 16 hours of the time due for them to commence, the employee will be paid 4 hours' ordinary pay.

(b) Where an employee is given notice to work the succeeding shift and the notice is cancelled, and as a consequence of the notice the employee has remained on the premises until the prescribed starting time, the employee will be paid 4 hours' ordinary pay.

(c) **Sunday allowance**

In consideration of the Sunday overtime required in the industry, an employee who works not less than 8 hours on a Sunday outside the employee's ordinary hours of work prescribed in this award and has worked not less than 8 hours on either of the immediately preceding 2 Sundays outside ordinary hours will be paid in respect of the first-mentioned Sunday a special allowance of 4 hours' pay at ordinary time.

25.5 **Non-accumulation of penalty rates**

The rates prescribed in this clause will be in substitution for and not cumulative upon the shift rates prescribed elsewhere in this award.

25.6 **Payment for work on rostered day off - all employees**

All work performed on a rostered day off on the instructions of the employer will be paid for at time and one half for the first 2 hours and double time after 2 hours, with a minimum payment for 3 hours at that rate. If the rostered day off is a Sunday, all work must be paid for at double time, with a minimum payment for 3 hours.

25.7 **Watchpersons**

All overtime for a watchperson will be paid for at time and one half.

25.8 **Reasonable overtime**

(a) An employer may require an employee to work reasonable overtime hours at overtime rates.

(b) An employee may refuse to work overtime in circumstances where the working of the overtime would result in the employee working hours which are unreasonable having regard to:

(i) any risk to the employee's health and safety that might reasonably be expected to arise if the employee worked the overtime;

(ii) the employee's personal circumstances (including any family responsibilities);

(iii) the conduct of the operations or business in relation to which the employee is required or requested to work the overtime;

(iv) any notice given by the employer of the requirement or request that the employee work the overtime;

(v) any notice given by the employee of the employee's intention to refuse to work the overtime;

(vi) whether any of the overtime is on a public holiday in the area of the State where the employee is required or requested to work the overtime;

(vii) the employee's hours of work over the 4 weeks ending immediately before the employee is required or requested to work the overtime; and

(viii) any other relevant matter.

25.9 **Rest period after overtime**

(a) When overtime work is necessary, it must, whenever reasonably practicable, be arranged so that employees have at least 10 consecutive hours off duty between the work of successive days.

(b) Where an employee works so much overtime that there are fewer than 10 consecutive hours between finishing overtime on one day and commencing ordinary work on the next day, the employee will be released until they have had at least 10 consecutive hours off duty without loss of pay for ordinary working time occurring during the absence.

(c) If, on the instructions of the employer, an employee resumes or continues work without having had 10 consecutive hours off duty, the employee will be paid at double time until they are released from duty and they are then entitled to be absent until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during that absence.

(d) In the case of a shiftworker the provisions of this subclause will apply as if 8 hours were substituted for 10 hours when overtime is worked:

(i) for the purpose of changing shift rosters;

(ii) where a shiftworker does not report for duty and a day worker or a shiftworker is required to replace the shiftworker; or

(iii) where a shift is worked by arrangement between the employees themselves.

25.10 **Call-back**

(a) An employee recalled to work overtime after leaving the employer's business premises (whether notified before or after leaving the premises) will be paid for a minimum of 4 hours' work at the appropriate rate for the call-back except when the employee is entitled to payment for standing by in accordance with clause 25.11, in which case the employee will be paid for a minimum of 3 hours' work at the appropriate rate.

(b) The employee will not be required to work the full 4 hours' work if the work the employee was recalled to perform is completed in a shorter period, except in unforeseen circumstances.

25.11 **Standing by**

When an employee is required by the employer to be in readiness for a call-back to work the employee will, until released by the employer or notified of the requirement to attend for duty, be paid for standing by time at ordinary rates from the time held in readiness.

25.12 **Recall without notice – pulp and paper stream**

An employee in the pulp and paper stream recalled without notice to work overtime will be paid at the rate of ordinary time from the time of receipt of notice of recall until the employee reports for duty. Provided the employee reports for duty without unreasonable delay.

25.13 **Transport for employees after overtime**

(a) Where an employee working overtime is required to remain on duty to a time which precludes the employee from using any reasonable means of transport to the employee's home, the employer must pay the cost of transport for the employee to get home free of charge and pay the employee's current rate until transport is available.

(b) Clause 25.13(a) will not apply to an employee who lives within reasonable walking distance from the point at which the employee is employed or otherwise has their own transport.

25.14 **Time off instead of payment for overtime**

(a) An employee and employer may agree to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.

(b) The period of time off that an employee is entitled to take is equivalent to the overtime payment that would have been made.

EXAMPLE: An employee who worked 2 overtime hours at time and one half is entitled to 3 hours' time off.

(c) Time off must be taken within 6 months of the overtime being worked at a time or times agreed by the employee and employer.

(d) If the employee requests at any time to be paid for overtime covered by an agreement under this subclause but not taken as time off, the employer must pay the employee for the overtime in the next pay period following the request, at the applicable overtime rate.

(e) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in clause 25.14(c), the employer must pay the employee for the overtime in the next pay period following those 6 months, at the applicable overtime rate.

(f) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.

(g) If, on the termination of the employee's employment, time off for overtime worked by the employee to which this subclause applies has not been taken, the employer must pay the employee for the overtime at the applicable overtime rate.

**26. Penalty rates and shiftwork arrangements**

26.1 **Penalty rates for day workers**

An employer must pay a day worker the following penalty rates for work performed during ordinary hours:

(a) **Payment for work on Saturdays**

All ordinary hours of work performed by a day worker on a Saturday will be paid for at the rate of time and one half for the first 2 hours and double time after 2 hours, with a minimum payment for 3 hours.

(b) **Payment for work on Sundays**

All ordinary hours of work performed by a day worker on a Sunday will be paid for at double time, with a minimum payment for 3 hours.

(c) **Payment for work on public holidays**

Except as prescribed by clause 32 – Public holidays, all work performed by a day worker on a public holiday will be paid for at the rate of double time and one half, with a minimum payment for 3 hours.

Note: For casual employees the 25% casual loading is added to, but not compounded on, the above penalty rates.

26.2 **Shiftwork arrangements**

(a) **Twelve hour shifts**

Employees may be required to work a continuous 12 hour shift subject to:

(i) proper health monitoring procedures being introduced;

(ii) suitable roster arrangements being made;

(iii) proper supervision being provided;

(iv) adequate breaks being provided; and

(v) an adequate trial or review process being implemented through the consultative process at the workplace.

(b) **Changes to shifts**

(i) **Consultation**

Where an employer proposes to change an employee's regular roster or ordinary hours of work, the employer must comply with clause 34 – Consultation about major workplace change and rosters.

(ii) **Day worker changing to shiftwork**

Where a day worker commences shiftwork at the instruction of the employer without 7 days' notice (or a reduced period of 48 hours' notice where the transfer to shiftwork is necessitated by absenteeism), the employer will pay the employee at time and one half for all ordinary hours worked until the required notice period would have expired. This payment will be in place of any shift rates payable under clause 26.3.

Note: All ordinary hours worked on Sunday must still be paid at double time.

(iii) **Change of shift rosters**

Where the employer does not provide a shiftworker with 48 hours' notice of any change to the employee's shift roster, the employer will pay the employee at time and one half for all ordinary hours worked until the 48 hour notice period would have expired. This payment will be in place of any shift rates payable under clause 26.3.

Note: All ordinary hours worked on Sunday must still be paid at double time.

(iv) **Termination of shiftwork**

An employer must give a shiftworker 7 days' notice of the cessation of the shiftwork. If 7 days' notice is not given, the employer will pay the employee the shift rates payable under this clause for all ordinary hours worked until the 7 days' notice would have expired.

26.3 **Penalty rates for shiftworkers**

(a) **Definitions**

(i) **Afternoon shift** means any shift finishing after 6.00 pm and at or before midnight.

(ii) **Day shift** means any shift that is not an afternoon shift or a night shift.

(iii) **Night shift means** any shift finishing after midnight or commencing before 6.00 am.

(iv) **Rostered shift means** a shift of which the employee concerned has had at least 48 hours' notice.

(v) **Continuous work** means work carried on with consecutive shifts of persons throughout the 24 hours of each of at least 6 consecutive days without interruptions except during breakdowns or meal breaks or due to unavoidable causes beyond the control of the employer.

(b) **Afternoon and night shifts to be consecutive**

(i) Where any particular process is carried out on shifts other than day shift, and less than five consecutive afternoon or five consecutive night shifts are worked on that process, the employees employed on such afternoon or night shifts must be paid at overtime rates.

(ii) Provided that where the ordinary hours of work in an establishment are performed on less than five days per week, the provisions of paragraph (i) will be as if four consecutive shifts were substituted for five consecutive shifts.

(iii) The sequence of work will not be deemed to be broken under paragraphs (i) or (ii) above because work on the process is not carried out on a Saturday, Sunday, public holiday, rostered day off or non-working day.

(c) **Payment for ordinary hours - Monday to Friday**

(i) **Day shift**

A shiftworker whilst on day shift will be paid the ordinary hourly rate for all hours of that shift.

(ii) **Afternoon shift**

A shiftworker whilst on afternoon shift will be paid a **15%** loading on the ordinary hourly rate for all hours of that shift.

(iii) **Night shift - rotating**

A shiftworker whilst on a night shift roster which rotates with other shift types will be paid a **15%** loading on the ordinary hourly rate for all hours of a night shift.

(iv) **Night shift - non-rotating**

A shiftworker who works night shifts only will be paid a **30%** loading on the ordinary hourly rate for all hours of a night shift.

(d) **Payment for ordinary hours - Saturday and Sunday**

(i) Ordinary hours of work performed by a shiftworker on a Saturday will be paid for at time and one half.

(ii) Ordinary hours of work performed by a shiftworker on a Sunday will be paid for at double time.

(e) **Payment for ordinary hours - public holidays**

Ordinary hours of work performed by a shiftworker on a public holiday will be paid for at double time.

Note: For casual employees the 25% casual loading is added to, but not compounded on, the above penalty rates.

**Summary of penalty rates – day workers**

| Time of hours worked | Full-time and part-time employees | Casual employees |
|---|---|---|
| | additional % of ordinary hourly rate | additional % of ordinary hourly rate (inclusive of casual loading) |
| Monday to Friday | 0% | 25% |
| Saturday - first 2 hours | 50% | 75% |
| Saturday - after 2 hours | 100% | 125% |
| Sunday - all hours | 100% | 125% |
| Public holiday - all hours | 150% | 175% |

**Summary of penalty rates - shiftworkers**

| Time of hours worked | Full-time and part-time employees | Casual employees |
|---|---|---|
| | additional % of ordinary hourly rate | additional % of ordinary hourly rate (inclusive of casual loading) |
| Monday to Friday - day shift | 0% | 25% |
| Monday to Friday - afternoon shift | 15% | 40% |
| Monday to Friday - night shift (rotating) | 15% | 40% |
| Monday to Friday - night shift (non-rotating) | 30% | 55% |
| Saturday - all hours | 50% | 75% |
| Sunday - all hours | 100% | 125% |
| Public holiday – all hours | 100% | 125% |

**Part 6 - Leave and Public Holidays**

**27. Annual leave**

27.1 Annual leave is provided for in the *Minimum Conditions of Employment Act 1993*. Annual leave does not apply to a casual employee.

Note: The provisions of this clause only detail annual leave provisions that are additional to and/or more favourable than what is contained in the *Minimum Conditions of Employment Act 1993*.

27.2 **Additional leave for shiftworkers**

Shiftworkers who are regularly rostered to work on Sundays and public holidays are entitled to an additional one week of annual leave per annum. This annual leave accrues pro rata on a weekly basis.

27.3 **Payment for annual leave**

(a) **Employees other than pieceworkers**

(i) An employee must be paid the rate they would have received in respect of the ordinary hours the employee would have worked had the employee not been on leave during the relevant period.

(ii) Subject to clause 27.3(a)(iii), the rate to be paid must be worked out on the basis of what the employee would have been paid under this award for working ordinary hours during the period of annual leave, including allowances, loadings and penalties paid for all purposes of the award, first aid allowance and any other wages payable under the employee's contract of employment including any over-award payment.

(iii) **The** employee is not entitled to payments in respect of overtime, special rates or any other payment which might have been payable to the employee as a reimbursement for expenses incurred.

(b) **Pieceworkers**

In the case of a pieceworker the rate of pay for annual leave is whichever is the higher of:

(i) the rate then currently prescribed by the award for the ordinary weekly hours for the classification in which the employee was classified by the employer immediately prior to commencing leave, plus **25**%;

(ii) the rate payable under the employee's contract of employment; or

(iii) the rate calculated according to the employee's average weekly earnings during the 365 days immediately before the leave is taken (or during the employee's employment if less than 365 days).

Note: Section 18A of the *Minimum Conditions of Employment Act 1993* outlines the process for calculating the rate of pay for paid leave for an employee paid wholly by commission or percentage reward or at piece rates.

27.4 **Loading on annual leave—employees other than pieceworkers**

(a) During a period of annual leave an employee will receive a loading calculated on the minimum wage prescribed by clause 17 – Minimum rates, in the following manner:

(i) **Day workers**

An employee who would have worked on day work only had the employee not been on leave will receive a loading of **17.5%,** or in the case of an employee in the Pulp and Paper Stream, a loading of **20%**.

(ii) **Shiftworkers**

Where an employee would have worked on shiftwork had the employee not been on annual leave, the employee will be paid a loading for each shift equal to the greater of:

- **17.5%** (or **20%** in the case of an employee in the Pulp and Paper Stream); or
- the shift allowances that would have been payable to the employee for those shifts under clause 26 - Penalty rates and shiftwork arrangements.

(b) Annual leave loading will not apply to any public holiday occurring during a period of annual leave.

(c) Annual leave loading will, upon termination of the employment for any reason, also apply in respect of leave not taken for a full 12 months qualifying period of service by the employee with the employer.

(d) Annual leave loading will not apply to proportionate payment on termination under clause 37 – Termination of employment, except in the case of an employee with not less than 3 months' service with an employer whose services are terminated by the employer through no fault of the employee.

27.5 **Annual leave in advance**

(a) An employer and employee may agree in writing to the employee taking a period of paid annual leave before the employee has accrued an entitlement to the leave.

(b) An agreement must:

- state the amount of leave to be taken in advance and the date on which leave is to commence; and
- be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

(c) The employer must keep a copy of any agreement under clause 27.5 as an employee record.

(d) If an employee's employment terminates and the employee has taken a period of annual leave that exceeds what the employee has accrued, the employee is liable to pay the employer an amount representing the annual leave not accrued.

Note: Under the *Minimum Conditions of Employment Act 1993* annual leave accrues pro rata on a weekly basis.

**28. Personal leave**

28.1 Personal leave is provided for in the *Minimum Conditions of Employment Act 1993*.

Note: The provisions of this clause only detail personal leave provisions that are additional to and/or more favourable than what is contained in the *Minimum Conditions of Employment Act 1993*.

28.2 **Adjustment of personal leave**

If, in the first or successive years of service with the employer, an employee is absent on personal leave for a period longer than the employee's accrued entitlement to paid personal leave, payment may be adjusted at the end of that 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.

28.3 **Replacement of paid personal leave during annual leave**

(a) Subject to the provisions of this subclause, an employee who suffers personal ill health or injury during annual leave may apply for and the employer must grant paid personal leave in place of paid annual leave.

(b) An application to replace annual leave with paid personal leave:

(i) must be made within 7 days of resuming work; and

(ii) is only available if the employee produces a certificate from a medical practitioner confirming they were confined to their residence or a hospital as a result of personal ill health or injury for a period of 7 consecutive days or more.

(c) Replacement of paid annual leave by paid personal leave must not exceed the period of paid personal leave the employee was entitled to and will not be made with respect to fractions of a day.

(d) Where paid personal leave has been granted by the employer in accordance with this clause, that portion of the annual leave equivalent to the paid personal leave is replaced by the paid personal leave.

(e) Payment for replaced annual leave is to be at the rate of pay applicable at the time the leave is subsequently

taken, provided that if annual leave loading has already been paid to the employee pursuant to clause 27 – Annual Leave, the leave loading is deemed to have been paid with respect to the replaced annual leave.

28.4 If an employee is terminated by their employer and is re-engaged by the same employer within a period of 6 months then the employee's unclaimed balance of paid personal leave continues from the date of re-engagement.

**29. Bereavement leave**

Bereavement leave is provided for in the *Minimum Conditions of Employment Act 1993*.

**30. Parental leave and related entitlements**

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

**31. Family and domestic violence leave**

Family and domestic violence leave is provided for in Division 7 of Part 2-2 of the *Fair Work Act 2009* (Cth) and the *Minimum Conditions of Employment Act 1993*.

**32. Public holidays**

32.1 (a) An employee is entitled to be absent from work without loss of pay on a day or part of a day that is a public holiday mentioned in Schedule 1 of the *Minimum Conditions of Employment Act 1993*.

(b) When any of the days mentioned in clause 32.1(a), other than Easter Sunday, falls on a Saturday or a Sunday the public holiday shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday the public holiday shall be observed on the next succeeding Tuesday. In each case the substituted day shall be a public holiday without deduction of pay and the day for which it is substituted shall not be a public holiday.

32.2 **Substitution of public holidays by agreement**

An employer and employee may agree to substitute another day for a day that would otherwise be a public holiday.

32.3 **Rostered day off falling on public holiday**

Where a full-time employee's ordinary hours of work are structured to include a rostered day off on a weekday and that day off falls on a public holiday, the employee is entitled, at the discretion of the employer, to either:

(a) 7.6 hours of pay at the ordinary time rate;

(b) 7.6 hours of extra annual leave; or

(c) a substitute day off on an alternative weekday.

32.4 **Full-time employees working non-standard hours**

(a) Clause 32.4 applies to full-time workers who do not regularly work a 5 day, Monday to Friday week.

(b) **Public holidays falling upon days employees not working**

When a public holiday falls upon a day when the employee would not be working in any event the employee will receive:

(i) a day's paid leave to be taken on another day or added to annual leave (to be mutually agreed between the employer and the employee); or

(ii) an additional day's wage.

(c) **Christmas Day loading**

If employees are rostered to work on a Saturday or Sunday that is a Christmas Day and are required to work, the employee will receive the normal Saturday or Sunday rate plus a loading of one-half of a normal day's wages for the full day's work and be entitled to the substitute day.

32.5 **Part-time employees**

(a) Where the normal roster of a part-time employee includes a day that is a public holiday, the employee will receive either a paid day off for the hours the employee would otherwise have worked that day or receive the appropriate public holiday rate for working that day.

(b) For part-time employees whose normal roster includes a Saturday or Sunday that would be a prescribed holiday but for the substitution of an alternative day, the following will apply:

(i) the employee will be granted leave with pay on the "actual day" without any substitution; or

(ii) the employee works on the "actual day" at normal Saturday or Sunday rates (if the Saturday or Sunday is Christmas Day the Christmas Day loading will apply) and is allowed to take another day with pay, which may or may not be the prescribed substitute day, as a holiday; or

(iii) the employee works on the "actual day" at normal Saturday or Sunday rates (if the Saturday or Sunday is Christmas Day the Christmas Day loading will apply) and receives, in addition, payment at ordinary time rates for an additional day of equal length (with no substitution of an alternative day).

**Part 7 - Workplace Delegates, Consultation and Dispute Resolution**

**33. Workplace delegates' rights**

33.1 In this clause:

(a) **employer** means the employer of the workplace delegate;

(b) **delegate's organisation** means the employee organisation in accordance with the rules of which the workplace delegate was appointed or elected; and

(c) **eligible workers** means members and persons eligible to be members of the workplace delegate's organisation who work in a particular enterprise.

33.2 Before exercising entitlements under this clause, a workplace delegate must give the employer written notice of their appointment or election as a workplace delegate. If requested, the workplace delegate must provide the employer with evidence that would satisfy a reasonable person of their appointment or election.

33.3 An employee who ceases to be a workplace delegate must give written notice to the employer within 14 days.

33.4 **Right of representation**

A workplace delegate may represent the industrial interests of eligible workers who wish to be represented by the workplace delegate in matters including:

(a) consultation about major workplace change;

(b) consultation about changes to rosters or hours of work;

(c) resolution of disputes;

(d) disciplinary processes;

(e) enterprise bargaining where the workplace delegate is assisting the delegate's organisation with enterprise bargaining; and

(f) any process or procedure within an award, enterprise agreement or policy of the employer under which eligible workers are entitled to be represented and which concerns their industrial interests.

33.5 **Entitlement to reasonable communication**

(a) A workplace delegate may communicate with eligible workers in relation to their industrial interests under clause 33.4. This includes discussing membership of the delegate's organisation and representation with eligible workers.

(b) A workplace delegate may communicate with eligible workers during working hours or work breaks, or before or after work.

33.6 **Entitlement to reasonable access to the workplace and workplace facilities**

(a) The employer must provide a workplace delegate with access to or use of the following workplace facilities:

(i) a room or area to hold discussions that is fit for purpose, private and accessible by the workplace delegate and eligible workers;

(ii) a physical or electronic noticeboard;

(iii) electronic means of communication ordinarily used in the workplace by the employer to communicate with eligible workers and by eligible workers to communicate with each other, including access to Wi-Fi;

(iv) a lockable filing cabinet or other secure document storage area; and

(v) office facilities and equipment including printers, scanners and photocopiers.

(b) The employer is not required to provide access to or use of a workplace facility under clause 33.6(a) if:

(i) the workplace does not have the facility;

(ii) due to operational requirements, it is impractical to provide access to or use of the facility at the time or in the manner it is sought; or

(iii) the employer does not have access to the facility at the enterprise and is unable to obtain access after taking reasonable steps.

33.7 **Entitlement to reasonable access to training**

Employers who employ 15 or more employees must provide a workplace delegate with access to up to 5 days of paid time during normal working hours for initial training and at least one day each subsequent year, to attend training related to representation of the industrial interests of eligible workers, subject to the following conditions:

(a) In each year commencing 1 July, the employer is not required to provide access to paid time for training to more than one workplace delegate per 50 eligible workers.

(b) The number of eligible workers will be determined on the day a delegate requests paid time to attend training, as the number of eligible workers who are:

(i) full time or part time employees; or

(ii) casual employees.

(c) Payment for a day of paid time during normal working hours is payment of the amount the workplace delegate would have been paid for the hours the workplace delegate would have been rostered or required to work on that day if the workplace delegate had not been absent from work to attend the training.

(d) The workplace delegate must give the employer not less than 5 weeks' notice (unless the employer and delegate agree to a shorter period of notice) of the dates, subject matter, the daily start and finish times of the training, and the name of the training provider.

(e) If requested by the employer, the workplace delegate must provide the employer with an outline of the training content.

(f) The employer must advise the workplace delegate not less than 2 weeks from the day on which the training is scheduled to commence, whether the workplace delegate's access to paid time during normal working hours to attend the training has been approved. Such approval must not be unreasonably withheld.

(g) The workplace delegate must, within 7 days after the day on which the training ends, provide the employer with evidence that would satisfy a reasonable person of their attendance at the training.

33.8 **Exercise of entitlements**

(a) A workplace delegate's entitlements under this clause are subject to the conditions that the workplace delegate must, when exercising those entitlements:

(i) comply with the reasonable policies and procedures of the employer, including reasonable codes of conduct and requirements in relation to occupational health and safety and acceptable use of ICT resources;

(ii) not hinder, obstruct or prevent eligible workers exercising their rights to freedom of association.

(b) When exercising any entitlements under this clause, a workplace delegate must, other than in the reasonable exercise of those entitlements:

(i) comply with their duties and obligations as an employee; and

(ii) not hinder, obstruct or prevent the normal performance of work.

(c) This clause does not require the employer to provide a workplace delegate with access to electronic means of communication in a way that provides individual contact details for eligible workers.

(d) This clause does not require an eligible worker to be represented by a workplace delegate without the worker's agreement.

**34. Consultation about major workplace change and rosters**

**Consultation about major workplace change**

34.1 If an employer makes a definite decision to make major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must:

(a) give notice of the changes to all employees who may be affected by them, and if an employee nominates a union to represent them, the union; and

(b) discuss with affected employees and their union (if nominated):

(i) the introduction of the changes; and

(ii) their likely effect on employees; and

(iii) measures to avoid or minimise the adverse effects of the changes on employees; and

(c) commence discussions as soon as practicable after a definite decision has been made.

34.2 For the purposes of the discussion under clause 34.1(b), the employer must give in writing to the affected employees and the union (if nominated) all relevant information about the changes including:

(a) their nature; and

(b) their expected effect on employees; and

(c) any other matters likely to affect employees.

34.3 Clause 34.2 does not require an employer to disclose any confidential information if its disclosure would be adverse to the employer's interests.

34.4 The employer must promptly consider any matters raised by the employees or their union (if nominated) about the changes in the course of the discussion under clause 34.1(b).

34.5 In this clause **significant effects**, on employees, includes any of the following:

(a) termination of employment; or

(b) major changes in the composition, operation or size of the employer's workforce or in the skills required; or

(c) loss of, or reduction in, job or promotion opportunities; or

(d) loss of, or reduction in, job tenure; or

(e) alteration of hours of work; or

(f) the need for employees to be retrained or transferred to other work or locations; or

(g) job restructuring.

34.6 Where this award makes provision for alteration of any of the matters defined at 34.5, the alteration is taken not to have

significant effect.

**Consultation about changes to rosters or hours of work**

34.7 (a) This subclause applies if an employer proposes to change the regular roster or ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic or unpredictable.

(b) The employer must consult with any employees affected by the proposed change and if an employee nominates a union to represent them, the union.

(c) For the purpose of the consultation, the employer must:

(i) provide to the employees and the union (if nominated) information about the proposed change (for example, information about the nature of the change and when it is to begin); and

(ii) invite the employees to give their views about the impact of the proposed change on them (including any impact on their family or caring responsibilities) and also invite the union (if nominated) to give their views about that impact.

(d) The employer must consider any views given under clause 34.7(c)(ii).

(e) Clause 34.7 is to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.

**35. Dispute resolution**

35.1 The following procedure applies to any question, dispute or difficulty arising under this award.

35.2 The parties to the question, difficulty or dispute must first try to resolve the dispute at the workplace through discussion between the employee or employees concerned and the relevant supervisor.

35.3 If the dispute is not resolved through discussion as mentioned in clause 35.2, the parties to the dispute must then try to resolve it in a timely manner at the workplace through discussion between the employee or employees concerned and more senior levels of management, as appropriate.

35.4 If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses 35.2 and 35.3, the dispute may be referred to the Commission, provided that the persons involved in the question, dispute or difficulty must confer among themselves and make reasonable attempts to resolve questions, disputes or difficulties before taking those matters to the Commission.

35.5 A party to the question, dispute or difficulty may appoint a person, organisation or association to support and/or represent them in any discussion or process under this clause.

35.6 While procedures are being followed under this clause in relation to a dispute:

(a) work must continue in accordance with this award; and

(b) an employee must not unreasonably fail to comply with any direction given by the employer about performing work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

35.7 This clause is subject to any applicable work health and safety legislation.

**36. Dispute resolution procedure training**

36.1 An eligible employee representative who will be involved in dispute resolution will be allowed to be trained in order to assist the employee to settle disputes as per this clause. The employee must arrange for suitable training and apply in writing with a minimum of 6 weeks' notice (or less amount by agreement) for up to 5 days leave with pay each calendar year, non-cumulative.

36.2 The notice to the employer must include details of the type, content and duration of the course to be attended. The employer must have a reasonable opportunity to:

(a) consult with the eligible employee representative and/or the training provider regarding dispute resolution training; and

(b) participate in the development of the dispute resolution training course.

36.3 Leave of absence granted pursuant to this clause will count as service for all purposes.

36.4 The time of taking leave will be arranged so as to minimise any adverse effect on the employer's operations.

36.5 For the purpose of determining the entitlement of employee representatives to dispute resolution procedure training leave, an **eligible employee representative** is an employee who is a shop steward, a delegate, or an employee representative duly elected or appointed by the employees in an enterprise or workplace generally or collectively for all or part of an enterprise or workplace for the purpose of representing those employees in the dispute resolution procedure.

**Part 8 - Termination of Employment and Redundancy**

**37. Termination of employment**

37.1 **Notice of termination by an employer – full-time and part-time employees**

(a) An employer must give the employee notice of termination in accordance with the following table.

**Period of notice**

| Employee's period of continuous service with the employer at the end of the | Period of notice |
|---|---|

| | |
|---|---|
| day the notice is given | |
| Not more than 1 year | 1 week |
| More than 1 year but not more than 3 years | 2 weeks |
| More than 3 years but not more than 5 years | 3 weeks |
| More than 5 years | 4 weeks |

(b) An employee who at the time of being given notice is over 45 years of age and who at the date of termination has completed 2 years' continuous service with the employer, is entitled to one week's notice in addition to the notice prescribed in clause 37.1(a).

(c) Payment in lieu of the notice prescribed in clauses 37.1(a) and 37.1(b) must be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu.

(d) 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:

(i) the employee's ordinary hours of work (even if they are not standard hours);

(ii) the amounts ordinarily payable to the employee in respect of those hours, including for example, allowances, loadings and penalties; and

(iii) any other amounts payable under the employee's contract of employment.

(e) The period of notice in this subclause does not apply to those employees who are exempt from receiving notice under Subdivision A of Division 11 of Part 2-2 of the *Fair Work Act 2009* (Cth), as amended from time to time.

(f) For the purpose of this subclause an employee's continuity of service has the same meaning as prescribed in section 22 of the *Fair Work Act 2009* (Cth).

37.2 **Notice of Termination by Employee – full-time and part-time employees**

The notice of termination required to be given by an employee is the same as that required of an employer, except that there is no additional notice based on the age of the employee concerned

37.3 **Job search entitlement**

(a) Where an employer has given notice of termination to an employee, the employee must be allowed time off without loss of pay of up to one day each week for the purpose of seeking other employment. The time off is to be taken at times that are convenient to the employee after consultation with the employer.

(b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or they shall not receive payment for the time absent. For this purpose, a statutory declaration will be sufficient.

37.4 **Transport of employees on termination of employment**

Where means of transport to the bush or bush sawmills is provided by the employer, on the termination of service of an employee, the employee, the employee's family and goods and chattels will be transported within 48 hours of receipt by the employer of notice that the transport is required, and the employee will be reimbursed the cost of the transport if not provided by the employer. An employee will not be entitled to free transport on a route along which the public is regularly transported for payment, however the employee will not be charged a rate on the route in excess of that regularly charged to the public.

37.5 **Casual employees**

An employer or employee may terminate a casual employment arrangement with one hour's notice.

37.6 **Statement of employment**

An employer must, in the event of termination of employment, provide upon request to the employee who has been terminated, a written statement specifying the period of employment and the classification or type of work performed by the employee.

**38. Redundancy**

38.1 **Consultation before terminations**

(a) Where an employer has made a decision that the employer no longer wishes the job the employee has been doing to be done by anyone and that decision may lead to termination of employment, the employer must consult with the employees directly affected and, if an employee nominates a union to represent them, the union.

(b) The consultation must take place as soon as is practicable and cover, amongst other matters, the reasons the proposed terminations are required, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any terminations on the employees.

(c) For the purposes of the consultation the employer must, as soon as practicable, provide in writing to the employees concerned and, if an employee nominates a union to represent them, the union, all relevant

information about the proposed terminations, including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of employees normally employed and the period over which the terminations are likely to be carried out.

(d) The employer is not required to disclose confidential information the disclosure of which would be adverse to the employer's interests.

38.2 **Transfer to lower paid duties**

(a) Where an employee is transferred to lower paid duties for reasons of redundancy, the employee is entitled to the same period of notice of transfer they would have been entitled to if they had been terminated.

(b) The employer may, at the employer's option, make payment in lieu of notice for an amount equal to the difference between the former amounts the employer would have been liable to pay and the new lower amount the employer is liable to pay the employee for the number of weeks of notice still owing.

(c) The amounts must be worked out on the basis of:

(i) the ordinary working hours to be worked by the employee; and

(ii) the amounts payable to the employee for the hours including for example, allowances, loading and penalties; and

(iii) any other amounts payable under the employee's contract of employment.

38.3 **Severance pay**

(a) **Employers with 15 or more employees**

In addition to the period of notice provided in clause 37 – Termination of employment, and subject to any further order of the Commission, employers who employ 15 or more employees must pay the following amount of severance to any full-time or part-time employee whose employment is terminated by reason of redundancy.

| **Period of continuous service** | **Severance pay** |
|---|---|
| Less than 1 year | nil |
| 1 year and less than 2 years | 4 weeks' pay |
| 2 years and less than 3 years | 6 weeks' pay |
| 3 years and less than 4 years | 7 weeks' pay |
| 4 years and less than 5 years | 8 weeks' pay |
| 5 years and less than 6 years | 10 weeks' pay |
| 6 years and less than 7 years | 11 weeks' pay |
| 7 years and less than 8 years | 13 weeks' pay |
| 8 years and less than 9 years | 14 weeks' pay |
| 9 years and less than 10 years | 16 weeks' pay |
| 10 years and over | 12 weeks' pay |

(b) **Employees with fewer than 15 employees**

In addition to the period of notice provided in clause 37 – Termination of employment, and subject to any further order of the Commission, employers who employ fewer than 15 employees must pay the following amount of severance to any full-time or part-time employee whose employment is terminated by reason of redundancy.

| **Period of continuous service** | **Severance pay** |
|---|---|
| Less than 1 year | nil |
| 1 year and less than 2 years | 4 weeks' pay |
| 2 years and less than 3 years | 6 weeks' pay |
| 3 years and less than 4 years | 7 weeks' pay |
| 4 years and over | 8 weeks' pay |

(c) "Weeks' pay" means the ordinary time rate of pay for the employee concerned. Provided that this rate excludes:

(i) overtime;

(ii) penalty rates;

(iii) disability allowances;

(iv) shift allowances;

(v) special rates;

(vi) fares and travelling time allowances;

(vii) bonuses; and

(viii) any other ancillary payments of a like nature.

(d) Severance payments will not exceed the amount which the employee would have earned if employment with the employer had proceeded to the employee's normal retirement date.

(e) For the purpose of this clause continuity of service will not be broken on account of:

(i) any interruption or termination of the employment by the employer if the interruption or termination has

been made with the intention of avoiding the obligations of this clause in respect of leave;

(ii) any absence from work where leave has been granted by the employer; or

(iii) any absence with reasonable cause, if the employee can supply sufficient proof.

Provided that in the calculation of continuous service any time an employee is absent from work, except time for which the employee is entitled to claim paid leave, will not count as time worked.

(f) Service by an employee with a business which has been transferred from one employer to another will also constitute continuous service for the purpose of this clause, provided the employee's service has been deemed continuous in accordance with Part II, Division 3 of the *Long Service Leave Act 1958*.

38.4 **Employee leaving during notice**

Where an employee is terminated because of redundancy, the employee may resign from their employment during the period of notice and, if so, will be entitled to the same benefits and payments under this clause as they would be if they had remained with the employer until the expiry of the notice. However, in this situation, the employee will not be entitled to payment in lieu of notice in accordance with clause 37 – Termination of employment.

38.5 **Alternative employment**

An employer, in a particular redundancy case, may apply to the Commission to have the severance payment varied if the employer obtains acceptable alternative employment for an employee.

38.6 **Transmission of business**

(a) The provisions of this clause are not applicable where a business is transferred from one employer to another employer in any of the following circumstances:

(i) Where the employee accepts employment with the new employer which recognises the period of continuous service which the employee had with the old employer (and any other prior employers for that business) to be continuous service of the employee with the new employer; or

(ii) Where the employee rejects an offer of employment with the new employer:

(aa) in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the old employer; and

(bb) which recognises the period of continuous service which the employee had with the old employer (and any other prior employers for that business) to be continuous service with the new employer.

(b) The Commission may vary the provisions of clause 38.6(a) if it is satisfied that it would operate unfairly in a particular case.

38.7 **Notice to Centrelink**

Where a decision has been made to terminate employees due to redundancy, the employer must notify Centrelink as soon as possible giving all relevant information about the proposed terminations, including a written statement of the reasons for the terminations, the number and categories of the employees likely to be affected, the number of employees normally employed and the period over which the terminations are intended to be carried out.

38.8 **Employees exempted**

(a) This clause does not apply where employment is terminated as a consequence of conduct that justifies instant dismissal or to casual employees.

(b) Apart from the requirement to consult with affected employees in accordance with clause 38.1, this clause does not apply to apprentices, trainees, probationary employees or employees engaged for a specific period of time or for a specified task or tasks.

38.9 **Incapacity to pay**

An employer in a particular redundancy case may apply to the Commission to have the severance pay varied on the basis of the employer's incapacity to pay.

**Part 9 – Named Parties**

**39. Named parties to the award**

Union Party

The Construction, Forestry, Mining and Energy Union of Workers

**Schedule A - Classification Definitions - General Timber Stream**

**A.1 Level 2 (Adult Minimum Wage)**

**Level 2 – employee new to industry**

The following provisions apply to a Level 2 employee who is new to the industry.

A.1.1 **General**

(a) A new employee at this level:

(i) will complete a program of induction training;

(ii) will complete a program of skills training to meet the requirement of being able to competently perform work within the scope of Level 2; and

(iii) where required by statute or regulation will obtain the necessary licenses, permits or other authorisations.

(b) **General description of skills required**

A new Level 2 employee will exercise the following skills:

(i) the ability to follow instructions;

(ii) manual handling skills; and

(iii) the ability to follow standards and procedures.

(c) **General description of knowledge required**

A new Level 2 employee will develop the following:

(i) broad knowledge of the industry sector and operations at the enterprise level;

(ii) broad understanding of all functions carried out in the enterprise;

(iii) understanding of health and safety regulations and procedures relevant to the level;

(iv) an understanding of the employment conditions set out in the award, and enterprise policies and procedures relating to conditions;

(v) knowledge of the resources used in the sector; and

(vi) knowledge of the range and uses of basic hand tools.

(d) **Induction training**

Induction training will cover the following:

(i) basic work health and safety;

(ii) first aid;

(iii) conditions of employment; and

(iv) organisation policies and objectives.

(e) **Level of responsibility**

New Level 2 employees will work under direct supervision at all times and will be expected to exercise minimal judgement.

**Level 2 - competent**

A.1.2 **General**

The following provisions apply to a competent Level 2 employee.

(a) At this level an employee:

(i) will have a broad general knowledge of the industry and the functions carried out in the workplace;

(ii) works under direct supervision either individually or in a team environment;

(iii) understands and undertakes basic quality control/assurance procedures including the ability to recognise basic quality deviations/faults;

(iv) in the harvesting forest management sector, understands and utilises basic environmental procedures in accordance with relevant forest codes of practice;

(v) understands and utilises basic process control procedures;

(vi) may assist skilled trainers in the provision of on-the-job training; and

(vii) should be given the opportunity to participate in ongoing skills training to enable progress to Level 3.

(b) **Indicative tasks**

An employee at this level will perform any or all of the tasks listed below and after suitable training, will be expected to operate flexibly between work stations at this level.

(i) **Harvesting sector**

- landing builder or repairer;
- operates a chainsaw at a basic level ancillary to normal duties;
- crosscut and trim logs on the landing/dump;
- segregation of logs and sleepers;
- loader trimming and cutting logs in pine plantations;
- loader or turner sleepers over 1.5 metres long;
- pulpwood cutter and/or splitter;
- spar or plank road builder;

- woodcutter for charcoal or firewood; and
- log measurer.

(ii) **Milling and processing sector**

- sorts, stacks and binds materials;
- uses selected hand tools;
- racks timber (manually or mechanically);
- assembles boxes and crates;
- grades round poles and peels posts for preservation;
- operates manual transfer equipment;
- produces beams using nail plates;
- operates a range of basic pre-set wood machines as prescribed within the current definitions of the award appropriate to this level;
- assists in preparing timber orders by selecting pre-cut timber from stocks;
- operates chainsaw at a basic level ancillary to normal duties;
- watchperson who does not attend boilers; and
- greases or oils any engine, machinery or shafting.

(iii) **Panel products sector**

- uses selected hand tools;
- centre feeder and/or core feeder and/or coverlayer and/or assistant in glue spreading;
- veneer joiner and/or repairer where the work is done by hand with less than one year's experience;
- tapeless veneer joining machine with less than one year's experience;
- operator on power-operated veneer edge truing or trimming machine (saw, cutter block or guillotine) where the machinist is never required to set up the machine nor to grind the knives and cutters but is merely an operator or feeder of the machine;
- assembling veneers with film glue;
- plywood and veneer grader grading into 3 or more classes;
- flat press operators and assistants not elsewhere specified;
- operates manual transfer equipment;
- assistant to lathe or slicer operator;
- plywood scarfing machine where the machinist is never required to set up the machine nor to grind the knives and cutters but is merely an operator;
- assistant to veneer kiln drier or re-drier operator who operates a drying kiln;
- other operators of immunising plant;
- assistant on veneer clipper machine;
- taping and glue thread machinist with less than one year's experience;
- operator of plywood trimming machine using parallel saws;
- belt sander in sanding of plywood faced with rotary peel veneer;
- edge gluing veneer by hand or roller for tapeless joining machine;
- guillotine operator not elsewhere included;
- feeder and/or assistant on automatic core assembling machine;
- operator of folding machine; and
- glue spreading spray gun operator.

(iv) **Manufacturing sector**

- assists in assembling wall frames and roof trusses;
- sorts, stacks and binds materials;
- uses and maintains selected hand tools;
- racks timber (manually or mechanically);
- assembles boxes and crates or trellis;
- primes and paints;
- operates door and/or panel trimming machines where the operator is not required to set up the machine nor to grind the knives and cutters and operates punching and notching machines;
- operates manual and motorised transfer equipment while holding appropriate permits/licences/certification;
- produces beams using nail plates;
- points posts;
- operates a range of basic pre-set wood machines as prescribed within the current definitions of the award appropriate to this level;
- operates chainsaw at a basic level ancillary to normal duties;
- operates cross cut and bench saws in box and case factories;
- measures and records sawn timber; and
- assists sawyer to change bandsaw.

(v) **Merchandising sector**

- sorts, stacks and binds materials;
- uses and maintains selected hand tools;
- operates a chainsaw at a basic level ancillary to normal duties;
- assists sawyer to change bandsaw;
- operates manual and motorised transfer equipment;
- assists in assembling wall frames and roof trusses;
- primes and paints; and
- operates a range of basic pre-set wood machines as prescribed within the current definitions of the award appropriate to this level.

(c) **General description of skills required**

(i) manual handling skills;

(ii) the ability to make judgements visually of size and shape;

(iii) in the panel products sector, the ability to make judgements by measurement coupled to quality control procedures;

(iv) ability to operate basic, pre-set cutting equipment;

(v) ability to use hand power tools safely; and

(vi) problem solving skills.

(d) **General description of knowledge required:**

(i) basic knowledge of timber use and value;

(ii) in the harvesting forest management sector, awareness and understanding of relevant Forest Codes of Practice;

(iii) in the panel products sector, basic knowledge of timber, veneer and plywood use and value;

(iv) awareness of work health and safety procedures for pre-set cutting equipment, and other health and safety procedures; and

(v) knowledge of the functions and use of hand tools and base technology saws/machine/equipment for this level.

(e) **Level of responsibility**

An employee at this level will be:

(i) responsible for identifying and solving minor problems which occur in the work process the Level 2 worker is directly responsible for;

(ii) required to work to predetermined standards and outcomes; and

(iii) responsible for keeping own work area safe and clean.

(f) **Promotional criteria**

An employee remains at this level until capable of effectively performing through assessment or appropriate certification the tasks required of the next level so as to enable progress as a position becomes available.

**A.2 Level 3 (relativity 87.4%)**

A.2.1 **General**

(a) An employee at this level performs work above and beyond the skills of an employee at Level 2 and is competent to perform work within the scope of this level.

At this level an employee:

(i) is responsible for the quality of own work subject to general supervision;

(ii) works under general supervision either individually or in a team environment;

(iii) exercises discretion within own level of skills and training;

(iv) operates flexibly between work stations and machines;

(v) may assist skilled trainers in the provision of on-the-job training;

(vi) in the harvesting forest management sector, understands and utilises environmental control procedures in accordance with relevant Forest Codes of Practice; and

(vii) should be given the opportunity to participate in ongoing skills training to enable progression to Level 4.

(b) **Indicative tasks**

An employee at this level will perform any or all of the tasks listed below and will be expected after suitable training to operate flexibly between work stations at this level.

(i) **Harvesting and forest management sector**

- operate mechanical debarking equipment;
- operate chipping machines;

- operate log splitting machine;
- offsider to logging tractor or bulldozer driver;
- faller - pine plantation;
- pole handler; and
- operate and maintain chainsaws.

NOTE: Employees must hold appropriate licence/certification.

(ii) **Milling and processing sector**

- preliminary processing of logs;
- operates and maintains mechanical debarking equipment;
- demonstrates basic keyboard skills;
- assembles pallets, boxes and crates;
- controls the flow of materials through mill;
- operates, resets and maintains planing machines;
- operates recovery bench, breaking down rig (no sizing mode), bench controls;
- operates and maintains drilling machines, static press, snatcher, tilt hoist;
- operates and maintains chipping machines;
- assists breaking down sawyer;
- sets up single multi-rip saws, band resaw and circular saws;
- prepares preservation solution and appropriate paperwork at the appropriate level;
- operates and maintains chainsaws to a higher level than Level 2;
- prepares timber orders and tallies timber;
- where the employee has completed a recognised grading course, grades timber visually according to quality;
- operates pulpwood processing equipment;
- laminates, fabricates or assembles timber, plywood and veneers;
- assists a tradesperson to carry out their duties;
- sets up and operates a range of wood machines as prescribed within the current definitions of the award appropriate to this level;
- operates waste chipper/hogger;
- sorts on boardline or similar process;
- operates traverser machine;
- tails out moulder, planer or equivalent machinery and pulls out behind sawbenches;
- operates docking and/or trim saws to eliminate defects;
- attends a boiler;
- a greaser or oiler who under the supervision of an engine driver stops or starts an engine or engines, but does not include any greaser or oiler who does so only in cases of necessity or emergency;
- operates pneumatic tyred tractor not using power operated attachments 35 kW brake power and under; and
- operates steam engine or suction gas and other internal combustion engine under 35 kW brake power.

(iii) **Panel products sector**

- centre layer and/or corelayer and/or coremaker building up solid timber and/or veneer centres;
- veneer joiners and/or repairers where the work is done by hand with one year's experience;
- operator on power-operated veneer edge truing or trimming machine (cutter block or guillotine) where the machinist has not been required to grind the knives and cutters but is at any time required to set up the machine and then only from the time the employee is required to act;
- operator of hot press who sets the pressure and temperature but is not required to calculate areas and pressures and control temperatures;
- operator of rotary veneer peeling lathe or slicing veneer machine;
- plywood scarfing machinist where the machinist has not been required to grind the knives and cutters, but is at any time required to set up the machine and then only from the time the employee is required to do so;
- veneer kiln drier heat plant operator or re-drier operator who operates a drying kiln drier or re-drier or who may be required to make temperature readings and records;
- veneer clipper operator in conjunction with rotary peeling lathe or slicing machine;
- operates and maintains mechanical debarking equipment including grinding and sharpening blades;
- taping glue thread, edge glued machinist with more than one year's experience;
- band sawyer using band saw up to 90 cm capacity, rough cutting and trimming;
- operator of the belt sander in sanding of plywood faced with fancy sliced veneer;
- operator employed on gluing jigs and/or cramps for the laminating fabrication or assembling of veneers, timber and plywood;
- operator of power-operated veneer edge truing or trimming machine saw (saw type) where the

operator is required to set up and sharpen the saw;
- veneer splicing machine; and
- adhesive solution mixer where test control procedures are not required.

(iv) **Manufacturing sector**
- assembles cable drums;
- demonstrates basic keyboard skills;
- assembles pallets, boxes and crates appropriate to this level;
- assembles wall and roof trusses appropriate to this level;
- assists in setting up jig for standard 'A' roof trusses;
- sets up and operates a range of saws including docking saws appropriate to this level;
- tails out, checks timber and docks out faults;
- sets up and operates a range of wood machines as prescribed in the current definitions of the award appropriate to this level;
- surfaces floors;
- bends timber by hand and machine;
- assists in preparation of logs in log cabin manufacture;
- operates spray painting machine;
- operates and maintains chainsaws to a higher level than Level 2;
- prepares timber orders and tallies timber;
- where the employee has completed a recognised grading course, grades timber visually according to quality;
- operates door and/or panel machines appropriate to this level;
- assembler;
- assistant or other operator to a laminated beam maker;
- laminates, fabricates or assembles timber, plywood and veneers;
- assists a tradesperson to carry out duties;
- removes and replaces saw blades on dresser;
- operates traverser machine;
- tails out moulder, planer or equivalent machinery and pulls out behind sawbenches;
- operates docking and/or trim saws to eliminate defects;
- operates but does not set up: a computerised automatic 2 dimensional dividing and squaring saw, double ended tenoner, a multi-headed boring machine with 3 or more bits, v-grooving machine, vinyl or melamine laying machine, v-line folding machine, longitudinal grooving machine, edgebander and/or double edgebander and any programmed and/or computerised high output wood machine not mentioned herein;
- spray hand engaged on finishing coats;

(v) **Merchandising sector**
- demonstrates basic keyboard skills;
- size and straighten timber to feed dresser;
- tails out, moulder, planer or equivalent machinery and pulls out behind sawbenches;
- checks timber and operates docking and/or trim saw to eliminate defects;
- sets up and operates a range of wood machines as prescribed within the current definitions of the award appropriate to this level;
- sets up and operates a range of saws including docking saws appropriate to this level;
- where the employee has completed a recognised grading course, grades timber visually according to quality;
- prepares timber orders and tallies timber;
- assists a tradesperson to carry out duties;
- assembles wall and roof trusses appropriate to this level;
- assists in setting up jig for standard 'A' roof trusses;
- responds to customer routine enquiries and lays out stock for delivery driver; and
- removes and replaces saw blades on dresser.

(c) **General description of skills required**

In addition to those outlined in Level 2:

(i) ability to interpret and follow plans and procedures;

(ii) problem solving skills;

(iii) ability to operate machinery/saws/equipment according to prescribed procedures and standards appropriate to this level;

(iv) ability to grade timber according to obvious defects and to exercise quality control;

(v) in the panel products sector, the ability to grade timber veneer and plywood according to obvious defects and to exercise quality control; and

(vi) ability to record in writing simple information relating to lengths and species of timber.

(d) **General description of knowledge required**

In addition to that outlined in Level 2:

(i) knowledge of commonly used timbers, their value, and what products they can be used for;

(ii) in the panel products sector, knowledge of commonly used timbers, veneers;

(iii) in the harvesting forest management sector, awareness and understanding of relevant Forest Codes of Practice;

(iv) knowledge of storage, stacking and drying technique;

(v) knowledge of the functions and use of saws, machines and equipment for this level;

(vi) knowledge of health and safety procedures/regulations appropriate to this level;

(vii) knowledge of the industry standards for tasks performed at this level; and

(viii) knowledge of quality control standards appropriate to this level.

(e) **Level of responsibility**

(i) An employee at this level will operate under general direction for the whole job. Individual tasks will be completed according to clear, set procedures and standards. An employee will be responsible for the quality of work within these limits.

(ii) The employee will also be responsible for identifying and solving problems which occur in the work process the Level 3 worker is directly responsible for, and for identifying and reporting problems outside own work process.

(f) **Promotional criteria**

An employee remains at this level until capable of effectively performing through assessment or appropriate certification the tasks required of the next level so as to enable progress as a position becomes available.

**A.3 Level 4 (relativity 92.4%)**

A.3.1 **General**

(a) An employee at this level performs work above and beyond the skills of an employee at Level 3 and is competent to perform work within the scope of this level.

At this level an employee:

(i) works from complex instructions and procedures;

(ii) may assist skilled trainers in provision of on-the-job training;

(iii) in the harvesting forest management sector, ensures application of sound forest environmental practices in accordance with relevant Forest Codes of Practice;

(iv) works in a team environment or works individually under general supervision;

(v) is responsible for assuring the quality of their own work; and

(vi) should be given the opportunity to participate in ongoing skills training to enable progress to Level 5.

(b) **Indicative tasks**

An employee at this level will perform any or all of the tasks listed below or as described for machinist B grade. They will be expected after suitable training to operate flexibly between work stations at this level.

(i) **Harvesting and forest management sector**

- operation of mobile equipment appropriate to this level up to and including 13 500 kg;
- operator of tree harvester;
- operator of bucker-limber-buncher machine (logma);
- faller who works alone, selects trees and sharpens own saws;
- faller other;
- operates and maintains chipping machines;
- pole dresser;
- performs non-trade carpentry functions; and
- spotter at spot mills.

NOTE: Employees must hold appropriate licences/certification to operate machinery.

(ii) **Milling and processing sector**

- maintains and fault finds on plant and equipment (including lubrication);
- maintains mill buildings;
- performs non-trade carpentry functions;
- operates and maintains mobile equipment (multi-skilled operator-loader, forklift, crane, mobile crane with lifting capacity not exceeding 20 tonnes) while holding appropriate licenses/certifications;

- demonstrates intermediate keyboard skills including CNC operations in saws and/or machines where the operator controls one process only;
- sets up, monitors and operates twin edgers, single and double bandsaws, bench saw not cutting to size;
- operates optimising docker (computerised) and finger jointer;
- where the employee has completed a recognised stress grading course, grades timber (includes mechanical stress grader);
- undertakes primary conversion of logs (no sizing);
- analyses log moisture content and selects preservation method;
- prepare preservation solution and appropriate paperwork at the appropriate level;
- loads/unloads cylinder and monitors faulty operation at the appropriate level;
- laminated beam maker—responsible for setting up machine, setting out product and operating machine other than on a continuous basis;
- selects, grades and marks materials for re-manufacture and from stock for filling orders, including tallying, measuring and checking of complete orders and compiling for dispatch;
- storeperson including: inventory and stores control, VDU operation and use of other electronic equipment, e.g., scanner or using intermediate keyboard skills to carry out stores work, storing and packing of goods and materials in accordance with appropriate procedures and/or regulations; preparation and receipt of appropriate documentation including liaison with suppliers; allocating and retrieving goods from specific warehouse areas; periodic stock-checks;
- gatekeeper in control of movement of persons, vehicles, stock and material at gatehouses and similar locations including vehicles carrying goods of any description, to ensure that the quantity and description of those goods is in accordance with the requirements of the relevant document/gate pass; utilising monitoring and operating computer based systems requiring data input, or other advanced monitoring system;
- operates and maintains hydraulic debarking equipment;
- attends boiler/kilns as required and responsible for temperature readings and records, including a watchperson who attends boilers;
- sharpens saws (with or without tensioning), chainsaws, hand tools, knives, grinds and sharpens debarker/chipper blades and operates punching press for saws (without tipping);
- operates and maintains mechanical stacking and sorting equipment;
- attends to 2 or more boilers or 2 or more suction gas generators, or one boiler the evaporation capacity of which attributed thereto by the maker exceeds 5 000 kg but less than 45 000 kg of steam per hour, or one gas generator supplying a total engine load capacity attributed thereto by the maker of not less than 740 kW;
- operates suction gas and other internal combustion engine 35 kW brake power or over; and
- operates any of the following items of mechanical plant: crawler tractor using power operated attachments up to 8000 pounds shipping weight, excavator up to and including 0.5 cubic metre capacity, grader, power operated below 35 kW brake power, loaders, front end and overhead, over 2.25 cubic metres up to and including 4.5 cubic metres, pneumatic tyred tractor using power operated attachments in excess of 110 kW brake power.

(iii) **Panel products sector**

- maintains and fault-finds on plant and equipment (including lubrication);
- adhesive solution mixer where the employee is required to mix, test, control and check in operation and is responsible for its proper use;
- veneer matcher responsible for selecting and setting out fancy sliced veneers to design or specification;
- operator of power-driven veneer edge truing or trimming machine (cutter block or guillotine) where the operator is required to grind the knives and cutters and set up the machine;
- employee in charge of hot process who sets pressures and temperatures and who is responsible for calculating areas and pressures and controlling temperatures and operators of specialty presses;
- rotary veneer peeling lathe or slicing machine operator who sharpens knives and/or sets up the machine;
- sharpens lathe knives, pressure bars, clipper blades and chipper;
- plywood scarfing machinist where the machinist is ever required to set up the machine and grind the knives and cutters and then only from the time as the employee is required to do so;
- employee in charge of veneer kiln heat plant operator or re-drier (plate roller or conveyor type) who is required to adjust temperatures, humidity, conditions, calculate moisture contents, test and control;
- immunising plant operator who is required to control temperatures, preservative contents in solution and analyse treated timbers and/or veneer samples;
- operator of torwegge or similar automatic core assembling machine who is required to set up and adjust the machine and is fully responsible for the operation of the machine;
- employee in charge of paper honeycomb making machine;
- operator in graining machine where the operator is required to set up the machine and sharpen the

blades;
- operates and maintains mobile equipment appropriate to this level;
- demonstrates intermediate keyboard skills including CNC operations in saws and/or machines where the operator controls one process only; and
- operates and maintains hydraulic debarking equipment.

(iv) **Manufacturing sector**
- maintains and fault-finds on plant and equipment (including lubrication);
- operates high frequency machine and edge band as a gluer;
- operates and maintains mobile equipment appropriate to this level while holding appropriate licenses/certifications;
- demonstrates intermediate keyboard skills including CNC operations in saws/and or machines where the operator controls one process only;
- sets up, monitors and operates twin edgers, single and double bandsaws, circular saws;
- operates optimising docker (computerised);
- where the employee has completed a recognised grading course, grades timber (both quality and stress);
- assembles wall frames and roof trusses appropriate to this level including operation and responsibility for wall frame fabricating machines manually controlled;
- sharpens saws (with or without tensioning), chainsaws, hand tools, knives and dresser blades and operates punching press for saws (without tipping);
- bends timber using own forms and equipment and operates machine;
- assembles prepared pieces of timber (as defined);
- glazes;
- operates log preparing machine and fabricates modules—log cabin manufacture;
- makes knives from beginning to end as a sawmaker;
- operates gluing jigs for laminating veneers or timber;
- laminated beam maker—responsible for setting up machine, setting out product and operating machine other than on continuous process;
- selects, grades and marks materials for re-manufacture and from stock for filling orders, including tallying, measuring and checking of complete orders and compiling for dispatch;
- operates and maintains mechanical stacking and sorting equipment; and
- cricket bat operations—spindle machinist and or wood turner with handles fitted by hand.

**(v) Merchandising sector**
- maintains and fault finds on plant and equipment (including lubrication);
- operates mobile equipment appropriate to this level while holding appropriate licences/certifications;
- demonstrates intermediate keyboard skills including CNC operations in saw/and or machines where the operator controls one process only;
- where the employee has completed a recognised grading course, grades timber (both quality and stress);
- selects grades and marks materials for re-manufacturing and from stock for filling orders including tallying, measuring and checking of complete orders and compiling for dispatch;
- collects payment for goods from customer;
- maintains delivery schedules;
- sets up, monitors and operates band or circular saw;
- assembles wall frames and roof trusses appropriate to this level including operation and responsibility for wall frame fabricating machines manually controlled; and
- sharpens saws (with or without tensioning) chainsaws, hand tools, knives, grinds and sharpens debarker/chipper blades and operate punching press for saws (without tipping).

(c) **General description of skills required**

In addition to that outlined in Level 3:

(i) ability to set up and adjust machines to produce a specific product;

(ii) ability to drive and operate mobile machinery;

(iii) ability to complete simple clerical tasks;

(iv) in the harvesting forest management sector, awareness and understanding of relevant Forest Codes of Practice;

(v) problem solving skills;

(vi) ability to select suitable methods for completing tasks and plan the order in which to complete them; and

(vii) ability to assess timber, or timber veneer and plywood, for cutting giving regard to quality and the

purpose it will be used for.

(d) **General description of knowledge required**

In addition to that outlined in Level 3:

(i) knowledge of saws, machinery and equipment used at this level;

(ii) knowledge of health and safety legislation and procedures appropriate to this level; and

(iii) knowledge of the industry standards for tasks performed at this level.

(e) **Level of responsibility**

(i) An employee at this level will operate under general direction for the whole job. In completing individual tasks an employee will work to set standards. An employee will be responsible for the quality of work in own area.

(ii) The employee will also be responsible for identifying and solving problems which occur in the work process the Level 4 worker is directly responsible for, and in conjunction with others for identifying and solving problems in the work area.

(f) **Promotional criteria**

An employee remains at this level until capable of effectively performing through assessment or appropriate certification the tasks required of the next level so as to enable progress as a position becomes available.

**A.4 Level 5 (relativity 100%)**

A.4.1 **General**

(a) An employee at this level may be employed under one of the following categories:

(i) Timber tradesperson; or

(ii) Harvesting and forest management sector, Milling and processing sector, Manufacturing sector or Merchandising sector employee.

(b) An employee at this level works above and beyond an employee at Level 4 and is competent to perform work within the scope of this level.

(c) At this level an employee:

(i) understands and applies quality control techniques;

(ii) exercises good interpersonal and communication skills;

(iii) exercises keyboard skills at a level higher than Level 4;

(iv) exercises discretion within the scope of this level;

(v) performs work under limited supervision either individually or in a team environment;

(vi) in the harvesting sector applies skills acquired through successful completion of requisite certification relating to plant and equipment used in forest harvesting;

(vii) in the harvesting sector ensures application of sound forest environmental practices in accordance with forest codes of practice;

(viii) is able to inspect products and/or materials for conformity with established operational standards; and

(ix) conducts training in conjunction with a skilled trainer as required.

A.4.2 **Timber tradesperson Level 5**

(a) A Timber tradesperson Level 5 or machinist A grade is an employee who holds a Trade Certificate or Tradespersons Rights Certificate as a tradesperson in one of the classes identified appropriate to the sector in which they work and is able to exercise the skills and knowledge of that trade and may be required to supervise other employees.

(i) **Milling and processing sector trades**

- Timber tradesperson—sawdoctor;
- Timber tradesperson—wood machinist; and
- Timber tradesperson—millwright.

(ii) **Merchant sector trades**

- Timber tradesperson—grinder;
- Timber tradesperson—wood machinist;
- Timber tradesperson—wood turner; and
- Timber tradesperson—sawdoctor.

(iii) **Manufacturing sector trades**

- Timber tradesperson—grinder;
- Timber tradesperson—sawdoctor;
- Timber tradesperson—wood machinist; and
- Timber tradesperson—wood turner.

(b) **Indicative tasks**

A Timber tradesperson Level 5 at this level will perform any or all of the tasks listed below and will be expected, after suitable training, to operate flexibly between work stations at this level:

(i) **Milling and processing sector, Manufacturing sector and Merchandising sector: Timber tradesperson Level 5**

- understands and applies quality control techniques for self and others;
- exercises good interpersonal and communication skills;
- exercises keyboard skills at a level higher than Level 4;
- exercises discretion within the scope of this level;
- performs work under limited supervision either individually or in a team environment;
- operates all lifting equipment incidental to own work;
- performs non-trade tasks incidental to own work;
- performs work which, while primarily involving the skills of the employee's trade, is incidental or peripheral to the primary task and facilitates the completion of the whole task; the incidental or peripheral work would not require additional formal technical training;
- performs work within the definition of machinist A grade;
- performs work of a motor mechanic;
- inspects products and/or materials for conformity with established operational standards as required; and
- sets up, monitors and operates a range of pre-set wood machines appropriate to this level including multi headed square dresser.

(c) **Level of responsibility**

(i) An employee at this level has greater responsibility than those at Level 4 in that the employee may be responsible for the work of others through the monitoring role. The employee will be responsible for work outcomes regarding quantity and quality in own area, including own work and the work of others. The employee may be required to supervise others in groups in the training situation. An employee at this level will be required to exercise discretion in the planning and carrying out of work.

(ii) The employee will also be responsible, with others, for identifying and solving problems in their work areas; if supervising others for initiating, co-ordinating and monitoring problem solving in own work area; for identifying and reporting problems in other work areas where they affect activity in own work area.

(d) **Promotional criteria**

An employee remains at this level until capable of effectively performing through assessment or appropriate certification the tasks required of the next level so as to enable progress as a position becomes available.

A.4.3 **Harvesting, milling and processing, Manufacturing or Merchandising employee Level 5**

(a) **General**

An employee at this level performs work above and beyond the skills of a Level 4 employee and is competent to perform work within the scope of this level.

At this level an employee:

(i) understands and applies quality control techniques;

(ii) exercises good interpersonal and communication skills;

(iii) exercises keyboard skills at a level higher than Level 4;

(iv) exercises discretion within the scope of this level;

(v) performs work under limited supervision either individually or in a team environment;

(vi) able to inspect products and/or materials for conformity with established operational standards; and

(vii) conducts training in conjunction with a skilled trainer as required.

(b) **Indicative tasks**

An employee at this level will perform any or all of the tasks listed below and will be expected after suitable training to operate flexibly between work stations at this level:

(i) **Harvesting and forest management sector**

- able to inspect logs for conformity with established operational standards (grade and segregate);
- operates harvesting and extraction equipment in a mechanical harvesting environment appropriate to this level;
- operation of mobile equipment to a level higher than Level 4 over 13 500 kg;
- fall and process trees of any species which are possible to work safely;
- broad axeperson;
- axeperson;
- axeperson employed using chopping axe taking off bark and lumps from logs for use in veneer

mills;
- rigger or tree climber;
- head faller;
- forwarder log handling machine; and
- operator of grapple saw.
- Driving an articulated vehicle with 3 axles and GCM of 22.4 tonnes or less.
- Driving a rigid truck and heavy trailer combination with more than 3 axles and a GCM greater than 22.4 tonnes - over 15 tonnes up to 21 tonnes capacity.
- Driving an articulated vehicle with more than 3 axles and a GCM greater than 22.4 tonnes - capacity up to or over 22 tonnes.
- Driving a low loader with GCM up to or over 43 tonnes.
- Driver of a double articulated vehicle up to and including 53.4 tonne GCM, including B doubles.

(ii) **Milling and processing sector**
- operates a breaking down rig (primary conversion with sizing);
- operating no. 1 bench;
- supervision of kiln operations;
- hardens/tempers/beats out saws;
- weighs and records loads of timber and maintains security of the premises;
- operates ship loading equipment;
- laminated beam maker—responsible for setting up machine, setting out product and operating machine on a continuous process;
- sets up and operates a range of wood machines within the current definitions of the award appropriate to this level; and
- operates mechanical plant and mobile equipment including, crawler tractor with a shipping weight exceeding 80 000 pounds, excavator over 2.25 cubic metres, power operated grader over 70 kW brake power, loaders over 4.5 cubic metres capacity, mobile cranes with a lifting capacity over 20 tonnes and not exceeding 100 tonnes.

(iii) **Manufacturing sector**
- operates and maintains mobile equipment appropriate to this level while holding appropriate licences/certifications;
- estimator;
- laminated beam maker - responsible for setting up machine, setting out product and operating machine on a continuous process;
- hardens/tempers/beats out saws;
- weighs and records loads of timber and maintains security of the premises;
- sets up and operates door and/or panel trimming machine and grinds knives and cutters;
- operates CNC wall frame fabricating machine;
- sets up truss jigs;
- breaks down and finishes on anvils;
- prepares cutting list of timber for use in the manufacture of building components from builders, architects, or other plans; and
- sets up, monitors and operates a range of wood machines as prescribed within the current definitions of machinist A grade of the award appropriate to this level including multi-headed square dresser.

(iv) **Merchandising sector**
- prepares cutting lists of timber for use in the manufacture of building components from builders, architects, or other plans; and
- sets up, monitors and operates a range of wood machines within the current definitions of the award appropriate to this level including multi-headed square dresser.

(c) **General description of skills required**

In addition to those outlined in Level 4:

(i) ability to make decisions regarding work processes and implement them in own work area;

(ii) ability to use judgement based on experience to optimise productivity in own work area;

(iii) ability to supervise workers in the training situation;

(iv) ability to set up, operate and monitor mechanical and CNC equipment used in work area;

(v) ability to work to standards requiring precision and attention to detail; and

(vi) problem solving skills.

(d) **General description of knowledge required**

In addition to that outlined in Level 4:

(i) detailed knowledge of the sector and work undertaken at the enterprise;

(ii) in the Harvesting forest management sector, awareness and understanding of relevant Forest Codes of Practice;

(iii) understanding of quality control techniques;

(iv) knowledge of industry standards for product and/or materials;

(v) thorough knowledge of equipment/machinery used in the work area;

(vi) knowledge of work health and safety, safety techniques and legislation for work undertaken at this level;

(vii) detailed knowledge of product used; and

(viii) knowledge of training principles and practices.

(e) **Level of responsibility**

(i) An employee at this level has greater responsibility than at Level 4 in that the employee may be responsible for the work of others through the monitoring role. The employee will be responsible for work outcomes regarding quantity and quality in own area, including own work and the work of others. The employee may be required to supervise others in groups in the training situation. An employee at this level will be required to exercise discretion in the planning and carrying out of work.

(ii) The employee will also be responsible, with others, for identifying and solving problems in their work areas; if supervising others for initiating, co-ordinating and monitoring problem solving in own work area; for identifying and reporting problems in other work areas where they affect activity in own work area.

(f) **Promotional criteria**

An employee remains at this level until capable of effectively performing through assessment or appropriate certification the tasks required of the next level so as to enable progress as a position becomes available.

**A.5 Level 6 (relativity 105%)**

A.5.1 **General**

(a) An employee at this level may be employed under one of the following categories:

(i) Timber tradesperson; or

(ii) production or merchant employee.

(b) A Timber tradesperson at this level works above and beyond an employee at Level 5 and is competent to perform work within the scope of this level.

(c) At this level an employee:

(i) understands and applies quality control techniques;

(ii) exercises good interpersonal and communication skills;

(iii) exercises keyboard skills at a level higher than Level 5;

(iv) exercises discretion within the scope of this level;

(v) performs work under limited supervision either individually or in a team environment;

(vi) will be responsible for planning own work and the work of others and for the quantity and quality of the results of that work; and

(vii) conducts training as required.

A.5.2 **Timber tradesperson**

(a) A Timber tradesperson Level 6 is a saw doctor tradesperson who has completed an appropriate post trade course in maintaining high tension saws and stellite tipping, or a wood machinist tradesperson who has completed an appropriate post trade course (or equivalent) in CNC and PLC machinery operations and CAD design systems and is able to exercise the skills and knowledge of that trade and may be required to supervise other employees, or a millwright—special class who has completed 3 appropriate modules of post-trade training in addition to the Level 5 qualification requirements.

(b) **Indicative tasks**

An employee at this level will perform any or all of the tasks listed below and will be expected, after suitable training, to operate flexibly between work stations at this level:

(i) **Milling and processing sector, Manufacturing sector and Merchandising sector: Timber tradesperson Level 6**

- exercises the skills attained through satisfactory completion of the training prescribed for this classification subject to the standards of this award;
- exercises discretion within the scope of this level;

- works under limited supervision either individually or in a team environment;
- understands and implements quality control techniques;
- provides trade guidance and assistance as part of a work team;
- exercises trade skills relevant to the specific requirements of the enterprise at a level higher than Timber tradesperson Level 5;
- supervision and training of employees as required; and
- ability to plan, conduct and evaluate training both on and off-the-job, one-to-one and in groups.

(c) **Level of responsibility**

An employee at this level will be responsible in conjunction with others for identifying and solving problems in own work area. If supervising others the employee will be responsible for initiating, co-ordinating and monitoring problem solving in own work area. The employee will be responsible for identifying and reporting problems in other work areas where they affect activity in own work area.

A.5.3 **Harvesting and forest management, Milling and processing, Manufacturing or Merchandising employee**

**General**

An employee at this level performs work above and beyond the skills of a Level 5 Production employee and is competent to perform work within the scope of this level and has acquired skills recognised by the employer.

At this level an employee:

(i) understands and applies quality control techniques;

(ii) exercises good interpersonal and communication skills;

(iii) exercises keyboard skills at a level higher than Level 5;

(iv) exercises discretion within the scope of this level;

(v) performs work under limited supervision either individually or in a team environment;

(vi) will be responsible for planning own work and the work of others and for the quantity and the quality of the results of that work; and

(vii) conducts training as required.

**Indicative tasks**

An employee at this level will perform any or all of the tasks listed below and will be expected after suitable training to operate flexibly between work stations at this level:

**Harvesting and forest management, Milling and processing sector, Manufacturing sector, Merchandising sector**

- operates a wide range of complex machines, saws and/or equipment in the work place;
- exercises the skills attained through satisfactory completion of the training prescribed for this classification subject to the standards of this award;
- exercises discretion within the scope of this level;
- works under limited supervision either individually or in a team environment;
- understands and implements quality control techniques;
- supervision and training of employees as required;
- ability to plan, conduct and evaluate training both on and off-the-job, one-to-one and in groups; and
- operate a mobile crane with a lifting capacity over 100 tonnes and not exceeding 180 tonnes.
- Driver of a rigid vehicle with trailer combinations or articulated vehicle with trailer combinations exceeding 94 tonne GCM.

**A.6 Timber tradesperson millwright - special class Level 7 (relativity 115%)**

A.6.1 **General**

(a) A Timber tradesperson millwright—special class Level 7, is a millwright who has completed 9 appropriate modules in addition to the requirements of Level 5; or 9 appropriate modules towards an Advanced Certificate; or 9 appropriate modules towards an Associate Diploma; or an AQF Level 4 National Certificate.

(b) **Duties**

An employee at this level performs trade and non-trade functions. In addition to the tasks required to be performed at Timber tradesperson Level 6, a Timber tradesperson Level 7 employee may perform the following indicative tasks:

(i) provides trade guidance and training;

(ii) provides training to other employees in the enterprise;

(iii) assists in the management/operation of a quality control/assurance program;

(iv) assists in the management/operation of best practice program;

(v) exercises complex, new high precision, trade skills;

(vi) applies advanced computer numerical control techniques in machining;

(vii) exercises intermediate CAD/CAM skills;

(viii) commissions and fault finds on new equipment and approves first off samples; or

(ix) performs or assists in design work involving drafting or planning (e.g. preparation of cutting lists).

(c) **Responsibility**

An employee at this level will work competently either individually or in a team environment and will be responsible for the quality and accuracy of their own work and (subject to the relevant leading hand provisions) may be required to monitor the work of others.

(d) **Training**

An employee at this level will be provided with skill development consistent with national competency standards relevant to this level to enable the employee to perform duties within the range specified for this level.

**Schedule B - Classification Definitions - Pulp and Paper Stream**

B.1 **Indicative tasks/skills**

B.1.1 Employees engaged in the classifications contained in this Schedule will work to the level of their skills, competence and training and will perform work within the scope of their level as follows:

B.1.2 **Level 1 (relativity 85%)**

Employee undertakes induction training sufficient to allow the employee to participate in work training. Can undertake tasks under direct supervision and to the level provided in the induction training.

Induction may include information on:

- the workplace and the industry
- conditions of employment
- training and career path opportunities
- plant layout
- work and documentation procedures
- work health and safety
- environmental issues
- housekeeping
- basic paper manufacturing
- waste control
- cost and quality assurance
- equal employment opportunity and harassment.

After induction the employee:

- has been trained and can apply safe working practices required to adhere to standard operating procedures;
- performs duties essentially of a manual nature; and
- exercises minimal judgement in line with training provided.

B.1.3 **Level 2 (relativity 90%)**

Employee has completed structured training as defined for Level 1 to enable work to be performed at this level.

- Has been trained and can apply safe working practices required to adhere to standard operating procedures
- Works under direct supervision and instruction
- Communicates basic information effectively and can interact with other employees
- Understands the need to report workplace hazards and the process to perform personal risk assessments
- Able to record established production and quality indicators which may require keyboard operation
- Understands basic process control procedures
- Understands and applies the minor mechanical procedures that can be performed at this level.

B.1.4 **Level 3 (relativity 93%)**

Performs work above and beyond the skills of a Level 2 and to the level of competency exhibited and assessed.

- Works under general supervision and as directed and operates within strict guidelines
- Able to communicate process information verbally and in written form
- Can interact with other employees and has developed interpersonal skills
- Performs routine duties

- Applies safe working practices
- Can report workplace hazards and performs personal risk assessments
- Understands and applies basic quality requirements of function
- Keyboard skills sufficient to access and use documents
- Can use mechanical plant and lifting equipment to level of competency
- Carries out minor mechanical maintenance requirements where it is efficient to do so.

B.1.5 **Level 4 (relativity 96%)**

Performs work above and beyond the skills required of a Level 3 and to the level of competency exhibited and assessed.

- Works under general supervision and exercises limited discretion within the scope of skills and training
- Understands the need for accurate, timely and technically correct communication. Communicates verbally and in written form and understands group decision making processes
- Uses electronic facilities and technology competently for production activities
- Understands the need to maintain a safe working environment
- Accurately assesses raw materials used
- Understands the impact of quality standards on product
- Operates mechanical plant and lifting equipment to level of competence
- Carries out minor mechanical maintenance.

B.1.6 **Level 5 (relativity 100%)**

Performs work above and beyond the skills of a Level 4 and to the level of competency exhibited and assessed.

- Works under limited supervision and operates with limited discretion.
- Communicates technical information correctly to supervisor and fellow operators and including the use of electronic facilities. Can participate in group decision making processes
- Actively pursues a safe, hazard free workplace
- Uses and understands detailed information on production and quality indicators and recommends improvements
- Understands and applies quality control techniques and quality standards
- Provides technical/production instruction as directed
- Able to operate mechanical plant including lifting equipment to level of competence
- Organises repairs and maintenance in accordance with the principles of minor mechanical maintenance.

B.1.7 **Level 6 (relativity 105%)**

Performs work above and beyond the skills of a Level 5 and to the level of competency exhibited and assessed.

- Works under limited supervision and/or general direction, exercises initiative and judgement with discretion
- Able to communicate at production senior level to an acceptable standard and undertakes group decision making processes and dynamics
- Observes work health and safety and environmental policies, supervises other employees in safe working practices
- Trained in statistical process control techniques to use detailed information on production and quality indicators, and make improvements
- Detects errors, investigates causes, recommends preventative action
- Understands and applies quality control techniques
- Operates lifting equipment to level of competence
- Provides technical/production instruction as required
- Plans, directs and organises others in the repair or maintenance of equipment within the scope of minor mechanical maintenance principles where it is efficient to do so.

B.1.8 **Level 7 (relativity 110%)**

Performs work above and beyond the skills of a Level 6 and to the level of competency exhibited and assessed.

- Can supervise the work of others, and also works under broad principles and limited supervision
- Works from complex instruction
- Communication skills at a level appropriate to facilitate supervision, training and technical knowledge both at a production and senior level
- Can lead group decision making processes and understands the need for and processes of consultation

- Carries out risk assessments, rectifies identified hazards, applies work health and safety and environmental policies, and ensures safe working practices are followed
- Undertakes quality control and work organisation and implements improvements and preventative action to improve product quality
- Provides technical/production training
- Operates lifting equipment that requires certification
- Applies statistical process control techniques
- Determines the need for equipment to be repaired or maintained. Can organise resources necessary to effect maintenance and repair.

B.1.9 **Level 8 (relativity 115%)**

Performs work above and beyond the skills of a Level 7 and to the level of competency exhibited and assessed.

- Can supervise the work of others and works under broad policies and general supervision
- Assesses, evaluates and implements changes to processes within process control parameters or complex instructions
- High level of communication skill to ensure clear and concise instruction, delivery of training to employees and imparting of technical knowledge to supervisors and employees
- Can undertake consultation within established consultation procedures
- Leads group decision making processes
- Applies work health and safety and environmental policies and/or legislation and ensures safe working practices are followed
- Ensures hazards are identified and rectification has been carried out
- Ensures risk assessments are carried out when alteration to equipment or new equipment is provided
- Provides training to employees
- Operates lifting equipment that requires certification
- Applies statistical process control techniques and other actions required to improve processes and products
- Supervises repairs and maintenance to ensure appropriate resources are used at all times to ensure efficiency and best use of labour in accordance with minor mechanical principles.

B.1.10 **Level 9 (relativity 120%)**

Performs work above and beyond the skills of a Level 8 and to the level of competency exhibited and assessed.

- Supervises the work of others
- Works under broad policies and organisational principles
- Communicates throughout organisation using established communication methods
- Consults other employees using established consultation policies and procedures
- Can establish safe working procedures and systems and participates in the establishment of work health and safety and environmental policies
- Establishes and maintains quality assurance processes and activities
- Plans and organises training to ensure efficient use of labour
- Plans and supervises repairs and maintenance to ensure appropriate resources are used at all times to ensure efficiency and best use of labour.

**Schedule C - School-based Apprentices**

C.1 This schedule applies to school-based apprentices. A school-based apprentice is a person who is undertaking an apprenticeship in accordance with this schedule while also undertaking a course of secondary education.

C.2 A school-based apprenticeship may be undertaken in the trades covered by this award under a training agreement or contract of training for an apprentice declared or recognised by the Department of Training and Workforce Development.

C.3 The relevant minimum wages for full-time junior and adult apprentices provided for in this award, calculated hourly, will apply to school-based apprentices for total hours worked including time deemed to be spent in off-the-job training.

C.4 For the purposes of clause C.3, where an apprentice is a full-time school student, the time spent in off-the-job training for which the apprentice must be paid is **25%** of the actual hours worked each week on-the-job. The wages paid for training time may be averaged over the semester or year.

C.5 A school-based apprentice must be allowed, over the duration of the apprenticeship, the same amount of time to attend off-the-job training as an equivalent full-time apprentice.

C.6 For the purposes of this schedule, off-the-job training is structured training delivered by a Registered Training Organisation separate from normal work duties or general supervised practice undertaken on the job.

C.7 The duration of the apprenticeship must be as specified in the training agreement or contract for each apprentice but must not exceed 6 years.

C.8 School-based apprentices progress through the relevant wage scale at the rate of 12 months progression for each 2 years of employment as an apprentice or at the rate of competency-based progression, if provided for in this award.

C.9 The apprentice wage scales are based on a standard full-time apprenticeship of 4 years (unless the apprenticeship is of 3 years duration) or stages of competency-based progression, if provided for in this award. The rate of progression reflects the average rate of skill acquisition expected from the typical combination of work and training for a school-based apprentice undertaking the applicable apprenticeship.

C.10 If an apprentice converts from school-based to full-time, the successful completion of competencies (if provided for in this award) and all time spent as a full-time apprentice will count for the purposes of progression through the relevant wage scale in addition to the progression achieved as a school-based apprentice.

C.11 School-based apprentices are entitled pro rata to all of the other conditions in this award.

**Schedule D - No Reduction**

D.1 An employee (including a casual employee) who was employed under this award or any of the superseded awards listed in D.2 as at 1 July 2026 and who continues to be employed under this award with the same employer after that date, must not be paid less than they would have been paid for the same work under the provisions of this award or any of the superseded awards as they stood prior to 1 July 2026.

D.2 For the purpose of clause D.1, the awards are:

(a) Particle Board Employees' Award, 1964;

(b) Plywood and Veneer Workers' Award, 1952;

(c) Saw Servicing Establishments Award No. 17 of 1977; and

(d) Case and Box Makers' Award, 19

**2026 WAIRC 00446**

**TIMBER INDUSTRY (CFMEU) STATE AWARD**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION OF WORKERS |
| | **APPLICANT** |
| | **-v-** |
| | (NOT APPLICABLE) |
| | **RESPONDENT** |
| **CORAM** | SENIOR COMMISSIONER R COSENTINO |
| **DATE** | TUESDAY, 30 JUNE 2026 |
| **FILE NO/S** | APPL 23 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00446 |

| | |
|---|---|
| **Result** | Award varied |
| **Representation** | |
| **Applicant** | Mr R Cardinal on behalf of the applicant |
| **Section 29B party** | Mr B Entrekin and Ms D Arntzen on behalf of the Honourable Minister for Industrial Relations |

*Order*

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

THAT the *Timber Yard Workers Award No. 11 of 1951* be varied in accordance with the attached Schedule, and such variations to have effect on and from 1 July 2026

(Sgd.) R COSENTINO,
[L.S.] Senior Commissioner.

SCHEDULE

Delete the entire contents of the following of the *Timber Yard Workers Award No. 11 of 1951* (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:

**Timber Industry (CFMEU) State Award**

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## Part 1 - Application and Operation of this Award

**1. Title**

1.1 This award is the *Timber Industry (CFMEU) State Award.*

**2. Definitions**

2.1 In this award, unless the contrary intention appears:

**adult apprentice** means an apprentice 21 years of age or over.

**all purposes** means the payment will be included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties or loadings or payment while they are on annual leave.

**casual employee** means an employee engaged and paid as such, applying section 7B of the *Industrial Relations Act 1979*.

**Commission** means the Western Australian Industrial Relations Commission.

**continuous work** means work carried on with consecutive shifts of persons throughout the 24 hours of each of at least 6 consecutive days without interruptions except during breakdowns or meal breaks or due to unavoidable causes beyond the control of the employer.

**engine driver** means any person who operates or drives any engine or engines, the motive power of which is either steam, gas, oil, water, compressed air or electricity, and includes any person who is called upon in the ordinary course of their duty to do engine driver's work other than simply stopping or starting an engine under the supervision of an engine driver.

**estimator** means an employee who has served an apprenticeship to any of the building trades or as a draughtsperson who is engaged in preparing cutting lists of timber for use in the manufacture of building components from builders, architects, or other plans.

**examiner** (Timber tradesperson - Level 5 or above) means an employee who is capable of using all measuring equipment and who is sufficiently versatile to examine and check any kind of product normally produced. They may be called upon to work under supervision but are not expected to exercise discretion and are only required to accept or reject those articles which conform or fail to conform to clearly defined standards.

**greaser or oiler** means any person substantially engaged in greasing or oiling any engine, machinery or shafting.

**head faller** means an employee who selects timber for falling, exercises supervision over 2 or more other fallers and/or who sharpens fallers' saws used in bush operations.

**inspector** (Timber tradesperson—Level 6 or above) means a tradesperson who is engaged to inspect components or finished products whilst in production or upon completion as to their conformity with a specific standard of quality and accuracy and who is authorised to exercise and does exercise discretion to pass components which may not conform to that standard.

**leading hand** means an employee who, while working, has charge or control of any adult person or persons not apprentices and who has been appointed by the employer to take charge or control. This definition does not apply to engine drivers, firemen or greasers.

**machinist A grade** (Timber tradesperson - Level 5) means a tradesperson wood machinist who has served the prescribed apprenticeship to wood machining as set out in this or previous awards, or an adult by reason of training for 4 years or more and experience is, at the time of engagement or subsequent thereto, deemed by the employer to be capable and is willing to perform the work of a tradesperson wood machinist. Work which will include the work of operating and setting up and/or grinding the knives and cutters of any of the following machines upon which the employee is employed notwithstanding that the employee may not be called upon to perform all such work:

(a) automatic profile sander;
(b) shaper who works freehand or automatic shaper (other than grooving and/or slotting in box and case making);
(c) boult's carver;
(d) buzzer and/or jointer (using other than straight knives and cutters);
(e) crossgrainer;
(f) computerised automatic 2 dimensional dividing and squaring saw;
(g) double edgebander and/or double ended tenoner;
(h) edgebander;
(i) dowel machine (multiple type);
(j) drum sander (4 or more drums);
(k) general joiner;

(l) lindemann gluer and jointer;
(m) longitudinal grooving machine;
(n) lock angle machine;
(o) mosaic flooring machine (other than assembling machine);
(p) moulder;
(q) multi-headed boring machine, with 3 or more bits;
(r) panel line machine;
(s) planer—3 heads or more (other than box);
(t) planer, box (4 heads or more);
(u) polisher including a person who is responsible for the setting up and operation of a curtain coating machine;
(v) sets up and operates any programmed and/or computerised high output wood machine not mentioned herein;
(w) responsible person in charge of radio frequency gluing equipment and radio frequency gluing operations;
(x) router, working freehand;
(y) shaper (other than grooving and/or slotting in box and case making);
(z) spoke throater;
(aa) tenoner (using scribing irons, other than an automatic tenoner);
(bb) upholsterer who is capable of and does spring canvas, first and second stuff cover finish;
(cc) trusser or crozier;
(dd) variety turning on lathes other than automatic lathes;
(ee) v-grooving machine;
(ff) v-line folding machine;
(gg) vinyl or melamine laying machine;
(hh) wood chipper;
(ii) wood carver; and
(jj) wood turner who grinds cutters and/or sets up and operates or who works freehand and a turner who sets up and operates a copying or automatic lathe.

An employee operating any of the following machines: automatic shaper; boult's carver; buzzer and/or jointer; general joiner; lindeman gluer and jointer; and a router will be a **machinist A grade** notwithstanding the employee does not set up and/or grind the knives and cutters.

**machinist B grade** means an adult employee other than a tradesperson, operating and setting up and/or grinding the knives or cutters of any of the following machines:

(a) automatic lathe;
(b) band and/or jig saw (other than sawmilling);
(c) belt sander and bobbin sander;
(d) belt sander on veneers;
(e) borer (3 or more spindles);
(f) buzzer and/or jointer (using straight knives or cutters);
(g) circular saw;
(h) copying lathe;
(i) dovetailer;
(j) dowel machine (single type);
(k) drum sander (double or triple drums);
(l) end matcher, finger jointer and all other male and female profile machines;
(m) glue jointer and/or automatic dowel driving machine;
(n) mechanical cutting veneer guillotine and veneer press
(o) microplaner;
(p) morticer (chain or hollow chisel of any kind or any other);
(q) panel line machine;
(r) planer (one or 2 heads) other than box;
(s) planer, box (less than 4 heads);
(t) pole scarfing (including operator of such machine who also operates a pole boring or pole capping machine);
(u) radial head using saws or cutters in the making of component parts for pre-cut buildings or of roof trusses or any other form of trusses;
(v) relisher;

(w) router (working from templates, dies, jigs or fences);
(x) sets up and operates a tenoner, other than double ended tenoner;
(y) shaper (grooving and/or slotting in box and case making);
(z) slicer (box);
(aa) spiking machine (incisor);
(bb) thicknesser;
(cc) timber bending machine;
(dd) v-grooving machine;
(ee) v-line folding machine;
(ff) vinyl or melamine laying machine;
(gg) wood chipping machine (other than log chipper); and
(hh) wood wool machine.

**measurer** means an employee who measures and records dimensions and number of pieces of sawn timber.

**millwright** means a tradesperson engaged in installing and/or maintaining machinery.

**on-hire** means the on-hire of an employee by their employer to a client, where the employee works under the general guidance and instruction of the client or a representative of the client.

**order** means the demand of a customer or of the employer, or someone on the employer's behalf, to the orderperson for an expressed size and class or expressed sizes and classes of timber.

**ordinary hourly rate** means the minimum hourly rate for an employee's classification specified in clause 17 – Minimum rates (excluding any casual loading), plus any allowances specified as being included in the employee's ordinary hourly rate or payable for all purposes.

**rostered shift** means a shift of which the employee concerned has had at least 48 hours' notice.

**sawbenches classifications:**

(a) **breaking down bench** includes a circular saw, a band saw, twin saws, horizontal saw or vertical frame saw when any of the saws are used for the purposes of reducing a log to flitches;

(b) **no. 1 bench** means any bench which takes flitches from the breaking down bench;

(c) **no. 2 bench** means any bench which is fed directly from a no. 1 bench or an edger sawbench, and which is not being used as a picket bench within no. 4 bench;

(d) **no. 3 bench** means any bench which is fed directly from a no. 2 bench and which is not being used as a picket bench within no. 4 bench; and

(e) **no. 4 bench** means a bench on which timber is cut into pickets, lathes, droppers, palings, staves or other small sizes which do not exceed 7.6 cm by 3.8 cm by 2.7 metres or the equivalent in section by 2.7 metres.

**saw doctor** means an employee who may be required to manufacture from blank ribbon steel band saws of varying widths and who punches teeth, grinds teeth, swages and sets, hard tips teeth, tensions and levels circular saws, grinds, sharpens and sets circular saws, maintains chainsaw chains, hand saws and frame saws and who when required, is responsible for the training of other employees.

**saw sharpener** means an employee who sharpens, sets and tensions saws only, using either hand or automatic grinding equipment, file setting lever and setting gauge saw sharpener.

**standard rate** means the 'Minimum weekly rate (full-time) employee' for a Level 5 in clause 17 - Minimum rates.

**timber tradesperson millwright—special class** means an employee who installs, repairs and maintains complex machinery and equipment including machinery which utilises hydraulic or pneumatic principles and who in the course of that work is required to read and understand hydraulic and pneumatic circuitry which controls fluid power systems; who has completed appropriate training as described in the classification descriptions of this award.

**training agreement** means a traineeship or apprenticeship agreement that is registered with the Department of Training and Workforce Development under the provisions of the *Vocational Education and Training Act 1996*.

**3. The *Minimum Conditions of Employment Act 1993* and this award**

3.1 The *Minimum Conditions of Employment Act 1993* (MCE Act) and this award contain the minimum conditions of employment for employees covered by this award.

3.2 Where this award refers to a condition of employment provided for in the MCE Act, the MCE Act applies.

3.3 The employer must ensure that copies of this award and the MCE Act are available to all employees to whom they apply, either on a notice board which is conveniently located at or near the workplace or through accessible electronic means.

**4. Area and Scope**

4.1 This award applies throughout Western Australia, excluding that portion of the South West Land Division situated outside a radius of 45 kilometres from the G.P.O. Perth.

4.2 This award covers employers in the Timber Industry, as defined in clause 4.3, and to the work and persons performing that work as listed in the skill grade structures, as described in clause 2 - Definitions. Without limiting the scope of this

award, it applies to the types of work listed in clause 4.3 in the forest and building products, manufacturing and merchandising, and pulp and paper sectors and persons performing that work or employed in connection with the following work, to the exclusion of any other award.

4.3 **Timber Industry** means any of the following industry sectors, but does not include any work covered by the awards specified in clause 5(b). In reality each sector may overlap and include any or all activities from other sectors.

(a) **Harvesting and forestry management sector**

(i) Harvesting timber, processing of harvested timber, operating any machinery or vehicle in connection with harvesting, lifting, processing and transporting timber.

(ii) Routine maintenance of equipment or vehicle.

(iii) Preparation of forest for harvesting operations, maintenance of forest during harvesting and activities associated with the rejuvenation of forest during and after harvesting operations, where carried out by employers engaged in harvesting operations.

(iv) General forestry and forest management work where carried out by employers engaged in harvesting operations.

(b) **Milling and processing sector**

(i) Processing of logs and other forms of raw timber into building timber and other value-added products in timber mills, factories, merchant's premises and other locations.

(ii) Processing includes lifting, sorting, stacking, storing, warehousing transporting, debarking, sawing, dressing, drying, machining, laminating, jointing, chipping, treating and carrying out any grading and labelling functions associated with processing.

(iii) Operation of any machinery used in processing or in connection with processing including plant and infrastructure and any maintenance associated with that machinery, plant or infrastructure.

(iv) Assembling and construction of products from processed timber.

(v) Supervision, co-ordination and planning of the processing activities and processing infrastructure.

(c) **Panel products sector**

(i) Manufacturing of boards, panels or veneer from timber and timber products.

(ii) Handling, sorting, stacking, lifting, treating, cutting, pressing, gluing, edging, trimming, painting, laminating and processing in any manner, board, panel or veneer.

(iii) Transporting and storing board, panels or veneer.

(iv) Operating and maintaining any or all machinery associated with board, panel or veneer manufacture including manufacturing plant and infrastructure.

(v) Planning, setting-up and assembling products from board, panel or veneer and associated components.

(d) **Manufacturing sector**

(i) All activities listed in the milling and processing sector in clause 4.3(b).

(ii) Machining timber in any manner to produce components and articles.

(iii) Planning, setting-up and assembling wood components and associated attachments into products.

(iv) Manufacturing frames, trusses and doors.

(v) Measuring, estimating, designing and manufacturing products for building and other purposes.

(vi) Manufacturing wooden sporting goods including for cricket, hockey, lacrosse, polocrosse, and/or badminton.

(vii) Wood machining, wood turning, wood carving, finishing, polishing, upholstering and other work carried out in or in connection with preparing, packing, assembling, manufacturing repairing or fixing, whether new or second hand, musical instruments and toys; where any of them are made of wood or timber, manufactured wood or timber products; and any other product made from wood other than furniture.

(e) **Merchandising and retailing sector**

(i) All activities listed in the manufacturing sector in clause 4.3 (d).

(ii) Displaying, demonstrating, preparing, handling, providing advice and selling timber and timber related products, hardware and building products in wholesale and timber merchant/retail outlets.

(iii) Activities associated with the importing and wholesaling of timber products.

(iv) Calculating and processing customer orders and dealing with customers generally.

(f) **Pulp and paper sector**

The manufacture, process and supply of: pulp and recycled pulp; plastic materials where obtained from the wood and cooking chemicals derived from the manufacture, processing and supply of pulp and recycled pulp; paper, including paper board, strawboard, paper bags or any similar commodity, brown papers, copy paper, envelope grade paper, hardboard paper, kraft paper, linerboard, publication and printing papers, sackcraft, security papers, watermark papers, fruit trays, egg cartons, wine trays, paper towel, facial tissue, toilet tissue, paper napkins, printed tissue products (including printed and laminated) where printing and conversion occurs in conjunction with the processing of pulp for tissue manufacture.

4.4 Reference to timber and/or wood in this award without in any way limiting the ordinary meaning of the words, will also include any artificial, laminated or manufactured material now in existence or hereafter coming into existence from whatever materials made or constructed or manufactured, which is or can be used in the place of wood or timber and worked in a similar manner as wood or timber.

4.5 This award covers any employer which supplies labour on an on-hire basis in the industry sectors described in clause 4.3 in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in those industry sectors. Clause 4.5 operates subject to the exclusions from coverage in this award.

4.6 This award covers employers which provide group training services for apprentices and/or trainees engaged in the industry sectors and/or parts of those industry sectors set out at clause 4.3, and those apprentices and/or trainees engaged by a group training service hosted by a business to perform work at a location where the activities described in clause 4.3 are being performed. Clause 4.6 operates subject to the exclusions from coverage in this award.

4.7 This award replaces the:

(a) *Particle Board Employees' Award, 1964*;

(b) *Plywood and Veneer Workers' Award, 1952*;

(c) *Saw Servicing Establishments Award No. 17 of 1977*; and

(d) *Case and Box Makers' Award, 1952*.

**5. Exclusions**

This award does not apply to:

(a) employers and employees who are subject to the national industrial relations system;

(b) employees who are covered by another award of the Commission, including the:

(i) *Building Trades and Labourers (Construction) Award*;

(ii) *Building Trades and Labourers (General) Award*;

(iii) *Commercial Sales Representatives' Award*;

(iv) *Furniture Trades Industry Award*;

(v) *Shop and Warehouse (Wholesale and Retail Establishments) State Award*; and

(vi) *Timber Industry (AWU) State Award*.

**6. Requests for flexible working arrangements**

Requests for flexible working arrangements are provided for in Part 4A of the *Minimum Conditions of Employment Act 1993*.

## Part 2 - Types of Employment and Classifications

**7. Types of employment**

7.1 Employees under this award will be employed in one of the following categories:

(a) full-time;

(b) part-time;

(c) piecework (see clause 11 - Piecework - General Timber Stream); or

(d) casual.

**8. Full-time employees**

8.1 A full-time employee is engaged to work an average of 38 hours per week.

8.2 Full-time employees are employed by the week.

**9. Part-time employees**

9.1 A part-time employee:

(a) is engaged to work less than an average of 38 ordinary hours per week; and

(b) has a regular pattern of hours.

9.2 Before commencing part-time employment, the employee and employer must agree upon the hours to be worked by the employee, the days upon which they will be worked and the starting and finishing times for the work.

9.3 The terms of the part-time work and any agreed variation will be recorded in writing and retained by the employer. The employer will provide a copy of the agreement and any variation to it to the employee.

9.4 An employer is required to roster a regular part-time employee for a minimum of 3 consecutive hours on any shift.

9.5 A part-time employee will be paid at the minimum hourly rate for the grade of work performed.

9.6 Subject to this clause, all of the provisions of this award will apply to a part-time employee.

**10. Casual employees**

10.1 A casual employee engaged for a part of any day will be entitled to a minimum of 4 hours' pay per day whether the casual employee is required to work for 4 hours or less than 4 hours.

10.2 **Casual loading**

For each hour worked, a casual employee must be paid:

(a) the ordinary hourly rate; and

(b) a loading of **25%** of the ordinary hourly rate,

for the classification in which they are employed.

10.3 A casual employee who works overtime will be paid at the appropriate overtime rate provided in clause 25 - Overtime based on the casual rate of pay (including the casual loading provided for in clause 10.2).

**11. Piecework - General Timber Stream**

11.1 **Definition**

A **pieceworker** is an employee who is not a weekly employee but who is engaged to work away from the employer's mill, yard or other place of business in or in connection with felling, snigging, hauling or other obtaining of logs, billets, chips or other timber at rates of remuneration depending only on the amount of work performed, irrespective of the hours or times concerned.

11.2 **Remuneration**

The remuneration payable to a pieceworker will be fixed by agreement between the employee and the employer at rates which would enable an employee of average capacity to earn, for an ordinary week's work, not less than **25%** above the appropriate weekly base rate for the class of work performed.

11.3 **Chainsaw and other additional costs**

(a) Pieceworkers who, with the agreement of the employer, supply, operate and maintain their own chainsaws will be reimbursed for the supply of that equipment as per clause 11.3(b).

(b) Pieceworkers will be reimbursed for all costs incidental to and directly connected with piecework in one of the following methods as agreed between the employer and the employee concerned:

(i) incorporating the costs into the piecework rate;

(ii) by calculating the costs and applying an additional flat rate or percentage rate to the piecework rate; or

(iii) by reimbursement of the actual amount involved.

11.4 The following clauses of this award do not apply to pieceworkers:

| Clause title | Clause number |
|---|---|
| Ordinary hours of work | 14 |
| Rostering arrangements | 15 |
| Breaks | 16 |
| Minimum rates | 17 |
| Wage-related allowances | 21 |
| Expense related allowances (except for Protective clothing, footwear and covering) | 22 |
| Accident Pay | 23 |
| Overtime | 25 |
| Penalty rates and shiftwork arrangements | 26 |

11.5 **Shifting haulers**

Pieceworkers will be paid at the award rate plus **25%** for time occupied shifting haulers from one landing to another except in cases where the piecework rates are arranged to include time occupied in shifting haulers.

11.6 **Sleepers—loading and turning**

When sleepers are being inspected whilst they are being loaded into trucks by pieceworkers and, at the request of the employer or of a government inspector or of the buyer, the sleepers are turned for inspection or reinspection, the loaders will receive turning rates whilst turning sleepers and loading rates whilst loading those sleepers.

11.7 **Measurement of logs**

All logs felled or hauled at piecework rates will be measured or weighed at the mill landing or elsewhere by agreement. Particulars of the logs so measured or weighed will be given to the pieceworker at least once a fortnight unless otherwise agreed upon by the employer and employee. These particulars will set out the name of the mill supplied, the name of the employee, the date, the brand, the length, the girth or the weight or the cubic meterage of those logs scaled according to the prevailing practice.

11.8 **Subsistence allowance**

(a) The employer will make every reasonable effort to ensure that the logs are not unduly delayed by stockpiling in the bush. Where logs are stockpiled in excess of 14 days in the bush the pieceworkers affected may be paid, by agreement, a subsistence allowance based on the estimated tonnage of the logs in the pieceworkers' pile agreed to between the pieceworkers and the employer.

(b) If the actual tonnage turns out to be greater than or less than the estimated tonnage after weighing, an adjustment will be made for the differences in the employee's next pay or otherwise as agreed to between the employer and the employee concerned.

11.9 **Royalty payment**

Where the employee obtaining the timber pays royalty on behalf of the employer, the employer will reimburse the royalty to the employee in addition to piecework rates.

11.10 **Payslips**

The employer must provide a payslip to piecework employees in accordance with section 49DA of the *Industrial Relations Act 1979*. In addition to the requirements of section 49DA of the *Industrial Relations Act 1979*, the payslip must include the following information:

(a) tonnes cut—saw log—pulp log;

(b) classification;

(c) adjustments;

(d) conversion factor tonnes/metre.

11.11 **Pieceworker reimbursement**

All pieceworkers will be reimbursed for all costs incidental to and directly connected with piecework in one of the following methods as agreed between the employee and employer concerned:

(a) incorporating the costs into the piecework rate;

(b) by calculating the costs and applying an additional flat rate or percentage rate to the piecework rate; or

(c) by reimbursement of the actual amount involved. The amount will be a minimum of **9.6%** of the standard rate.

**12. Apprentices**

12.1 **Supervision and training**

An employer will ensure that each apprentice has appropriate arrangements made at an enterprise level to meet the apprentices' training requirements and adequate access to and supervision from tradespersons has been arranged.

12.2 **Apprenticeship arrangements**

Apprenticeship arrangements will be as per the requirements of the Department of Training and Workforce Development (or any successor organisation) and/or the *Vocational Education and Training Act 1996*. This includes form and registration of indenture.

12.3 **Period of apprenticeship**

The term of apprenticeship is determined by the rate by which an apprentice gains the required competence and the starting level of competence of the apprentice. An apprenticeship will end once an apprentice displays the competency required under the apprenticeship agreement.

12.4 **Overtime and public holiday rates**

(a) An employer requiring an apprentice to work overtime will pay the apprentice double time for all overtime. No apprentice will be required to work overtime for more than 8 hours in any one week, or more than 16 hours in any 4 weeks, and the overtime must not prevent the apprentice attending any technical school.

(b) An employer may roster an apprentice to work on a public holiday if the apprentice willingly agrees to work that day, in which case the apprentice must be paid double time and one half for the shift. The work on the public holiday will not exceed the ordinary hours of work and will not be included in the calculation of 8 and 16 hours in clause 12.4(a).

12.5 **Travel payment for block release training**

(a) Where an apprentice is required to attend block release training for training identified in or associated with their training contract, and the training requires an overnight stay, the employer must pay for the excess reasonable travel costs incurred by the apprentice in the course of travelling to and from the training. Provided that clause 12.5 will not apply where the apprentice could attend an alternative

Registered Training Organisation (RTO) and the use of the more distant RTO is not agreed between the employer and the apprentice.

(b) For the purposes of clause 12.5(a) above, excess reasonable travel costs include the total costs of reasonable transportation (including transportation of tools where required), accommodation costs incurred while travelling (where necessary) and reasonable expenses incurred while travelling, including meals, which exceed those incurred in travelling to and from work. Excess travel costs do not include payment for travelling time or expenses incurred while not travelling to and from block release training.

(c) The amount payable by an employer under clause 12.5(a) may be reduced by an amount the apprentice is eligible to receive for travel costs to attend block release training under a Government apprentice assistance scheme. This will only apply if an apprentice has either received that assistance or their employer has advised them in writing of the availability of the assistance.

12.6 **Payment of fees and textbooks**

(a) All training fees charged by an RTO for prescribed courses and the cost of all prescribed textbooks (excluding those textbooks which are available in the employer's technical library) for the apprenticeship, which are paid by an apprentice, shall be reimbursed by the employer within 6 months of the commencement of the apprenticeship or the relevant stage of the apprenticeship, or within 3 months of the commencement of the training provided by the RTO, whichever is the later, unless there is unsatisfactory progress.

(b) An employer may meet its obligations under clause 12.6(a) by paying any fees and/or cost of textbooks directly to the RTO.

12.7 **Other apprentice conditions of employment**

(a) An apprentice is entitled to be released from work without loss of continuity of employment and to payment of the appropriate wages to attend any training and assessment specified in, or associated with, the training contract.

(b) Time spent by an apprentice in attending any training and/or assessment specified in, or associated with, the training contract is to be regarded as time worked for the employer for the purposes of calculating the apprentice's wages and determining the apprentice's employment conditions. Clause 12 operates subject to the provisions of Schedule C - School-based Apprentices.

(c) No apprentice will, except in an emergency, work or be required to work overtime or shiftwork at times which would prevent their attendance at training consistent with their training contract.

**13. Classifications**

The definitions of the classification levels in clause 17 – Minimum rates, are contained in Schedule A – Classification Definitions – General Timber Stream and Schedule B – Classification Definitions – Pulp and Paper Stream.

## Part 3 - Hours of Work

**14. Ordinary hours of work**

14.1 **Ordinary hours and roster cycles - day workers**

(a) Ordinary hours of work for a full-time employee shall be an average of 38 per week and will be worked between the hours of 6.00 am and 6.00 pm Monday to Friday in one of the following manners:

(i) 38 hours within a work cycle of one week;

(ii) 76 hours within a work cycle of 2 weeks;

(iii) 114 hours within a work cycle of 3 weeks; or

(iv) 152 hours within a work cycle of 4 weeks.

(b) Different methods of implementation of a 38 hour week may apply to various groups or sections of employees in the establishment concerned.

(c) (i) By agreement between the employer and the majority of affected employees, the ordinary hours of work can be worked on any day of the week, Saturday and Sunday inclusive.

(ii) Notwithstanding clause 14.1(c)(i), where the ordinary hours of work in a particular workplace or part thereof were already being performed on Saturdays and/or Sundays before 1 July 2026, those arrangements may continue to operate.

(d) The ordinary hours of work for a part-time employee will be in accordance with clause 9 – Part-time employees. The ordinary hours of work for a casual employee will be in accordance with clause 10 - Casual employees.

14.2 **Ordinary hours and roster cycles – shiftworkers**

(a) The ordinary hours of work for a full-time shiftworker are an average of 38 hours per week.

(b) Different methods of working shifts may apply to various groups or sections of employees in the establishment concerned.

(c) (i) Where agreement exists between the employer and the majority of affected employees, ordinary hours can be worked on any day of the week, including Saturday and/or Sunday.

(ii) Notwithstanding clause 14.2(c)(i), where the ordinary hours of work in a particular workplace or part thereof were already being performed on Saturdays and/or Sundays before 1 July 2026, those arrangements may continue to operate.

(d) Clause 26 - Penalty rates and shiftwork arrangements provides for shiftwork arrangements.

14.3 **Ordinary hours - watchpersons**

(a) A watchperson may be employed on the basis of 152 hours in a 4 week cycle provided that not more than 48 hours may be worked in any one week or 80 hours in a fortnight without payment for overtime.

(b) Clause 14.1 will not apply to a watchperson.

**15. Rostering arrangements**

15.1 **Rostered days, or shifts, off**

(a) Notwithstanding provisions elsewhere in this award and subject to clause 34 – Consultation about major workplace change and rosters, the employer and the majority of affected employees may agree to establish a system of rostered days off to provide that an employee may elect, with the consent of the employer to:

(i) take a rostered day, or shift, off at any time;

(ii) take rostered days, or shifts, off in part day amounts; or

(iii) accrue some or all rostered days off for the purpose of creating a bank to be drawn upon by the employee at times mutually agreed by the employer, or subject to reasonable notice by the employee or the employer.

(b) Clause 15.1(a) is subject to the employer informing each union which has members employed at the particular enterprise of its intention to introduce an enterprise system of rostered day off flexibility and providing a reasonable opportunity for the union to participate in negotiations.

(c) Once a decision has been taken to introduce a system of rostered day off flexibility in accordance with this clause 15.1(a) its terms must be set out in the time and wages records.

(d) An employer must record rostered day off arrangements in the time and wages record each time this provision is used.

15.2 **Notice of rostered days, or shifts, off**

In cases where, by virtue of the arrangement of the ordinary hours of work, an employee is entitled to a rostered day, or shift, off during the work cycle, the employee must be advised by the employer at least 4 weeks in advance of the day, or shift, to be taken off.

15.3 **Flexibility in relation to rostered days, or shifts, off**

By agreement between the employer and an employee, rostered days or shifts, off may be accumulated up to a maximum of 5 days or shifts, and may be taken in a manner agreed upon between the employer and the employee.

15.4 **Rostered days or shifts off – substitute days or shifts**

(a) **Rostered day off not to coincide with public holiday**

(i) Rostered days off must not be scheduled to coincide with a public holiday observed in accordance with clause 32 – Public Holidays.

(ii) An employee working continuous shiftwork who by the arrangement of ordinary hours of work is entitled to a rostered shift off which falls on a public holiday prescribed by clause 32 – Public Holidays will at the discretion of the employer, receive an additional day's pay or have an additional day added to their annual leave entitlement. This provision will not apply when the public holiday on which the employee is rostered off falls on a Saturday or Sunday.

(b) **Substitute days**

(i) An employer and an individual employee, or the employer and a majority of affected employees, may agree to substitute the day the employee or affected employees are to take off during a work cycle for another day.

(ii) An apprentice who is required to attend trade school on a rostered day off will be entitled to a substitute day as soon as practicable following the attendance at trade school.

(c) **Work on a rostered day, or shift, off**

Unless a rostered day off is substituted for another day off in accordance with clause 15.4(b), work performed on the rostered day off will be paid in accordance with clause 25 - Overtime.

15.5 **Rostered days off and averaging of pay**

For enterprises implementing a system of rostered days off based on a 19 day, 4 week cycle or in an enterprise where

rostered days off based on a 19 day, 4 week cycle exist the following system of averaging pay will apply:

(a) Averaging of pay over 4 weeks for all ordinary hours worked so that in the week during which an employee takes a rostered day off there is no reduction in pay.

(b) Under this system each person works 8 ordinary hours of work each day for 19 days in any 4 week cycle. An amount of pay equivalent to 0.4 hours of pay is held over for each day an employee is at work or absent from work on paid leave such as personal leave, workers compensation, bereavement leave, jury service or public holidays. This amount will be used to pay for the rostered day off during the week the employee takes a rostered day off.

**16. Breaks**

16.1 **Meal breaks - ordinary hours**

(a) Employees will be allowed an unpaid meal break of one hour or other time as may be agreed.

(b) An employee must not be required to work more than 5 ordinary hours without a meal break.

16.2 **Alteration of meal breaks**

In any establishment where the ordinary hours of work are worked on the basis of 4 days of 8 ordinary hours each and one day of 6 ordinary hours in a weekly work cycle, the employer and the majority of affected employees may agree that the 6 ordinary hour day may be worked without a meal break.

16.3 **Payment for work done during meal breaks**

(a) All work done during an employee's meal break must be paid for at double time.

(b) All work done after the time for the meal break until a meal break is allowed must be paid at:

(i) for employees in the Pulp and Paper Stream—double time; or

(ii) for all other employees – time and one half.

16.4 **Crib breaks during overtime**

(a) **Overtime on weekdays**

(i) An employee working overtime on a weekday will be allowed a paid crib break as follows, provided the employee continues to work after the crib break:

| Stream | Number of continuous hours of overtime worked | Length of crib break |
|---|---|---|
| Pulp and Paper Stream employees | Up to 4 hours | No break |
| | After 4 hours | 20 minutes |
| All other employees | Up to 4.5 hours | No break |
| | After 4.5 hours | 20 minutes |

(ii) Unless the period of overtime is 2 hours or less, an employee must be allowed a meal break after working ordinary hours and before starting overtime, which will be paid for at ordinary rates. The length of the meal break is:

| Stream | Length of meal break |
|---|---|
| Pulp and Paper Stream employees | 30 minutes |
| All other employees | 20 minutes |

(iii) An employer and an employee may agree to any variation of this provision to meet the circumstances of the work in hand; provided that the employer will not be required to make any payment in respect of any time allowed in excess of 20 minutes, or 30 minutes in the case of an employee in the Pulp and Paper Stream.

(b) **Saturdays, Sundays and public holidays**

(i) An employee working overtime on a Saturday, Sunday or public holiday will be allowed a paid crib break as follows, provided the employee continues to work after the crib break:

**Saturdays**

| Stream | Number of continuous hours of overtime worked | Length of crib break |
|---|---|---|
| Pulp and Paper Stream employees | Up to 4 hours | No break |
| | After 4 hours | 20 minutes |
| All other employees | Up to 4.5 hours | No break |
| | After 4.5 hours | 20 minutes |

**Sundays and public holidays**

| Stream | Number of continuous hours of overtime worked | Length of crib break |
|---|---|---|
| Pulp and Paper Stream employees | Up to 4 hours | No break |
| | After 4 hours | 30 minutes |

| Stream | Number of continuous hours of overtime worked | Length of crib break |
|---|---|---|
| All other employees | Up to 4.5 hours | No break |
| | After 4.5 hours | 20 minutes |

16.5 **Paid crib breaks—continuous work**

Where a shift roster provides for continuous work over 24 hours of the day, a 20 minute paid crib break will be allowed to shiftworkers each shift and will be counted as time worked. The crib break will be taken at a time and in a method agreed upon between the employer and the individual employee or majority of affected employees so as to meet the needs of the establishment.

16.6 **Determination of next meal break**

A meal break will not be regarded as time worked for the purpose of determining when the next meal break falls due.

16.7 **Minimum break after overtime**

Breaks after overtime will be provided in accordance with clause 25.9.

## Part 4 - Wages and Allowances

**17. Minimum rates**

17.1 An employer must pay adult employees the following minimum rates for ordinary hours worked by the employee (not including penalties and allowances):

(a) **General Timber Stream**

| Employee classification | Minimum weekly rate (full-time employee) | Minimum hourly rate |
|---|---|---|
| | $ | $ |
| Level 2 | 998.30 | 26.27 |
| Level 3 | 1029.10 | 27.08 |
| Level 4 | 1062.90 | 27.97 |
| Level 5 | 1119.10 | 29.45 |
| Level 6 | 1154.30 | 30.38 |
| Level 7 | 1221.10 | 32.13 |

(b) **Pulp and Paper Stream**

| Employee classification | Minimum weekly rate (full-time employee) | Minimum hourly rate |
|---|---|---|
| | $ | $ |
| Level 1 | 1013.50 | 26.67 |
| Level 2 | 1046.90 | 27.55 |
| Level 3 | 1067.30 | 28.09 |
| Level 4 | 1087.40 | 28.62 |
| Level 5 | 1119.10 | 29.45 |
| Level 6 | 1154.30 | 30.38 |
| Level 7 | 1189.40 | 31.30 |
| Level 8 | 1221.10 | 32.13 |
| Level 9 | 1256.20 | 33.06 |

17.2 **Apprentices (other than saw doctor apprentices)**

(a) The minimum rates for ordinary hours worked by apprentices (other than saw doctor apprentices) are as follows:

(i) **Apprentices that have completed year 12**

| 4 year term | 3.5 year term | 3 year term | % of award rate for Level 5 |
|---|---|---|---|
| 1st year | 0 – 6 months | | 55 |
| 2nd year | 7 – 18 months | 1st year | 65 |
| 3rd year | 19 – 30 months | 2nd year | 75 |
| 4th year | 31 – 42 months | 3rd year | 90 |

(ii) **Apprentices that have not completed year 12**

| 4 year term | 3.5 year term | 3 year term | % of award rate for Level 5 |
|---|---|---|---|
| 1st year | 0 – 6 months | | 50 |

| 4 year term | 3.5 year term | 3 year term | % of award rate for Level 5 |
|---|---|---|---|
| 2nd year | 7 – 18 months | 1st year | 60 |
| 3rd year | 19 – 30 months | 2nd year | 75 |
| 4th year | 31 – 42 months | 3rd year | 90 |

(b) Where an apprentice is under the age of 21 years on the expiry of the apprenticeship, the apprentice will be paid at not less than the adult ordinary hourly rate prescribed for the skill level on which the employee is employed.

17.3 **Saw doctor apprentices**

(a) The minimum rates for ordinary hours worked by saw doctor apprentices are as follows:

(i) **Apprentices that have completed year 12**

| 4 year term | 3.5 year term | 3 year term | % of award rate for Level 6 |
|---|---|---|---|
| 1st year | 0 – 6 months | | 55 |
| 2nd year | 7 – 18 months | 1st year | 65 |
| 3rd year | 19 – 30 months | 2nd year | 75 |
| 4th year | 31 – 42 months | 3rd year | 90 |

(ii) **Apprentices that have not completed year 12**

| 4 year term | 3.5 year term | 3 year term | % of award rate for Level 6 |
|---|---|---|---|
| 1st year | 0 – 6 months | | 50 |
| 2nd year | 7 – 18 months | 1st year | 60 |
| 3rd year | 19 – 30 months | 2nd year | 75 |
| 4th year | 31 – 42 months | 3rd year | 90 |

(b) Where an apprentice is under the age of 21 years on the expiry of the apprenticeship, the apprentice will be paid at not less than the adult ordinary hourly rate prescribed for the skill level on which the employee is employed.

17.4 **Adult apprentices**

(a) The minimum rate of an adult apprentice who is in the first year of their apprenticeship must be **80%** of the relevant Level 5 rate, or the relevant rate prescribed by clauses 17.2 or 17.3 for the relevant year of the apprenticeship, whichever is the greater.

(b) The minimum rate of an adult apprentice who is in the second and subsequent years of their apprenticeship must be the rate for the lowest relevant adult classification in clause 17.1, or the relevant rate prescribed by clauses 17.2 or 17.3 for the relevant year of the apprenticeship, whichever is the greater.

(c) A person employed by an employer under this award immediately prior to entering into a training agreement as an adult apprentice with that employer must not suffer a reduction in their minimum rate by virtue of entering into the training agreement, provided that the person has been an employee in that enterprise for at least 6 months as a full-time employee or 12 months as a part-time or regular casual employee immediately prior to commencing the apprenticeship. For the purpose only of fixing a minimum rate, the adult apprentice must continue to receive the minimum rate that applies to the classification specified in clause 17 in which the adult apprentice was engaged immediately prior to entering into the training agreement.

17.5 **Unapprenticed juniors**

The minimum rates for ordinary hours worked by unapprenticed juniors are the following percentages of the ordinary hourly rate for the applicable adult classification of Level 2, for the classification stream in which the junior is employed.

| Age | % of Level 2 award rate |
|---|---|
| | % |
| 16 years and under | 50 |
| 17 years | 60 |
| 18 years | 70 |
| 19 years and over | 100 |

17.6 **School based apprentices**

For school-based apprentices, see Schedule C – School-based Apprentices.

17.7 **Higher duties**

(a) An employee engaged for more than 2 hours during one day or shift on duties carrying a higher rate than the ordinary classification of that employee, will be paid the higher rate for that day or shift. If engaged for 2 hours or less during one day or shift the employee will be paid the higher rate for the time so worked.

(b) For the purpose of clause 17.7(a), the work carrying a higher rate need not be performed during a

continuous period but will be based on the aggregate of the time worked during a particular day or shift.

(c) Where an employee is transferred, without having received at least 7 days' written notice, to a grade of work carrying a lower rate than that at which the employee is usually employed, the employee will be paid at the higher rate until the 7 day notice period if provided would have expired.

17.8 **National training wage**

(a) Schedule E to the Miscellaneous Award 2020 sets out minimum wage rates and conditions for employees undertaking traineeships.

(b) This award incorporates the terms of Schedule E to the Miscellaneous Award 2020. Provided that any reference to "this award" in Schedule E to the Miscellaneous Award 2020 is to be read as referring to the Timber Industry (CFMEU) State Award and not the Miscellaneous Award 2020.

Note: The Miscellaneous Award 2020 is a modern award that applies to employers and employees in the national industrial relations system. The rates of pay for trainees are usually adjusted from 1 July each year.

**18. Minimum Adult Award Wage**

18.1 No employee aged 21 or more shall be paid less than the minimum adult award wage unless otherwise provided by this clause.

18.2 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 $998.30 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 $998.30 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 2026.

18.3 The minimum adult award wage is deemed to include all State Wage order adjustments from State Wage Case decisions.

18.4 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.

18.5 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*.

18.6 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*.

18.7 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.

18.8 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.

18.9 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 2026 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.

18.10 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 $828.90 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 $828.90 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 2026.

(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.

**19. Supported Wage System**

19.1 In this clause:

**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.

**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.

**disability support pension** means the Commonwealth 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.

**relevant minimum wage** means the minimum wage prescribed in this award for the class of work for which an employee is engaged.

**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.

**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.

19.2 **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 schedule 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 employment.

19.3 **Supported wage rates**

(a) Employees to whom this clause applies will be paid the applicable percentage of the relevant minimum wage 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 be not less than the amount set by the Commission under section 50A(1)(a)(iii) of the *Industrial Relations Act 1979*.

(c) Where an employee's assessed capacity is **10%**, they must receive a high degree of assistance and support.

19.4 **Assessment of capacity**

(a) For the purpose of establishing the percentage of the relevant minimum wage, 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, a union which the employee is eligible to join.

(b) All assessments made under this schedule must be documented in a SWS wage assessment agreement, and retained by the employer as a time and wages record.

19.5 **Lodgement of SWS wage assessment agreement**

(a) All SWS wage assessment agreements under the conditions of this clause, including the appropriate percentage of the relevant minimum 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.

19.6 **Review of assessment**

The assessment of the applicable percentage should be subject to annual or more frequent review on the basis of a reasonable request for such a review. The process of review must be in accordance with the procedures for assessing capacity under the SWS.

19.7 **Other terms and conditions of employment**

Where an assessment has been made, the applicable percentage will apply to the relevant minimum wage only. Employees covered by the provisions of this clause will be entitled to the same terms and conditions of employment as other employees covered by this award on a pro rata basis.

19.8 **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 re-design of job duties, working time arrangements and work organisation in consultation with other employees in the area.

19.9 **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 that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage 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 Commission under section 50A(1)(a)(iii) of the *Industrial Relations Act 1979*.

(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 clause 19.4.

**20. Payment of wages**

20.1 Section 49DA of the *Industrial Relations Act 1979* sets out the requirements for pay slips and the content of pay slips.

20.2 **Period of payment**

Wages will be paid either weekly or fortnightly, either according to the:

(a) actual ordinary hours worked each week or fortnight; or

(b) average number of ordinary hours worked each week or fortnight.

20.3 **Method of payment**

Wages must be paid by cash, cheque or electronic funds transfer into the employee's bank or other recognised financial institution account.

20.4 **Day off coinciding with pay day**

Where an employee is paid wages by cash or cheque and the employee is, by virtue of the arrangement of their ordinary hours, to take a day off on a day which coincides with pay day, the employee must be paid no later than the working day immediately following pay day. However, if the employer is able to make suitable arrangements, wages may be paid on the working day preceding pay day.

20.5 **Wages to be paid during work hours**

(a) Where an employee is paid wages by cash or cheque, the wages are to be paid during ordinary working hours.

(b) If an employee is paid wages by cash and is kept waiting for their wages on pay day after the usual time for ceasing work, the employee is to be paid at overtime rates for the period they are kept waiting.

20.6 **Absences from duty under an average system**

Where a full-time employee's ordinary hours in a week are greater or less than 38 hours and the employee's pay is averaged to avoid fluctuating wage payments, the following is to apply:

(a) the employee will accrue a credit for each day they work ordinary hours in excess of the daily average;

(b) the employee will not accrue a credit for each day of absence from duty, other than on paid leave; and

(c) an employee absent for part of a day, other than on paid leave, accrues a proportion of the credit for

the day, based on the proportion of the working day that the employee was in attendance.

20.7 **Payment on termination of employment**

(a) (i) When an employee is dismissed (other than for misconduct) or lawfully terminates their employment, the employee will be paid all moneys that are owing to them on the day of termination, unless that payment is prevented because of circumstances beyond the control of the employer.

(ii) For termination in circumstances other than in clause 20.7(a)(i), payment of moneys owing must be made no later than 7 days after the day of termination. Where an employee is paid by cash or cheque, moneys due shall be sent by registered post to the employee's last known address.

(b) In the case of an employee who is paid average pay and who has not taken time off due to them during the work cycle in which their employment is terminated, the wages due shall include a total of credits accrued during the work cycle. Provided that where the employee has taken time off during the work cycle in which their employment is terminated, the wages due shall be reduced by the total of credits which have not accrued during the work cycle.

**21. Wage-related allowances**

21.1 Employers must pay to an employee the wage-related allowances the employee is entitled to under this clause.

21.2 **All-purpose allowances**

Allowances paid for **all purposes** are included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties or loadings or payment while they are on annual leave. The following allowances are paid for all purposes under this award:

(a) forest work allowance; and

(b) low loader allowance.

21.3 **Forest work allowance**

(a) A forest work allowance equal to the amount prescribed in clause 22.3(a) of the Timber Industry Award 2020 is payable to an employee (other than a pieceworker) who is working in forests.
Note: The Timber Industry Award 2020 is a modern award that applies to employers and employees in the national industrial relations system. The forest work allowance contained in clause 22.3(a) of the Timber Industry Award 2020 is usually adjusted from 1 July each year.

(b) This allowance will be paid for all purposes of this award.

(c) This allowance compensates for all disabilities encountered in this type of work (including difficult terrain and dense undergrowth) whilst so engaged.

21.4 **Low loader allowance**

(a) An allowance equal to the amount prescribed in clause 22.4(a) of the Timber Industry Award 2020 per each additional complete tonne over 43 tonnes GCM is payable to an employee when driving a low loader.
Note: The Timber Industry Award 2020 is a modern award that applies to employers and employees in the national industrial relations system. The low loader allowance contained in clause 22.4(a) of the Timber Industry Award 2020 is usually adjusted from 1 July each year.

(b) This allowance will be paid for all purposes of this award.

21.5 **Leading hands**

A leading hands allowance equal to the amount prescribed in clause 22.5 of the Timber Industry Award 2020 is payable to a leading hand.
Note: The Timber Industry Award 2020 is a modern award that applies to employers and employees in the national industrial relations system. The leading hands allowance contained in clause 22.5 of the Timber Industry Award 2020 is usually adjusted from 1 July each year.

21.6 **Other wage related allowances**

The following allowances as set out in clause 22 of the Timber Industry Award 2020 (as varied from time to time) are incorporated into this award and must be provided to employees who qualify for the allowance:

(a) Cleaning of boilers and associated equipment allowance (clause 22.6)

(b) Repairs inside boilers and associated equipment allowance (clause 22.7)

(c) Additional allowances for engine drivers/firemen (clause 22.8)

(d) First aid allowance (clause 22.9)

(e) Charred timber (clause 22.10)

(f) Dirty work allowance (clause 22.11)

(g) Wet places allowance (clause 22.12)

(h) Hot work allowance (clause 22.13)

(i) Cold places allowance (clause 22.14)

(j) Confined spaces allowance (clause 22.15)

(k) Height money allowance (clause 22.16)

Note: The Timber Industry Award 2020 is a modern award that applies to employers and employees in the national industrial relations system. The wage related allowances contained in clause 22 of the Timber Industry Award 2020 are usually adjusted from 1 July each year.

**22. Expense-related allowances**

22.1 The following allowances as set out in clause 23 of the Timber Industry Award 2020 (as varied from time to time) are incorporated into this award and must be provided to employees who qualify for the allowance:

(a) Vehicle allowance (clause 23.2)

(b) Meal allowance - overtime (clause 23.3)

(c) Tool allowances (clause 23.4)

(d) Camping allowance (clause 23.5)

(e) Damage to clothing, tools and other items (clause 23.6)

(f) Protective clothing, footwear and covering allowance (clause 23.7)

(g) Travelling expenses (clause 23.8)

(h) Work away from usual place of employment allowance (clause 23.9)

(i) Travelling allowance - daily travel (clause 23.10)

(j) Travelling allowance - change of residence (clause 23.11)

(k) Travelling allowance - distant work (clause 23.12)

(l) Travelling allowance - bushworkers other than pieceworkers (clause 23.13)

(m) Training and skill development allowances (clause 23.14)

Note: The Timber Industry Award 2020 is a modern award that applies to employers and employees in the national industrial relations system. The expense related allowances contained in clause 23 of the Timber Industry Award 2020 are usually adjusted from 1 July each year.

**23. Accident Pay**

23.1 Should an employee, in either the General Timber Stream or the Pulp and Paper Stream of this Award, experience an accident at the place of employment and weekly payments of compensation are paid to the employee under the *Workers Compensation and Injury Management Act 2023*, the employee shall have the amount of compensation increased by the employer to the employee's usual weekly rate of pay under this Award (not including over award payments, shift loadings or overtime).

23.2 The payment made by the employer shall be limited to a maximum period of 39 weeks in the case of an employee in the General Timber Stream, and 52 weeks in the case of an employee in the Pulp and Paper Stream.

23.3 For the purpose of this clause, **place of employment** shall include travelling directly from or to their place of employment.

23.4 Casual employees' accident pay shall be based on the number of hours worked per week over the last month, with the present employer, or if less than one month the average for the time worked. The amount to be paid is the usual weekly rate of pay including the casual loading prescribed by clause 10.2 of this Award but not including over award payments, shift loadings or overtime.

23.5 If an employee entitled to accident pay under this clause returns to work on reduced hours or modified duties, the amount of accident pay due will be reduced by any amounts paid for the performance of that work.

**24. Superannuation**

24.1 **Superannuation legislation**

The Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth) and the *Superannuation Industry (Supervision) Act 1993* (Cth), deals with the superannuation rights and obligations of employers and employees.

24.2 **Employer contributions**

(a) An 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.

(b) Contributions must be paid into one of the following funds:

(i) any complying fund nominated by the employee; or

(ii) the employee's stapled fund; or

(iii) AustralianSuper, which will become the "nominated fund" if no fund is nominated by the employee and there is no stapled fund.

24.3 **Employee's options**

(a) Within 14 days of commencing employment, the employer must notify the employee of the employee's entitlement to nominate a complying fund.

(b) Any failure by the employee to nominate a fund will not affect the employee's eligibility to receive contributions.

(c) The employee and employer will 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.

(d) The employer must not unreasonably refuse to agree to a change of complying fund requested by an employee.

24.4 **Voluntary employee contributions**

(a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 24.2.

(b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee.

(c) The employer must pay the amount authorised under clauses 24.4(a) or 24.4(b) at the same time the employer makes their compulsory superannuation contributions on behalf of the employee.

24.5 **Absence from work**

Subject to the governing rules of the relevant superannuation fund, the employer must also make the superannuation contributions provided for in clause 24.2 and pay the amount authorised under clauses 24.4(a) or 24.4(b):

(a) **Paid leave**—while the employee is on any paid leave;

(b) **Work-related injury or illness**—for the period of absence from work (subject to a maximum of 52 weeks) of the employee due to work-related injury or work-related illness provided that:

(i) the employee is receiving workers' compensation payments or is receiving regular payments directly from the employer in accordance with the statutory requirements; and

(ii) the employee remains employed by the employer.

**Part 5 - Overtime and Penalty Rates**

**25. Overtime**

25.1 **Definition of overtime**

(a) All time worked by employees in excess of, or outside of, the ordinary hours of work as prescribed by this award will be overtime.

(b) A part-time employee who works in excess of the daily hours fixed by agreement between the employer and the employee will be paid at overtime rates.

25.2 **Payment for working overtime – day workers**

(a) All overtime worked by day workers between Monday and Saturday will be paid for at the rate of time and one half for the first 2 hours and double time after 2 hours.

(b) All overtime worked by day workers on Sunday will be paid for at double time.

(c) When computing overtime each day's work will stand alone.

(d) When computing overtime the hourly rate will be determined by dividing the appropriate weekly rate by 38.

25.3 **Shiftwork payments for overtime (excluding the pulp and paper stream)**

All overtime worked by shiftworkers (excluding pulp and paper shiftworkers) will be paid as follows:

(a) Monday to Saturday

(i) If on continuous work - at double time for all hours.

(ii) If on other than continuous work - time and one half for the first 2 hours on any one day and double time after 2 hours.

(b) Sunday

All overtime worked by shiftworkers (whether continuous or otherwise) on a Sunday will be paid for at double time.

(c) Shiftwork payments for overtime do not apply when the time is worked:

(i) by arrangement between the employees themselves; or

(ii) for the purpose of effecting the customary rotation of shifts.

(d) When not less than 8 hours' notice has been given to the employer by a reliever that the employee will be absent from work and the employee who should be relieved is not relieved and is required to continue to work on a rostered day off, the unrelieved employee will be paid at double time.

25.4 **Pulp and Paper Stream—payment for shiftworkers working overtime**

For all work outside the ordinary hours, or in excess of the normal duration of the shift, overtime will be paid to a shiftworker in the pulp and paper stream at the rate double time, except in cases where that time is worked by arrangement between the employees themselves. Provided that:

(a) Where an employee is given notice to work on the employee's rostered day off and the notice is cancelled within 16 hours of the time due for them to commence, the employee will be paid 4 hours' ordinary pay.

(b) Where an employee is given notice to work the succeeding shift and the notice is cancelled, and as a consequence of the notice the employee has remained on the premises until the prescribed starting time, the employee will be paid 4 hours' ordinary pay.

(c) **Sunday allowance**

In consideration of the Sunday overtime required in the industry, an employee who works not less than 8 hours on a Sunday outside the employee's ordinary hours of work prescribed in this award and has worked not less than 8 hours on either of the immediately preceding 2 Sundays outside ordinary hours will be paid in respect of the first-mentioned Sunday a special allowance of 4 hours' pay at ordinary time.

25.5 **Non-accumulation of penalty rates**

The rates prescribed in this clause will be in substitution for and not cumulative upon the shift rates prescribed elsewhere in this award.

25.6 **Payment for work on rostered day off - all employees**

All work performed on a rostered day off on the instructions of the employer will be paid for at time and one half for the first 2 hours and double time after 2 hours, with a minimum payment for 3 hours at that rate. If the rostered day off is a Sunday, all work must be paid for at double time, with a minimum payment for 3 hours.

25.7 **Watchpersons**

All overtime for a watchperson will be paid for at time and one half.

25.8 **Reasonable overtime**

(a) An employer may require an employee to work reasonable overtime hours at overtime rates.

(b) An employee may refuse to work overtime in circumstances where the working of the overtime would result in the employee working hours which are unreasonable having regard to:

(i) any risk to the employee's health and safety that might reasonably be expected to arise if the employee worked the overtime;

(ii) the employee's personal circumstances (including any family responsibilities);

(iii) the conduct of the operations or business in relation to which the employee is required or requested to work the overtime;

(iv) any notice given by the employer of the requirement or request that the employee work the overtime;

(v) any notice given by the employee of the employee's intention to refuse to work the overtime;

(vi) whether any of the overtime is on a public holiday in the area of the State where the employee is required or requested to work the overtime;

(vii) the employee's hours of work over the 4 weeks ending immediately before the employee is required or requested to work the overtime; and

(viii) any other relevant matter.

25.9 **Rest period after overtime**

(a) When overtime work is necessary, it must, whenever reasonably practicable, be arranged so that employees have at least 10 consecutive hours off duty between the work of successive days.

(b) Where an employee works so much overtime that there are fewer than 10 consecutive hours between finishing overtime on one day and commencing ordinary work on the next day, the employee will be released until they have had at least 10 consecutive hours off duty without loss of pay for ordinary working time occurring during the absence.

(c) If, on the instructions of the employer, an employee resumes or continues work without having had 10 consecutive hours off duty, the employee will be paid at double time until they are released from duty and they are then entitled to be absent until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during that absence.

(d) In the case of a shiftworker the provisions of this subclause will apply as if 8 hours were substituted

for 10 hours when overtime is worked:

(i) for the purpose of changing shift rosters;

(ii) where a shiftworker does not report for duty and a day worker or a shiftworker is required to replace the shiftworker; or

(iii) where a shift is worked by arrangement between the employees themselves.

25.10 **Call-back**

(a) An employee recalled to work overtime after leaving the employer's business premises (whether notified before or after leaving the premises) will be paid for a minimum of 4 hours' work at the appropriate rate for the call-back except when the employee is entitled to payment for standing by in accordance with clause 25.11, in which case the employee will be paid for a minimum of 3 hours' work at the appropriate rate.

(b) The employee will not be required to work the full 4 hours' work if the work the employee was recalled to perform is completed in a shorter period, except in unforeseen circumstances.

25.11 **Standing by**

When an employee is required by the employer to be in readiness for a call-back to work the employee will, until released by the employer or notified of the requirement to attend for duty, be paid for standing by time at ordinary rates from the time held in readiness.

25.12 **Recall without notice – pulp and paper stream**

An employee in the pulp and paper stream recalled without notice to work overtime will be paid at the rate of ordinary time from the time of receipt of notice of recall until the employee reports for duty. Provided the employee reports for duty without unreasonable delay.

25.13 **Transport for employees after overtime**

(a) Where an employee working overtime is required to remain on duty to a time which precludes the employee from using any reasonable means of transport to the employee's home, the employer must pay the cost of transport for the employee to get home free of charge and pay the employee's current rate until transport is available.

(b) Clause 25.13(a) will not apply to an employee who lives within reasonable walking distance from the point at which the employee is employed or otherwise has their own transport.

25.14 **Time off instead of payment for overtime**

(a) An employee and employer may agree to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.

(b) The period of time off that an employee is entitled to take is equivalent to the overtime payment that would have been made.

EXAMPLE: An employee who worked 2 overtime hours at time and one half is entitled to 3 hours' time off.

(c) Time off must be taken within 6 months of the overtime being worked at a time or times agreed by the employee and employer.

(d) If the employee requests at any time to be paid for overtime covered by an agreement under this subclause but not taken as time off, the employer must pay the employee for the overtime in the next pay period following the request, at the applicable overtime rate.

(e) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in clause 25.14(c), the employer must pay the employee for the overtime in the next pay period following those 6 months, at the applicable overtime rate.

(f) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.

(g) f, on the termination of the employee's employment, time off for overtime worked by the employee to which this subclause applies has not been taken, the employer must pay the employee for the overtime at the applicable overtime rate.

**26. Penalty rates and shiftwork arrangements**

26.1 **Penalty rates for day workers**

An employer must pay a day worker the following penalty rates for work performed during ordinary hours:

(a) **Payment for work on Saturdays**

All ordinary hours of work performed by a day worker on a Saturday will be paid for at the rate of time and one half for the first 2 hours and double time after 2 hours, with a minimum payment for 3 hours.

(b) **Payment for work on Sundays**

All ordinary hours of work performed by a day worker on a Sunday will be paid for at double time, with a minimum payment for 3 hours.

(c) **Payment for work on public holidays**

Except as prescribed by clause 32 – Public holidays, all work performed by a day worker on a public holiday will be paid for at the rate of double time and one half, with a minimum payment for 3 hours.

Note: For casual employees the 25% casual loading is added to, but not compounded on, the above penalty rates.

26.2 **Shiftwork arrangements**

(a) **Twelve hour shifts**

Employees may be required to work a continuous 12 hour shift subject to:

(i) proper health monitoring procedures being introduced;

(ii) suitable roster arrangements being made;

(iii) proper supervision being provided;

(iv) adequate breaks being provided; and

(v) an adequate trial or review process being implemented through the consultative process at the workplace.

(b) **Changes to shifts**

(i) **Consultation**

Where an employer proposes to change an employee's regular roster or ordinary hours of work, the employer must comply with clause 34 – Consultation about major workplace change and rosters.

(ii) **Day worker changing to shiftwork**

Where a day worker commences shiftwork at the instruction of the employer without 7 days' notice (or a reduced period of 48 hours' notice where the transfer to shiftwork is necessitated by absenteeism), the employer will pay the employee at time and one half for all ordinary hours worked until the required notice period would have expired. This payment will be in place of any shift rates payable under clause 26.3.

Note: All ordinary hours worked on Sunday must still be paid at double time.

(iii) **Change of shift rosters**

Where the employer does not provide a shiftworker with 48 hours' notice of any change to the employee's shift roster, the employer will pay the employee at time and one half for all ordinary hours worked until the 48 hour notice period would have expired. This payment will be in place of any shift rates payable under clause 26.3.

Note: All ordinary hours worked on Sunday must still be paid at double time.

(iv) **Termination of shiftwork**

An employer must give a shiftworker 7 days' notice of the cessation of the shiftwork. If 7 days' notice is not given, the employer will pay the employee the shift rates payable under this clause for all ordinary hours worked until the 7 days' notice would have expired.

26.3 **Penalty rates for shiftworkers**

(a) **Definitions**

(i) **Afternoon shift** means any shift finishing after 6.00 pm and at or before midnight.

(ii) **Day shift** means any shift that is not an afternoon shift or a night shift.

(iii) **Night shift means** any shift finishing after midnight or commencing before 6.00 am.

(iv) **Rostered shift means** a shift of which the employee concerned has had at least 48 hours' notice.

(v) **Continuous work** means work carried on with consecutive shifts of persons throughout the 24 hours of each of at least 6 consecutive days without interruptions except during breakdowns or meal breaks or due to unavoidable causes beyond the control of the employer.

(b) **Afternoon and night shifts to be consecutive**

(i) Where any particular process is carried out on shifts other than day shift, and less than five consecutive afternoon or five consecutive night shifts are worked on that process, the employees employed on such afternoon or night shifts must be paid at overtime rates.

(ii) Provided that where the ordinary hours of work in an establishment are performed on less than five days per week, the provisions of paragraph (i) will be as if four consecutive shifts were substituted for five consecutive shifts.

(iv) The sequence of work will not be deemed to be broken under paragraphs (i) or (ii) above because work on the process is not carried out on a Saturday, Sunday, public holiday, rostered day off or non-working day.

(c) **Payment for ordinary hours - Monday to Friday**

(i) **Day shift**

A shiftworker whilst on day shift will be paid the ordinary hourly rate for all hours of that shift.

(ii) **Afternoon shift**

A shiftworker whilst on afternoon shift will be paid a **15%** loading on the ordinary hourly rate for all hours of that shift.

(iii) **Night shift - rotating**

A shiftworker whilst on a night shift roster which rotates with other shift types will be paid a **15%** loading on the ordinary hourly rate for all hours of a night shift.

(iv) **Night shift - non-rotating**

A shiftworker who works night shifts only will be paid a **30%** loading on the ordinary hourly rate for all hours of a night shift.

(d) **Payment for ordinary hours - Saturday and Sunday**

(i) Ordinary hours of work performed by a shiftworker on a Saturday will be paid for at time and one half.

(ii) Ordinary hours of work performed by a shiftworker on a Sunday will be paid for at double time.

(e) **Payment for ordinary hours - public holidays**

Ordinary hours of work performed by a shiftworker on a public holiday will be paid for at double time.

Note: For casual employees the 25% casual loading is added to, but not compounded on, the above penalty rates.

**Summary of penalty rates – day workers**

| **Time of hours worked** | **Full-time and part-time employees** | **Casual employees** |
|---|---|---|
| | additional % of ordinary hourly rate | additional % of ordinary hourly rate (inclusive of casual loading) |
| Monday to Friday | 0% | 25% |
| Saturday - first 2 hours | 50% | 75% |
| Saturday - after 2 hours | 100% | 125% |
| Sunday - all hours | 100% | 125% |
| Public holiday - all hours | 150% | 175% |

**Summary of penalty rates – shiftworkers**

| **Time of hours worked** | **Full-time and part-time employees** | **Casual employees** |
|---|---|---|
| | additional % of ordinary hourly rate | additional % of ordinary hourly rate (inclusive of casual loading) |
| Monday to Friday - day shift | 0% | 25% |
| Monday to Friday - afternoon shift | 15% | 40% |
| Monday to Friday - night shift (rotating) | 15% | 40% |
| Monday to Friday - night shift (non-rotating) | 30% | 55% |
| Saturday - all hours | 50% | 75% |
| Sunday - all hours | 100% | 125% |
| Public holiday – all hours | 100% | 125% |

## Part 6 - Leave and Public Holidays

### 27. Annual leave

27.1 Annual leave is provided for in the *Minimum Conditions of Employment Act 1993*. Annual leave does not apply to a casual employee.

Note: The provisions of this clause only detail annual leave provisions that are additional to and/or more favourable than what is contained in the *Minimum Conditions of Employment Act 1993*.

27.2 **Additional leave for shiftworkers**

Shiftworkers who are regularly rostered to work on Sundays and public holidays are entitled to an additional one week of annual leave per annum. This annual leave accrues pro rata on a weekly basis.

27.3 **Payment for annual leave**

(a) **Employees other than pieceworkers**

(i) An employee must be paid the rate they would have received in respect of the ordinary hours the employee would have worked had the employee not been on leave during the relevant period.

(ii) Subject to clause 27.3(a)(iii), the rate to be paid must be worked out on the basis of what the employee would have been paid under this award for working ordinary hours during the period of annual leave, including allowances, loadings and penalties paid for all purposes of the award, first aid allowance and any other wages payable under the employee's contract of employment including any over-award payment.

(iii) The employee is not entitled to payments in respect of overtime, special rates or any other payment which might have been payable to the employee as a reimbursement for expenses incurred.

(b) **Pieceworkers**

In the case of a pieceworker the rate of pay for annual leave is whichever is the higher of:

(i) the rate then currently prescribed by the award for the ordinary weekly hours for the classification in which the employee was classified by the employer immediately prior to commencing leave, plus **25**%;

(ii) the rate payable under the employee's contract of employment; or

(iii) the rate calculated according to the employee's average weekly earnings during the 365 days immediately before the leave is taken (or during the employee's employment if less than 365 days).

Note: Section 18A of the *Minimum Conditions of Employment Act 1993* outlines the process for calculating the rate of pay for paid leave for an employee paid wholly by commission or percentage reward or at piece rates.

27.4 **Loading on annual leave—employees other than pieceworkers**

(a) During a period of annual leave an employee will receive a loading calculated on the minimum wage prescribed by clause 17 – Minimum rates, in the following manner:

(i) **Day workers**

An employee who would have worked on day work only had the employee not been on leave will receive a loading of **17.5%,** or in the case of an employee in the Pulp and Paper Stream, a loading of **20%**.

(ii) **Shiftworkers**

Where an employee would have worked on shiftwork had the employee not been on annual leave, the employee will be paid a loading for each shift equal to the greater of:

- 17.5% (or 20% in the case of an employee in the Pulp and Paper Stream); or
- the shift allowances that would have been payable to the employee for those shifts under clause 26 - Penalty rates and shiftwork arrangements.

(b) Annual leave loading will not apply to any public holiday occurring during a period of annual leave.

(c) Annual leave loading will, upon termination of the employment for any reason, also apply in respect of leave not taken for a full 12 months qualifying period of service by the employee with the employer.

(d) Annual leave loading will not apply to proportionate payment on termination under clause 37 – Termination of employment, except in the case of an employee with not less than 3 months' service with an employer whose services are terminated by the employer through no fault of the employee.

27.5 **Annual leave in advance**

(a) An employer and employee may agree in writing to the employee taking a period of paid annual leave before the employee has accrued an entitlement to the leave.

(b) An agreement must:

(i) state the amount of leave to be taken in advance and the date on which leave is to commence; and

(ii) be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

(c) The employer must keep a copy of any agreement under clause 27.5 as an employee record.

(d) If an employee's employment terminates and the employee has taken a period of annual leave that exceeds what the employee has accrued, the employee is liable to pay the employer an amount representing the annual leave not accrued.

Note: Under the *Minimum Conditions of Employment Act 1993* annual leave accrues pro rata on a weekly basis.

**28. Personal leave**

28.1 Personal leave is provided for in the *Minimum Conditions of Employment Act 1993*.

Note: The provisions of this clause only detail personal leave provisions that are additional to and/or more favourable than what is contained in the *Minimum Conditions of Employment Act 1993*.

28.2 **Adjustment of personal leave**

If, in the first or successive years of service with the employer, an employee is absent on personal leave for a period longer than the employee's accrued entitlement to paid personal leave, payment may be adjusted at the end of that 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.

28.3 **Replacement of paid personal leave during annual leave**

(a) Subject to the provisions of this subclause, an employee who suffers personal ill health or injury during annual leave may apply for and the employer must grant paid personal leave in place of paid annual leave.

(b) An application to replace annual leave with paid personal leave:

(i) must be made within 7 days of resuming work; and

(ii) is only available if the employee produces a certificate from a medical practitioner confirming they were confined to their residence or a hospital as a result of personal ill health or injury for a period of 7 consecutive days or more.

(c) Replacement of paid annual leave by paid personal leave must not exceed the period of paid personal leave the employee was entitled to and will not be made with respect to fractions of a day.

(d) Where paid personal leave has been granted by the employer in accordance with this clause, that portion of the annual leave equivalent to the paid personal leave is replaced by the paid personal leave.

(e) Payment for replaced annual leave is to be at the rate of pay applicable at the time the leave is subsequently taken, provided that if annual leave loading has already been paid to the employee pursuant to clause 27 – Annual Leave, the leave loading is deemed to have been paid with respect to the replaced annual leave.

28.4 If an employee is terminated by their employer and is re-engaged by the same employer within a period of 6 months then the employee's unclaimed balance of paid personal leave continues from the date of re-engagement.

**29. Bereavement leave**

Bereavement leave is provided for in the *Minimum Conditions of Employment Act 1993*.

**30. Parental leave and related entitlements**

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

**31. Family and domestic violence leave**

Family and domestic violence leave is provided for in Division 7 of Part 2-2 of the *Fair Work Act 2009* (Cth) and the *Minimum Conditions of Employment Act 1993*.

**32. Public holidays**

32.1 (a) An employee is entitled to be absent from work without loss of pay on a day or part of a day that is a public holiday mentioned in Schedule 1 of the *Minimum Conditions of Employment Act 1993*.

(b) When any of the days mentioned in clause 32.1(a), other than Easter Sunday, falls on a Saturday or a Sunday the public holiday shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday the public holiday shall be observed on the next succeeding Tuesday. In each case the substituted day shall be a public holiday without deduction of pay and the day for which it is substituted shall not be a public holiday.

32.2 **Substitution of public holidays by agreement**

An employer and employee may agree to substitute another day for a day that would otherwise be a public holiday.

32.3 **Rostered day off falling on public holiday**

Where a full-time employee's ordinary hours of work are structured to include a rostered day off on a weekday and that day off falls on a public holiday, the employee is entitled, at the discretion of the employer, to either:

(a) 7.6 hours of pay at the ordinary time rate;

(b) 7.6 hours of extra annual leave; or

(c) a substitute day off on an alternative weekday.

32.4 **Full-time employees working non-standard hours**

(a) Clause 32.4 applies to full-time workers who do not regularly work a 5 day, Monday to Friday week.

(b) **Public holidays falling upon days employees not working**

When a public holiday falls upon a day when the employee would not be working in any event the employee will receive:

(i) a day's paid leave to be taken on another day or added to annual leave (to be mutually agreed between the employer and the employee); or

(ii) an additional day's wage.

(c) **Christmas Day loading**

If employees are rostered to work on a Saturday or Sunday that is a Christmas Day and are required to work, the employee will receive the normal Saturday or Sunday rate plus a loading of one-half of a normal day's wages for the full day's work and be entitled to the substitute day.

32.5 **Part-time employees**

(a) Where the normal roster of a part-time employee includes a day that is a public holiday, the employee will receive either a paid day off for the hours the employee would otherwise have worked that day or receive the appropriate public holiday rate for working that day.

(b) For part-time employees whose normal roster includes a Saturday or Sunday that would be a prescribed holiday but for the substitution of an alternative day, the following will apply:

(i) the employee will be granted leave with pay on the "actual day" without any substitution; or

(ii) the employee works on the "actual day" at normal Saturday or Sunday rates (if the Saturday or Sunday is Christmas Day the Christmas Day loading will apply) and is allowed to take another day with pay, which may or may not be the prescribed substitute day, as a holiday; or

(iii) the employee works on the "actual day" at normal Saturday or Sunday rates (if the Saturday or Sunday is Christmas Day the Christmas Day loading will apply) and receives, in addition, payment at ordinary time rates for an additional day of equal length (with no substitution of an alternative day).

## Part 7 - Workplace Delegates, Consultation and Dispute Resolution

**33. Workplace delegates' rights**

33.1 In this clause:

(a) **employer** means the employer of the workplace delegate;

(b) **delegate's organisation** means the employee organisation in accordance with the rules of which the workplace delegate was appointed or elected; and

(c) **eligible workers** means members and persons eligible to be members of the workplace delegate's organisation who work in a particular enterprise.

33.2 Before exercising entitlements under this clause, a workplace delegate must give the employer written notice of their appointment or election as a workplace delegate. If requested, the workplace delegate must provide the employer with evidence that would satisfy a reasonable person of their appointment or election.

33.3 An employee who ceases to be a workplace delegate must give written notice to the employer within 14 days.

33.4 **Right of representation**

A workplace delegate may represent the industrial interests of eligible workers who wish to be represented by the workplace delegate in matters including:

(a) consultation about major workplace change;

(b) consultation about changes to rosters or hours of work;

(c) resolution of disputes;

(d) disciplinary processes;

(e) enterprise bargaining where the workplace delegate is assisting the delegate's organisation with enterprise bargaining; and

(f) any process or procedure within an award, enterprise agreement or policy of the employer under which eligible workers are entitled to be represented and which concerns their industrial interests.

33.5 **Entitlement to reasonable communication**

(a) A workplace delegate may communicate with eligible workers in relation to their industrial interests under clause 33.4. This includes discussing membership of the delegate's organisation and representation with eligible workers.

(b) A workplace delegate may communicate with eligible workers during working hours or work breaks, or before or after work.

33.6 **Entitlement to reasonable access to the workplace and workplace facilities**

(a) The employer must provide a workplace delegate with access to or use of the following workplace facilities:

(i) a room or area to hold discussions that is fit for purpose, private and accessible by the workplace delegate and eligible workers;

(ii) a physical or electronic noticeboard;

(iii) electronic means of communication ordinarily used in the workplace by the employer to communicate with eligible workers and by eligible workers to communicate with each other, including access to Wi-Fi;

(iv) a lockable filing cabinet or other secure document storage area; and

(v) office facilities and equipment including printers, scanners and photocopiers.

(b) The employer is not required to provide access to or use of a workplace facility under clause 33.6(a) if:

(i) the workplace does not have the facility;

(ii) due to operational requirements, it is impractical to provide access to or use of the facility at the time or in the manner it is sought; or

(iii) the employer does not have access to the facility at the enterprise and is unable to obtain access after taking reasonable steps.

33.7 **Entitlement to reasonable access to training**

Employers who employ 15 or more employees must provide a workplace delegate with access to up to 5 days of paid time during normal working hours for initial training and at least one day each subsequent year, to attend training related to representation of the industrial interests of eligible workers, subject to the following conditions:

(a) In each year commencing 1 July, the employer is not required to provide access to paid time for training to more than one workplace delegate per 50 eligible workers.

(b) The number of eligible workers will be determined on the day a delegate requests paid time to attend training, as the number of eligible workers who are:

(i) full time or part time employees; or

(ii) casual employees.

(c) Payment for a day of paid time during normal working hours is payment of the amount the workplace delegate would have been paid for the hours the workplace delegate would have been rostered or required to work on that day if the workplace delegate had not been absent from work to attend the training.

(d) The workplace delegate must give the employer not less than 5 weeks' notice (unless the employer and delegate agree to a shorter period of notice) of the dates, subject matter, the daily start and finish times of the training, and the name of the training provider.

(e) If requested by the employer, the workplace delegate must provide the employer with an outline of the training content.

(f) The employer must advise the workplace delegate not less than 2 weeks from the day on which the training is scheduled to commence, whether the workplace delegate's access to paid time during normal working hours to attend the training has been approved. Such approval must not be unreasonably withheld.

(g) The workplace delegate must, within 7 days after the day on which the training ends, provide the employer with evidence that would satisfy a reasonable person of their attendance at the training.

33.8 **Exercise of entitlements**

(a) A workplace delegate's entitlements under this clause are subject to the conditions that the workplace delegate must, when exercising those entitlements:

(i) comply with the reasonable policies and procedures of the employer, including reasonable codes of conduct and requirements in relation to occupational health and safety and acceptable use of ICT resources;

(ii) not hinder, obstruct or prevent eligible workers exercising their rights to freedom of association.

(b) When exercising any entitlements under this clause, a workplace delegate must, other than in the reasonable exercise of those entitlements:

(i) comply with their duties and obligations as an employee; and

(ii) not hinder, obstruct or prevent the normal performance of work.

(c) This clause does not require the employer to provide a workplace delegate with access to electronic means of communication in a way that provides individual contact details for eligible workers.

(d) This clause does not require an eligible worker to be represented by a workplace delegate without the

worker's agreement.

**34. Consultation about major workplace change and rosters**

**Consultation about major workplace change**

34.1 If an employer makes a definite decision to make major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must:

(a) give notice of the changes to all employees who may be affected by them, and if an employee nominates a union to represent them, the union; and

(b) discuss with affected employees and their union (if nominated):

(i) the introduction of the changes; and

(ii) their likely effect on employees; and

(iii) measures to avoid or minimise the adverse effects of the changes on employees; and

(c) commence discussions as soon as practicable after a definite decision has been made.

34.2 For the purposes of the discussion under clause 34.1(b), the employer must give in writing to the affected employees and the union (if nominated) all relevant information about the changes including:

(a) their nature; and

(b) their expected effect on employees; and

(c) any other matters likely to affect employees.

34.3 Clause 34.2 does not require an employer to disclose any confidential information if its disclosure would be adverse to the employer's interests.

34.4 The employer must promptly consider any matters raised by the employees or their union (if nominated) about the changes in the course of the discussion under clause 34.1(b).

34.5 In this clause **significant effects**, on employees, includes any of the following:

(a) termination of employment; or

(b) major changes in the composition, operation or size of the employer's workforce or in the skills required; or

(c) loss of, or reduction in, job or promotion opportunities; or

(d) loss of, or reduction in, job tenure; or

(e) alteration of hours of work; or

(f) the need for employees to be retrained or transferred to other work or locations; or

(g) job restructuring.

34.6 Where this award makes provision for alteration of any of the matters defined at 34.5, the alteration is taken not to have significant effect.

**Consultation about changes to rosters or hours of work**

34.7 (a) This subclause applies if an employer proposes to change the regular roster or ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic or unpredictable.

(b) The employer must consult with any employees affected by the proposed change and if an employee nominates a union to represent them, the union.

(c) For the purpose of the consultation, the employer must:

(i) provide to the employees and the union (if nominated) information about the proposed change (for example, information about the nature of the change and when it is to begin); and

(ii) invite the employees to give their views about the impact of the proposed change on them (including any impact on their family or caring responsibilities) and also invite the union (if nominated) to give their views about that impact.

(d) The employer must consider any views given under clause 34.7(c)(ii).

(e) Clause 34.7 is to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.

**35. Dispute resolution**

35.1 The following procedure applies to any question, dispute or difficulty arising under this award.

35.2 The parties to the question, difficulty or dispute must first try to resolve the dispute at the workplace through discussion between the employee or employees concerned and the relevant supervisor.

35.3 If the dispute is not resolved through discussion as mentioned in clause 35.2, the parties to the dispute must then try to resolve it in a timely manner at the workplace through discussion between the employee or employees concerned and more senior levels of management, as appropriate.

35.4 If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses 35.2 and 35.3, the dispute may be referred to the Commission, provided that the persons involved in the question, dispute or difficulty must confer among themselves and make reasonable attempts to resolve questions, disputes or difficulties before taking those matters to the Commission.

35.5 A party to the question, dispute or difficulty may appoint a person, organisation or association to support and/or represent them in any discussion or process under this clause.

35.6 While procedures are being followed under this clause in relation to a dispute:

(a) work must continue in accordance with this award; and

(b) an employee must not unreasonably fail to comply with any direction given by the employer about performing work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

35.7 This clause is subject to any applicable work health and safety legislation.

**36. Dispute resolution procedure training**

36.1 An eligible employee representative who will be involved in dispute resolution will be allowed to be trained in order to assist the employee to settle disputes as per this clause. The employee must arrange for suitable training and apply in writing with a minimum of 6 weeks' notice (or less amount by agreement) for up to 5 days leave with pay each calendar year, non-cumulative.

36.2 The notice to the employer must include details of the type, content and duration of the course to be attended. The employer must have a reasonable opportunity to:

(a) consult with the eligible employee representative and/or the training provider regarding dispute resolution training; and

(b) participate in the development of the dispute resolution training course.

36.3 Leave of absence granted pursuant to this clause will count as service for all purposes.

36.4 The time of taking leave will be arranged so as to minimise any adverse effect on the employer's operations.

36.5 For the purpose of determining the entitlement of employee representatives to dispute resolution procedure training leave, an **eligible employee representative** is an employee who is a shop steward, a delegate, or an employee representative duly elected or appointed by the employees in an enterprise or workplace generally or collectively for all or part of an enterprise or workplace for the purpose of representing those employees in the dispute resolution procedure.

## Part 8 - Termination of Employment and Redundancy

**37. Termination of employment**

37.1 **Notice of termination by an employer – full-time and part-time employees**

(a) An employer must give the employee notice of termination in accordance with the following table.

**Period of notice**

| Employee's period of continuous service with the employer at the end of the day the notice is given | Period of notice |
|---|---|
| Not more than 1 year | 1 week |
| More than 1 year but not more than 3 years | 2 weeks |
| More than 3 years but not more than 5 years | 3 weeks |
| More than 5 years | 4 weeks |

(b) An employee who at the time of being given notice is over 45 years of age and who at the date of termination has completed 2 years' continuous service with the employer, is entitled to one week's notice in addition to the notice prescribed in clause 37.1(a).

(c) Payment in lieu of the notice prescribed in clauses 37.1(a) and 37.1(b) must be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu.

(d) 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:

(i) the employee's ordinary hours of work (even if they are not standard hours);

(ii) the amounts ordinarily payable to the employee in respect of those hours, including for example, allowances, loadings and penalties; and

(iii) any other amounts payable under the employee's contract of employment.

(e) The period of notice in this subclause does not apply to those employees who are exempt from receiving notice under Subdivision A of Division 11 of Part 2-2 of the *Fair Work Act 2009* (Cth), as amended from time to time.

(f) For the purpose of this subclause an employee's continuity of service has the same meaning as prescribed in section 22 of the *Fair Work Act 2009* (Cth).

37.2 **Notice of Termination by Employee – full-time and part-time employees**

The notice of termination required to be given by an employee is the same as that required of an employer, except that there is no additional notice based on the age of the employee concerned

37.3 **Job search entitlement**

(a) Where an employer has given notice of termination to an employee, the employee must be allowed time off without loss of pay of up to one day each week for the purpose of seeking other employment. The time off is to be taken at times that are convenient to the employee after consultation with the employer.

(b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or they shall not receive payment for the time absent. For this purpose, a statutory declaration will be sufficient.

37.4 **Transport of employees on termination of employment**

Where means of transport to the bush or bush sawmills is provided by the employer, on the termination of service of an employee, the employee, the employee's family and goods and chattels will be transported within 48 hours of receipt by the employer of notice that the transport is required, and the employee will be reimbursed the cost of the transport if not provided by the employer. An employee will not be entitled to free transport on a route along which the public is regularly transported for payment, however the employee will not be charged a rate on the route in excess of that regularly charged to the public.

37.5 **Casual employees**

An employer or employee may terminate a casual employment arrangement with one hour's notice.

37.6 **Statement of employment**

An employer must, in the event of termination of employment, provide upon request to the employee who has been terminated, a written statement specifying the period of employment and the classification or type of work performed by the employee.

**38. Redundancy**

38.1 **Consultation before terminations**

(a) Where an employer has made a decision that the employer no longer wishes the job the employee has been doing to be done by anyone and that decision may lead to termination of employment, the employer must consult with the employees directly affected and, if an employee nominates a union to represent them, the union.

(b) The consultation must take place as soon as is practicable and cover, amongst other matters, the reasons the proposed terminations are required, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any terminations on the employees.

(c) For the purposes of the consultation the employer must, as soon as practicable, provide in writing to the employees concerned and, if an employee nominates a union to represent them, the union, all relevant information about the proposed terminations, including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of employees normally employed and the period over which the terminations are likely to be carried out.

(d) The employer is not required to disclose confidential information the disclosure of which would be adverse to the employer's interests.

38.2 **Transfer to lower paid duties**

(a) Where an employee is transferred to lower paid duties for reasons of redundancy, the employee is entitled to the same period of notice of transfer they would have been entitled to if they had been terminated.

(b) The employer may, at the employer's option, make payment in lieu of notice for an amount equal to the difference between the former amounts the employer would have been liable to pay and the new lower amount the employer is liable to pay the employee for the number of weeks of notice still owing.

(c) The amounts must be worked out on the basis of:

(i) the ordinary working hours to be worked by the employee; and

(ii) the amounts payable to the employee for the hours including for example, allowances, loading and penalties; and

(iii) any other amounts payable under the employee's contract of employment.

38.3 **Severance pay**

(a) **Employers with 15 or more employees**

In addition to the period of notice provided in clause 37 – Termination of employment, and subject to any further order of the Commission, employers who employ 15 or more employees must pay the following amount of severance to any full-time or part-time employee whose employment is terminated by reason of redundancy.

| **Period of continuous service** | **Severance pay** |
|---|---|
| Less than 1 year | nil |
| 1 year and less than 2 years | 4 weeks' pay |
| 2 years and less than 3 years | 6 weeks' pay |
| 3 years and less than 4 years | 7 weeks' pay |
| 4 years and less than 5 years | 8 weeks' pay |
| 5 years and less than 6 years | 10 weeks' pay |
| 6 years and less than 7 years | 11 weeks' pay |
| 7 years and less than 8 years | 13 weeks' pay |
| 8 years and less than 9 years | 14 weeks' pay |
| 9 years and less than 10 years | 16 weeks' pay |
| 10 years and over | 12 weeks' pay |

(b) **Employees with fewer than 15 employees**

In addition to the period of notice provided in clause 37 – Termination of employment, and subject to any further order of the Commission, employers who employ fewer than 15 employees must pay the following amount of severance to any full-time or part-time employee whose employment is terminated by reason of redundancy.

| **Period of continuous service** | **Severance pay** |
|---|---|
| Less than 1 year | nil |
| 1 year and less than 2 years | 4 weeks' pay |
| 2 years and less than 3 years | 6 weeks' pay |
| 3 years and less than 4 years | 7 weeks' pay |
| 4 years and over | 8 weeks' pay |

(c) "Weeks' pay" means the ordinary time rate of pay for the employee concerned. Provided that this rate excludes:

(i) overtime;

(ii) penalty rates;

(iii) disability allowances;

(iv) shift allowances;

(v) special rates;

(vi) fares and travelling time allowances;

(vii) bonuses; and

(viii) any other ancillary payments of a like nature.

(d) Severance payments will not exceed the amount which the employee would have earned if employment with the employer had proceeded to the employee's normal retirement date.

(e) For the purpose of this clause continuity of service will not be broken on account of:

(i) any interruption or termination of the employment by the employer if the interruption or termination has been made with the intention of avoiding the obligations of this clause in respect of leave;

(ii) any absence from work where leave has been granted by the employer; or

(iii) any absence with reasonable cause, if the employee can supply sufficient proof.

Provided that in the calculation of continuous service any time an employee is absent from work, except time for which the employee is entitled to claim paid leave, will not count as time worked.

(f) Service by an employee with a business which has been transferred from one employer to another will also constitute continuous service for the purpose of this clause, provided the employee's service has been deemed continuous in accordance with Part II, Division 3 of the *Long Service Leave Act 1958*.

38.4 **Employee leaving during notice**

Where an employee is terminated because of redundancy, the employee may resign from their employment during the period of notice and, if so, will be entitled to the same benefits and payments under this clause as they would be if they had remained with the employer until the expiry of the notice. However, in this situation, the employee will not be entitled to payment in lieu of notice in accordance with clause 37 - Termination of employment.

38.5 **Alternative employment**

An employer, in a particular redundancy case, may apply to the Commission to have the severance payment varied if the employer obtains acceptable alternative employment for an employee.

38.6 **Transmission of business**

(a) The provisions of this clause are not applicable where a business is transferred from one employer to another employer in any of the following circumstances:

(i) Where the employee accepts employment with the new employer which recognises the period of continuous service which the employee had with the old employer (and any other prior employers for that business) to be continuous service of the employee with the new employer; or

(ii) Where the employee rejects an offer of employment with the new employer:

(aa) in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the old employer; and

(bb) which recognises the period of continuous service which the employee had with the old employer (and any other prior employers for that business) to be continuous service with the new employer.

(b) The Commission may vary the provisions of clause 38.6(a) if it is satisfied that it would operate unfairly in a particular case.

38.7 **Notice to Centrelink**

Where a decision has been made to terminate employees due to redundancy, the employer must notify Centrelink as soon as possible giving all relevant information about the proposed terminations, including a written statement of the reasons for the terminations, the number and categories of the employees likely to be affected, the number of employees normally employed and the period over which the terminations are intended to be carried out.

38.8 **Employees exempted**

(a) This clause does not apply where employment is terminated as a consequence of conduct that justifies instant dismissal or to casual employees.

(b) Apart from the requirement to consult with affected employees in accordance with clause 38.1, this clause does not apply to apprentices, trainees, probationary employees or employees engaged for a specific period of time or for a specified task or tasks.

38.9 **Incapacity to pay**

An employer in a particular redundancy case may apply to the Commission to have the severance pay varied on the basis of the employer's incapacity to pay.

## Part 9 – Named Parties

**39. Named parties to the award**

Union Party

The Construction, Forestry, Mining and Energy Union of Workers

## Schedule A - Classification Definitions - General Timber Stream

**A.1 Level 2 (Adult Minimum Wage)**

**Level 2 – employee new to industry**

The following provisions apply to a Level 2 employee who is new to the industry.

A.1.1 **General**

(a) A new employee at this level:

(i) will complete a program of induction training;

(ii) will complete a program of skills training to meet the requirement of being able to competently perform work within the scope of Level 2; and

(iii) where required by statute or regulation will obtain the necessary licenses, permits or other authorisations.

(b) **General description of skills required**

A new Level 2 employee will exercise the following skills:

(i) the ability to follow instructions;

(ii) manual handling skills; and

(iii) the ability to follow standards and procedures.

(c) **General description of knowledge required**

A new Level 2 employee will develop the following:

(i) broad knowledge of the industry sector and operations at the enterprise level;

(ii) broad understanding of all functions carried out in the enterprise;

(iii) understanding of health and safety regulations and procedures relevant to the level;

(iv) an understanding of the employment conditions set out in the award, and enterprise policies and procedures relating to conditions;

(v) knowledge of the resources used in the sector; and

(vi) knowledge of the range and uses of basic hand tools.

(d) **Induction training**

Induction training will cover the following:

(i) basic work health and safety;

(ii) first aid;

(iii) conditions of employment; and

(iv) organisation policies and objectives.

(e) **Level of responsibility**

New Level 2 employees will work under direct supervision at all times and will be expected to exercise minimal judgement.

**Level 2 - Competent**

A.1.2 **General**

The following provisions apply to a competent Level 2 employee.

(a) At this level an employee:

(i) will have a broad general knowledge of the industry and the functions carried out in the workplace;

(ii) works under direct supervision either individually or in a team environment;

(iii) understands and undertakes basic quality control/assurance procedures including the ability to recognise basic quality deviations/faults;

(iv) in the harvesting forest management sector, understands and utilises basic environmental procedures in accordance with relevant forest codes of practice;

(v) understands and utilises basic process control procedures;

(vi) may assist skilled trainers in the provision of on-the-job training; and

(vii) should be given the opportunity to participate in ongoing skills training to enable progress to Level 3.

(b) **Indicative tasks**

An employee at this level will perform any or all of the tasks listed below and after suitable training, will be expected to operate flexibly between work stations at this level.

(i) **Harvesting sector**

- landing builder or repairer;
- operates a chainsaw at a basic level ancillary to normal duties;
- crosscut and trim logs on the landing/dump;
- segregation of logs and sleepers;
- loader trimming and cutting logs in pine plantations;
- loader or turner sleepers over 1.5 metres long;
- pulpwood cutter and/or splitter;
- spar or plank road builder;
- woodcutter for charcoal or firewood; and
- log measurer.

(ii) **Milling and processing sector**

- sorts, stacks and binds materials;
- uses selected hand tools;
- racks timber (manually or mechanically);
- assembles boxes and crates;
- grades round poles and peels posts for preservation;
- operates manual transfer equipment;
- produces beams using nail plates;
- operates a range of basic pre-set wood machines as prescribed within the current definitions of the award appropriate to this level;
- assists in preparing timber orders by selecting pre-cut timber from stocks;
- operates chainsaw at a basic level ancillary to normal duties;
- watchperson who does not attend boilers; and
- greases or oils any engine, machinery or shafting.

(iii) **Panel products sector**

- uses selected hand tools;
- centre feeder and/or core feeder and/or coverlayer and/or assistant in glue spreading;
- veneer joiner and/or repairer where the work is done by hand with less than one year's experience;
- tapeless veneer joining machine with less than one year's experience;
- operator on power-operated veneer edge truing or trimming machine (saw, cutter block or guillotine) where the machinist is never required to set up the machine nor to grind the knives and cutters but is merely an operator or feeder of the machine;
- assembling veneers with film glue;
- plywood and veneer grader grading into 3 or more classes;
- flat press operators and assistants not elsewhere specified;
- operates manual transfer equipment;
- assistant to lathe or slicer operator;
- plywood scarfing machine where the machinist is never required to set up the machine nor to grind the knives and cutters but is merely an operator;
- assistant to veneer kiln drier or re-drier operator who operates a drying kiln;
- other operators of immunising plant;
- assistant on veneer clipper machine;
- taping and glue thread machinist with less than one year's experience;
- operator of plywood trimming machine using parallel saws;
- belt sander in sanding of plywood faced with rotary peel veneer;
- edge gluing veneer by hand or roller for tapeless joining machine;
- guillotine operator not elsewhere included;
- feeder and/or assistant on automatic core assembling machine;
- operator of folding machine; and
- glue spreading spray gun operator.

(iv) **Manufacturing sector**

- assists in assembling wall frames and roof trusses;
- sorts, stacks and binds materials;
- uses and maintains selected hand tools;
- racks timber (manually or mechanically);
- assembles boxes and crates or trellis;
- primes and paints;
- operates door and/or panel trimming machines where the operator is not required to set up the machine nor to grind the knives and cutters and operates punching and notching machines;
- operates manual and motorised transfer equipment while holding appropriate permits/licences/certification;
- produces beams using nail plates;
- points posts;
- operates a range of basic pre-set wood machines as prescribed within the current definitions of the award appropriate to this level;
- operates chainsaw at a basic level ancillary to normal duties;
- operates cross cut and bench saws in box and case factories;
- measures and records sawn timber; and
- assists sawyer to change bandsaw.

(v) **Merchandising sector**

- sorts, stacks and binds materials;
- uses and maintains selected hand tools;
- operates a chainsaw at a basic level ancillary to normal duties;
- assists sawyer to change bandsaw;
- operates manual and motorised transfer equipment;
- assists in assembling wall frames and roof trusses;
- primes and paints; and
- operates a range of basic pre-set wood machines as prescribed within the current definitions of the award appropriate to this level.

(c) **General description of skills required**

(i) manual handling skills;

(ii) the ability to make judgements visually of size and shape;

(iii) in the panel products sector, the ability to make judgements by measurement coupled to quality control procedures;

(iv) ability to operate basic, pre-set cutting equipment;

(v) ability to use hand power tools safely; and

(vi) problem solving skills.

(d) **General description of knowledge required:**

(i) basic knowledge of timber use and value;

(ii) in the harvesting forest management sector, awareness and understanding of relevant Forest Codes of Practice;

(iii) in the panel products sector, basic knowledge of timber, veneer and plywood use and value;

(iv) awareness of work health and safety procedures for pre-set cutting equipment, and other health and safety procedures; and

(v) knowledge of the functions and use of hand tools and base technology saws/machine/equipment for this level.

(e) **Level of responsibility**

An employee at this level will be:

(i) responsible for identifying and solving minor problems which occur in the work process the Level 2 worker is directly responsible for;

(ii) required to work to predetermined standards and outcomes; and

(iii) responsible for keeping own work area safe and clean.

(f) **Promotional criteria**

An employee remains at this level until capable of effectively performing through assessment or appropriate certification the tasks required of the next level so as to enable progress as a position becomes available.

**A.2 Level 3 (relativity 87.4%)**

A.2.1 **General**

(a) An employee at this level performs work above and beyond the skills of an employee at Level 2 and is competent to perform work within the scope of this level.

At this level an employee:

(i) is responsible for the quality of own work subject to general supervision;

(ii) works under general supervision either individually or in a team environment;

(iii) exercises discretion within own level of skills and training;

(iv) operates flexibly between work stations and machines;

(v) may assist skilled trainers in the provision of on-the-job training;

(vi) in the harvesting forest management sector, understands and utilises environmental control procedures in accordance with relevant Forest Codes of Practice; and

(vii) should be given the opportunity to participate in ongoing skills training to enable progression to Level 4.

(b) **Indicative tasks**

An employee at this level will perform any or all of the tasks listed below and will be expected after suitable training to operate flexibly between work stations at this level.

(i) **Harvesting and forest management sector**

- operate mechanical debarking equipment;
- operate chipping machines;
- operate log splitting machine;
- offsider to logging tractor or bulldozer driver;
- faller - pine plantation;
- pole handler; and
- operate and maintain chainsaws.

NOTE: Employees must hold appropriate licence/certification.

(ii) **Milling and processing sector**

- preliminary processing of logs;
- operates and maintains mechanical debarking equipment;
- demonstrates basic keyboard skills;
- assembles pallets, boxes and crates;
- controls the flow of materials through mill;
- operates, resets and maintains planing machines;
- operates recovery bench, breaking down rig (no sizing mode), bench controls;
- operates and maintains drilling machines, static press, snatcher, tilt hoist;
- operates and maintains chipping machines;
- assists breaking down sawyer;

- sets up single multi-rip saws, band resaw and circular saws;
- prepares preservation solution and appropriate paperwork at the appropriate level;
- operates and maintains chainsaws to a higher level than Level 2;
- prepares timber orders and tallies timber;
- where the employee has completed a recognised grading course, grades timber visually according to quality;
- operates pulpwood processing equipment;
- laminates, fabricates or assembles timber, plywood and veneers;
- assists a tradesperson to carry out their duties;
- sets up and operates a range of wood machines as prescribed within the current definitions of the award appropriate to this level;
- operates waste chipper/hogger;
- sorts on boardline or similar process;
- operates traverser machine;
- tails out moulder, planer or equivalent machinery and pulls out behind sawbenches;
- operates docking and/or trim saws to eliminate defects;
- attends a boiler;
- a greaser or oiler who under the supervision of an engine driver stops or starts an engine or engines, but does not include any greaser or oiler who does so only in cases of necessity or emergency;
- operates pneumatic tyred tractor not using power operated attachments 35 kW brake power and under; and
- operates steam engine or suction gas and other internal combustion engine under 35 kW brake power.

(iii) **Panel products sector**

- centre layer and/or corelayer and/or coremaker building up solid timber and/or veneer centres;
- veneer joiners and/or repairers where the work is done by hand with one year's experience;
- operator on power-operated veneer edge truing or trimming machine (cutter block or guillotine) where the machinist has not been required to grind the knives and cutters but is at any time required to set up the machine and then only from the time the employee is required to act;
- operator of hot press who sets the pressure and temperature but is not required to calculate areas and pressures and control temperatures;
- operator of rotary veneer peeling lathe or slicing veneer machine;
- plywood scarfing machinist where the machinist has not been required to grind the knives and cutters, but is at any time required to set up the machine and then only from the time the employee is required to do so;
- veneer kiln drier heat plant operator or re-drier operator who operates a drying kiln drier or re-drier or who may be required to make temperature readings and records;
- veneer clipper operator in conjunction with rotary peeling lathe or slicing machine;
- operates and maintains mechanical debarking equipment including grinding and sharpening blades;
- taping glue thread, edge glued machinist with more than one year's experience;
- band sawyer using band saw up to 90 cm capacity, rough cutting and trimming;
- operator of the belt sander in sanding of plywood faced with fancy sliced veneer;
- operator employed on gluing jigs and/or cramps for the laminating fabrication or assembling of veneers, timber and plywood;
- operator of power-operated veneer edge truing or trimming machine saw (saw type) where the operator is required to set up and sharpen the saw;
- veneer splicing machine; and
- adhesive solution mixer where test control procedures are not required.

(iv) **Manufacturing sector**

- assembles cable drums;
- demonstrates basic keyboard skills;
- assembles pallets, boxes and crates appropriate to this level;
- assembles wall and roof trusses appropriate to this level;
- assists in setting up jig for standard 'A' roof trusses;
- sets up and operates a range of saws including docking saws appropriate to this level;
- tails out, checks timber and docks out faults;
- sets up and operates a range of wood machines as prescribed in the current definitions of the award appropriate to this level;
- surfaces floors;
- bends timber by hand and machine;

- assists in preparation of logs in log cabin manufacture;
- operates spray painting machine;
- operates and maintains chainsaws to a higher level than Level 2;
- prepares timber orders and tallies timber;
- where the employee has completed a recognised grading course, grades timber visually according to quality;
- operates door and/or panel machines appropriate to this level;
- assembler;
- assistant or other operator to a laminated beam maker;
- laminates, fabricates or assembles timber, plywood and veneers;
- assists a tradesperson to carry out duties;
- removes and replaces saw blades on dresser;
- operates traverser machine;
- tails out moulder, planer or equivalent machinery and pulls out behind sawbenches;
- operates docking and/or trim saws to eliminate defects;
- operates but does not set up: a computerised automatic 2 dimensional dividing and squaring saw, double ended tenoner, a multi-headed boring machine with 3 or more bits, v-grooving machine, vinyl or melamine laying machine, v-line folding machine, longitudinal grooving machine, edgebander and/or double edgebander and any programmed and/or computerised high output wood machine not mentioned herein;
- spray hand engaged on finishing coats;

(v) **Merchandising sector**

- demonstrates basic keyboard skills;
- size and straighten timber to feed dresser;
- tails out, moulder, planer or equivalent machinery and pulls out behind sawbenches;
- checks timber and operates docking and/or trim saw to eliminate defects;
- sets up and operates a range of wood machines as prescribed within the current definitions of the award appropriate to this level;
- sets up and operates a range of saws including docking saws appropriate to this level;
- where the employee has completed a recognised grading course, grades timber visually according to quality;
- prepares timber orders and tallies timber;
- assists a tradesperson to carry out duties;
- assembles wall and roof trusses appropriate to this level;
- assists in setting up jig for standard 'A' roof trusses;
- responds to customer routine enquiries and lays out stock for delivery driver; and
- removes and replaces saw blades on dresser.

(c) **General description of skills required**

In addition to those outlined in Level 2:

(i) ability to interpret and follow plans and procedures;

(ii) problem solving skills;

(iii) ability to operate machinery/saws/equipment according to prescribed procedures and standards appropriate to this level;

(iv) ability to grade timber according to obvious defects and to exercise quality control;

(v) in the panel products sector, the ability to grade timber veneer and plywood according to obvious defects and to exercise quality control; and

(vi) ability to record in writing simple information relating to lengths and species of timber.

(d) **General description of knowledge required**

In addition to that outlined in Level 2:

(i) knowledge of commonly used timbers, their value, and what products they can be used for;

(ii) in the panel products sector, knowledge of commonly used timbers, veneers;

(iii) in the harvesting forest management sector, awareness and understanding of relevant Forest Codes of Practice;

(iv) knowledge of storage, stacking and drying technique;

(v) knowledge of the functions and use of saws, machines and equipment for this level;

(vi) knowledge of health and safety procedures/regulations appropriate to this level;

(vii) knowledge of the industry standards for tasks performed at this level; and

(viii) knowledge of quality control standards appropriate to this level.

(e) **Level of responsibility**

(i) An employee at this level will operate under general direction for the whole job. Individual tasks will be completed according to clear, set procedures and standards. An employee will be responsible for the quality of work within these limits.

(ii) The employee will also be responsible for identifying and solving problems which occur in the work process the Level 3 worker is directly responsible for, and for identifying and reporting problems outside own work process.

(f) **Promotional criteria**

An employee remains at this level until capable of effectively performing through assessment or appropriate certification the tasks required of the next level so as to enable progress as a position becomes available.

**A.3 Level 4 (relativity 92.4%)**

A.3.1 **General**

(a) An employee at this level performs work above and beyond the skills of an employee at Level 3 and is competent to perform work within the scope of this level.

At this level an employee:

(i) works from complex instructions and procedures;

(ii) may assist skilled trainers in provision of on-the-job training;

(iii) in the harvesting forest management sector, ensures application of sound forest environmental practices in accordance with relevant Forest Codes of Practice;

(iv) works in a team environment or works individually under general supervision;

(v) is responsible for assuring the quality of their own work; and

(vi) should be given the opportunity to participate in ongoing skills training to enable progress to Level 5.

(b) **Indicative tasks**

An employee at this level will perform any or all of the tasks listed below or as described for machinist B grade. They will be expected after suitable training to operate flexibly between work stations at this level.

(i) **Harvesting and forest management sector**

- operation of mobile equipment appropriate to this level up to and including 13 500 kg;
- operator of tree harvester;
- operator of bucker-limber-buncher machine (logma);
- faller who works alone, selects trees and sharpens own saws;
- faller other;
- operates and maintains chipping machines;
- pole dresser;
- performs non-trade carpentry functions; and
- spotter at spot mills.

NOTE: Employees must hold appropriate licences/certification to operate machinery.

(ii) **Milling and processing sector**

- maintains and fault finds on plant and equipment (including lubrication);
- maintains mill buildings;
- performs non-trade carpentry functions;
- operates and maintains mobile equipment (multi-skilled operator-loader, forklift, crane, mobile crane with lifting capacity not exceeding 20 tonnes) while holding appropriate licenses/certifications;
- demonstrates intermediate keyboard skills including CNC operations in saws and/or machines where the operator controls one process only;
- sets up, monitors and operates twin edgers, single and double bandsaws, bench saw not cutting to size;
- operates optimising docker (computerised) and finger jointer;
- where the employee has completed a recognised stress grading course, grades timber (includes mechanical stress grader);
- undertakes primary conversion of logs (no sizing);
- analyses log moisture content and selects preservation method;
- prepare preservation solution and appropriate paperwork at the appropriate level;
- loads/unloads cylinder and monitors faulty operation at the appropriate level;
- laminated beam maker—responsible for setting up machine, setting out product and operating machine other than on a continuous basis;
- selects, grades and marks materials for re-manufacture and from stock for filling orders, including tallying, measuring and checking of complete orders and compiling for dispatch;
- storeperson including: inventory and stores control, VDU operation and use of other electronic equipment, e.g., scanner or using intermediate keyboard skills to carry out stores

work, storing and packing of goods and materials in accordance with appropriate procedures and/or regulations; preparation and receipt of appropriate documentation including liaison with suppliers; allocating and retrieving goods from specific warehouse areas; periodic stock-checks;

- gatekeeper in control of movement of persons, vehicles, stock and material at gatehouses and similar locations including vehicles carrying goods of any description, to ensure that the quantity and description of those goods is in accordance with the requirements of the relevant document/gate pass; utilising monitoring and operating computer based systems requiring data input, or other advanced monitoring system;
- operates and maintains hydraulic debarking equipment;
- attends boiler/kilns as required and responsible for temperature readings and records, including a watchperson who attends boilers;
- sharpens saws (with or without tensioning), chainsaws, hand tools, knives, grinds and sharpens debarker/chipper blades and operates punching press for saws (without tipping);
- operates and maintains mechanical stacking and sorting equipment;
- attends to 2 or more boilers or 2 or more suction gas generators, or one boiler the evaporation capacity of which attributed thereto by the maker exceeds 5 000 kg but less than 45 000 kg of steam per hour, or one gas generator supplying a total engine load capacity attributed thereto by the maker of not less than 740 kW;
- operates suction gas and other internal combustion engine 35 kW brake power or over; and
- operates any of the following items of mechanical plant: crawler tractor using power operated attachments up to 8000 pounds shipping weight, excavator up to and including 0.5 cubic metre capacity, grader, power operated below 35 kW brake power, loaders, front end and overhead, over 2.25 cubic metres up to and including 4.5 cubic metres, pneumatic tyred tractor using power operated attachments in excess of 110 kW brake power.

(iii) **Panel products sector**

- maintains and fault-finds on plant and equipment (including lubrication);
- adhesive solution mixer where the employee is required to mix, test, control and check in operation and is responsible for its proper use;
- veneer matcher responsible for selecting and setting out fancy sliced veneers to design or specification;
- operator of power-driven veneer edge truing or trimming machine (cutter block or guillotine) where the operator is required to grind the knives and cutters and set up the machine;
- employee in charge of hot process who sets pressures and temperatures and who is responsible for calculating areas and pressures and controlling temperatures and operators of specialty presses;
- rotary veneer peeling lathe or slicing machine operator who sharpens knives and/or sets up the machine;
- sharpens lathe knives, pressure bars, clipper blades and chipper;
- plywood scarfing machinist where the machinist is ever required to set up the machine and grind the knives and cutters and then only from the time as the employee is required to do so;
- employee in charge of veneer kiln heat plant operator or re-drier (plate roller or conveyor type) who is required to adjust temperatures, humidity, conditions, calculate moisture contents, test and control;
- immunising plant operator who is required to control temperatures, preservative contents in solution and analyse treated timbers and/or veneer samples;
- operator of torwegge or similar automatic core assembling machine who is required to set up and adjust the machine and is fully responsible for the operation of the machine;
- employee in charge of paper honeycomb making machine;
- operator in graining machine where the operator is required to set up the machine and sharpen the blades;
- operates and maintains mobile equipment appropriate to this level;
- demonstrates intermediate keyboard skills including CNC operations in saws and/or machines where the operator controls one process only; and
- operates and maintains hydraulic debarking equipment.

(iv) **Manufacturing sector**

- maintains and fault-finds on plant and equipment (including lubrication);
- operates high frequency machine and edge band as a gluer;
- operates and maintains mobile equipment appropriate to this level while holding appropriate licenses/certifications;
- demonstrates intermediate keyboard skills including CNC operations in saws/and or machines where the operator controls one process only;
- sets up, monitors and operates twin edgers, single and double bandsaws, circular saws;

- operates optimising docker (computerised);
- where the employee has completed a recognised grading course, grades timber (both quality and stress);
- assembles wall frames and roof trusses appropriate to this level including operation and responsibility for wall frame fabricating machines manually controlled;
- sharpens saws (with or without tensioning), chainsaws, hand tools, knives and dresser blades and operates punching press for saws (without tipping);
- bends timber using own forms and equipment and operates machine;
- assembles prepared pieces of timber (as defined);
- glazes;
- operates log preparing machine and fabricates modules—log cabin manufacture;
- makes knives from beginning to end as a sawmaker;
- operates gluing jigs for laminating veneers or timber;
- laminated beam maker—responsible for setting up machine, setting out product and operating machine other than on continuous process;
- selects, grades and marks materials for re-manufacture and from stock for filling orders, including tallying, measuring and checking of complete orders and compiling for dispatch;
- operates and maintains mechanical stacking and sorting equipment; and
- cricket bat operations—spindle machinist and or wood turner with handles fitted by hand.

(v) **Merchandising sector**

- maintains and fault finds on plant and equipment (including lubrication);
- operates mobile equipment appropriate to this level while holding appropriate licences/certifications;
- demonstrates intermediate keyboard skills including CNC operations in saw/and or machines where the operator controls one process only;
- where the employee has completed a recognised grading course, grades timber (both quality and stress);
- selects grades and marks materials for re-manufacturing and from stock for filling orders including tallying, measuring and checking of complete orders and compiling for dispatch;
- collects payment for goods from customer;
- maintains delivery schedules;
- sets up, monitors and operates band or circular saw;
- assembles wall frames and roof trusses appropriate to this level including operation and responsibility for wall frame fabricating machines manually controlled; and
- sharpens saws (with or without tensioning) chainsaws, hand tools, knives, grinds and sharpens debarker/chipper blades and operate punching press for saws (without tipping).

(c) **General description of skills required**

In addition to that outlined in Level 3:

(i) ability to set up and adjust machines to produce a specific product;

(ii) ability to drive and operate mobile machinery;

(iii) ability to complete simple clerical tasks;

(iv) in the harvesting forest management sector, awareness and understanding of relevant Forest Codes of Practice;

(v) problem solving skills;

(vi) ability to select suitable methods for completing tasks and plan the order in which to complete them; and

(vii) ability to assess timber, or timber veneer and plywood, for cutting giving regard to quality and the purpose it will be used for.

(d) **General description of knowledge required**

In addition to that outlined in Level 3:

(i) knowledge of saws, machinery and equipment used at this level;

(ii) knowledge of health and safety legislation and procedures appropriate to this level; and

(iii) knowledge of the industry standards for tasks performed at this level.

(e) **Level of responsibility**

(i) An employee at this level will operate under general direction for the whole job. In completing individual tasks an employee will work to set standards. An employee will be responsible for the quality of work in own area.

(ii) The employee will also be responsible for identifying and solving problems which occur in the work process the Level 4 worker is directly responsible for, and in conjunction with others for identifying

and solving problems in the work area.

(f) **Promotional criteria**

An employee remains at this level until capable of effectively performing through assessment or appropriate certification the tasks required of the next level so as to enable progress as a position becomes available.

**A.4 Level 5 (relativity 100%)**

A.4.1 **General**

(a) An employee at this level may be employed under one of the following categories:

(i) Timber tradesperson; or

(ii) Harvesting and forest management sector, Milling and processing sector, Manufacturing sector or Merchandising sector employee.

(b) An employee at this level works above and beyond an employee at Level 4 and is competent to perform work within the scope of this level.

(c) At this level an employee:

(i) understands and applies quality control techniques;

(ii) exercises good interpersonal and communication skills;

(iii) exercises keyboard skills at a level higher than Level 4;

(iv) exercises discretion within the scope of this level;

(v) performs work under limited supervision either individually or in a team environment;

(vi) in the harvesting sector applies skills acquired through successful completion of requisite certification relating to plant and equipment used in forest harvesting;

(vii) in the harvesting sector ensures application of sound forest environmental practices in accordance with forest codes of practice;

(viii) is able to inspect products and/or materials for conformity with established operational standards; and

(ix) conducts training in conjunction with a skilled trainer as required.

A.4.2 **Timber tradesperson Level 5**

(a) A Timber tradesperson Level 5 or machinist A grade is an employee who holds a Trade Certificate or Tradespersons Rights Certificate as a tradesperson in one of the classes identified appropriate to the sector in which they work and is able to exercise the skills and knowledge of that trade and may be required to supervise other employees.

(i) **Milling and processing sector trades**

- Timber tradesperson—sawdoctor;
- Timber tradesperson—wood machinist; and
- Timber tradesperson—millwright.

(ii) **Merchant sector trades**

- Timber tradesperson—grinder;
- Timber tradesperson—wood machinist;
- Timber tradesperson—wood turner; and
- Timber tradesperson—sawdoctor.

(iii) **Manufacturing sector trades**

- Timber tradesperson—grinder;
- Timber tradesperson—sawdoctor;
- Timber tradesperson—wood machinist; and
- Timber tradesperson—wood turner.

(b) **Indicative tasks**

A Timber tradesperson Level 5 at this level will perform any or all of the tasks listed below and will be expected, after suitable training, to operate flexibly between work stations at this level:

(i) **Milling and processing sector, Manufacturing sector and Merchandising sector: Timber tradesperson Level 5**

- understands and applies quality control techniques for self and others;
- exercises good interpersonal and communication skills;
- exercises keyboard skills at a level higher than Level 4;
- exercises discretion within the scope of this level;
- performs work under limited supervision either individually or in a team environment;
- operates all lifting equipment incidental to own work;
- performs non-trade tasks incidental to own work;
- performs work which, while primarily involving the skills of the employee's trade, is incidental or peripheral to the primary task and facilitates the completion of the whole task;

the incidental or peripheral work would not require additional formal technical training;

- performs work within the definition of machinist A grade;
- performs work of a motor mechanic;
- inspects products and/or materials for conformity with established operational standards as required; and
- sets up, monitors and operates a range of pre-set wood machines appropriate to this level including multi headed square dresser.

(c) **Level of responsibility**

(i) An employee at this level has greater responsibility than those at Level 4 in that the employee may be responsible for the work of others through the monitoring role. The employee will be responsible for work outcomes regarding quantity and quality in own area, including own work and the work of others. The employee may be required to supervise others in groups in the training situation. An employee at this level will be required to exercise discretion in the planning and carrying out of work.

(ii) The employee will also be responsible, with others, for identifying and solving problems in their work areas; if supervising others for initiating, co-ordinating and monitoring problem solving in own work area; for identifying and reporting problems in other work areas where they affect activity in own work area.

(d) **Promotional criteria**

An employee remains at this level until capable of effectively performing through assessment or appropriate certification the tasks required of the next level so as to enable progress as a position becomes available.

A.4.3 **Harvesting, milling and processing, Manufacturing or Merchandising employee Level 5**

(a) **General**

An employee at this level performs work above and beyond the skills of a Level 4 employee and is competent to perform work within the scope of this level.

At this level an employee:

(i) understands and applies quality control techniques;

(ii) exercises good interpersonal and communication skills;

(iii) exercises keyboard skills at a level higher than Level 4;

(iv) exercises discretion within the scope of this level;

(v) performs work under limited supervision either individually or in a team environment;

(vi) able to inspect products and/or materials for conformity with established operational standards; and

(vii) conducts training in conjunction with a skilled trainer as required.

(b) **Indicative tasks**

An employee at this level will perform any or all of the tasks listed below and will be expected after suitable training to operate flexibly between work stations at this level:

(i) **Harvesting and forest management sector**

- able to inspect logs for conformity with established operational standards (grade and segregate);
- operates harvesting and extraction equipment in a mechanical harvesting environment appropriate to this level;
- operation of mobile equipment to a level higher than Level 4 over 13 500 kg;
- fall and process trees of any species which are possible to work safely;
- broad axeperson;
- axeperson;
- axeperson employed using chopping axe taking off bark and lumps from logs for use in veneer mills;
- rigger or tree climber;
- head faller;
- forwarder log handling machine; and
- operator of grapple saw.
- Driving an articulated vehicle with 3 axles and GCM of 22.4 tonnes or less.
- Driving a rigid truck and heavy trailer combination with more than 3 axles and a GCM greater than 22.4 tonnes - over 15 tonnes up to 21 tonnes capacity.
- Driving an articulated vehicle with more than 3 axles and a GCM greater than 22.4 tonnes - capacity up to or over 22 tonnes.
- Driving a low loader with GCM up to or over 43 tonnes.
- Driver of a double articulated vehicle up to and including 53.4 tonne GCM, including B doubles.

(ii) **Milling and processing sector**

- operates a breaking down rig (primary conversion with sizing);
- operating no. 1 bench;
- supervision of kiln operations;
- hardens/tempers/beats out saws;
- weighs and records loads of timber and maintains security of the premises;
- operates ship loading equipment;
- laminated beam maker—responsible for setting up machine, setting out product and operating machine on a continuous process;
- sets up and operates a range of wood machines within the current definitions of the award appropriate to this level; and
- operates mechanical plant and mobile equipment including, crawler tractor with a shipping weight exceeding 80 000 pounds, excavator over 2.25 cubic metres, power operated grader over 70 kW brake power, loaders over 4.5 cubic metres capacity, mobile cranes with a lifting capacity over 20 tonnes and not exceeding 100 tonnes.

(iii) **Manufacturing sector**

- operates and maintains mobile equipment appropriate to this level while holding appropriate licences/certifications;
- estimator;
- laminated beam maker - responsible for setting up machine, setting out product and operating machine on a continuous process;
- hardens/tempers/beats out saws;
- weighs and records loads of timber and maintains security of the premises;
- sets up and operates door and/or panel trimming machine and grinds knives and cutters;
- operates CNC wall frame fabricating machine;
- sets up truss jigs;
- breaks down and finishes on anvils;
- prepares cutting list of timber for use in the manufacture of building components from builders, architects, or other plans; and
- sets up, monitors and operates a range of wood machines as prescribed within the current definitions of machinist A grade of the award appropriate to this level including multi-headed square dresser.

(iv) **Merchandising sector**

- prepares cutting lists of timber for use in the manufacture of building components from builders, architects, or other plans; and
- sets up, monitors and operates a range of wood machines within the current definitions of the award appropriate to this level including multi-headed square dresser.

(c) **General description of skills required**

In addition to those outlined in Level 4:

(i) ability to make decisions regarding work processes and implement them in own work area;

(ii) ability to use judgement based on experience to optimise productivity in own work area;

(iii) ability to supervise workers in the training situation;

(iv) ability to set up, operate and monitor mechanical and CNC equipment used in work area;

(v) ability to work to standards requiring precision and attention to detail; and

(vi) problem solving skills.

(d) **General description of knowledge required**

In addition to that outlined in Level 4:

(i) detailed knowledge of the sector and work undertaken at the enterprise;

(ii) in the Harvesting forest management sector, awareness and understanding of relevant Forest Codes of Practice;

(iii) understanding of quality control techniques;

(iv) knowledge of industry standards for product and/or materials;

(v) thorough knowledge of equipment/machinery used in the work area;

(vi) knowledge of work health and safety, safety techniques and legislation for work undertaken at this level;

(vii) detailed knowledge of product used; and

(viii) knowledge of training principles and practices.

(e) **Level of responsibility**

(i) An employee at this level has greater responsibility than at Level 4 in that the employee may be

responsible for the work of others through the monitoring role. The employee will be responsible for work outcomes regarding quantity and quality in own area, including own work and the work of others. The employee may be required to supervise others in groups in the training situation. An employee at this level will be required to exercise discretion in the planning and carrying out of work.

(ii) The employee will also be responsible, with others, for identifying and solving problems in their work areas; if supervising others for initiating, co-ordinating and monitoring problem solving in own work area; for identifying and reporting problems in other work areas where they affect activity in own work area.

(f) **Promotional criteria**

An employee remains at this level until capable of effectively performing through assessment or appropriate certification the tasks required of the next level so as to enable progress as a position becomes available.

**A.5 Level 6 (relativity 105%)**

A.5.1 **General**

(a) An employee at this level may be employed under one of the following categories:

(i) Timber tradesperson; or

(ii) production or merchant employee.

(b) A Timber tradesperson at this level works above and beyond an employee at Level 5 and is competent to perform work within the scope of this level.

(c) At this level an employee:

(i) understands and applies quality control techniques;

(ii) exercises good interpersonal and communication skills;

(iii) exercises keyboard skills at a level higher than Level 5;

(iv) exercises discretion within the scope of this level;

(v) performs work under limited supervision either individually or in a team environment;

(vi) will be responsible for planning own work and the work of others and for the quantity and quality of the results of that work; and

(vii) conducts training as required.

A.5.2 **Timber tradesperson**

(a) A Timber tradesperson Level 6 is a saw doctor tradesperson who has completed an appropriate post trade course in maintaining high tension saws and stellite tipping, or a wood machinist tradesperson who has completed an appropriate post trade course (or equivalent) in CNC and PLC machinery operations and CAD design systems and is able to exercise the skills and knowledge of that trade and may be required to supervise other employees, or a millwright—special class who has completed 3 appropriate modules of post-trade training in addition to the Level 5 qualification requirements.

(b) **Indicative tasks**

An employee at this level will perform any or all of the tasks listed below and will be expected, after suitable training, to operate flexibly between work stations at this level:

(i) **Milling and processing sector, Manufacturing sector and Merchandising sector: Timber tradesperson Level 6**

- exercises the skills attained through satisfactory completion of the training prescribed for this classification subject to the standards of this award;
- exercises discretion within the scope of this level;
- works under limited supervision either individually or in a team environment;
- understands and implements quality control techniques;
- provides trade guidance and assistance as part of a work team;
- exercises trade skills relevant to the specific requirements of the enterprise at a level higher than Timber tradesperson Level 5;
- supervision and training of employees as required; and
- ability to plan, conduct and evaluate training both on and off-the-job, one-to-one and in groups.

(c) **Level of responsibility**

An employee at this level will be responsible in conjunction with others for identifying and solving problems in own work area. If supervising others the employee will be responsible for initiating, co-ordinating and monitoring problem solving in own work area. The employee will be responsible for identifying and reporting problems in other work areas where they affect activity in own work area.

A.5.3 **Harvesting and forest management, Milling and processing, Manufacturing or Merchandising employee**

(a) An employee at this level performs work above and beyond the skills of a Level 5 Production employee and is

competent to perform work within the scope of this level and has acquired skills recognised by the employer.

(b) At this level an employee:

(i) understands and applies quality control techniques;

(ii) exercises good interpersonal and communication skills;

(iii) exercises keyboard skills at a level higher than Level 5;

(iv) exercises discretion within the scope of this level;

(v) performs work under limited supervision either individually or in a team environment;

(vi) will be responsible for planning own work and the work of others and for the quantity and the quality of the results of that work; and

(vii) conducts training as required.

(c) **Indicative tasks**

An employee at this level will perform any or all of the tasks listed below and will be expected after suitable training to operate flexibly between work stations at this level:

(i) **Harvesting and forest management, Milling and processing sector, Manufacturing sector, Merchandising sector**

- operates a wide range of complex machines, saws and/or equipment in the work place;
- exercises the skills attained through satisfactory completion of the training prescribed for this classification subject to the standards of this award;
- exercises discretion within the scope of this level;
- works under limited supervision either individually or in a team environment;
- understands and implements quality control techniques;
- supervision and training of employees as required;
- ability to plan, conduct and evaluate training both on and off-the-job, one-to-one and in groups; and
- operate a mobile crane with a lifting capacity over 100 tonnes and not exceeding 180 tonnes.
- Driver of a rigid vehicle with trailer combinations or articulated vehicle with trailer combinations exceeding 94 tonne GCM.

**A.6 Timber tradesperson millwright - special class Level 7 (relativity 115%)**

A.6.1 **General**

(a) A Timber tradesperson millwright—special class Level 7, is a millwright who has completed 9 appropriate modules in addition to the requirements of Level 5; or 9 appropriate modules towards an Advanced Certificate; or 9 appropriate modules towards an Associate Diploma; or an AQF Level 4 National Certificate.

(b) **Duties**

An employee at this level performs trade and non-trade functions. In addition to the tasks required to be performed at Timber tradesperson Level 6, a Timber tradesperson Level 7 employee may perform the following indicative tasks:

(i) provides trade guidance and training;

(ii) provides training to other employees in the enterprise;

(iii) assists in the management/operation of a quality control/assurance program;

(iv) assists in the management/operation of best practice program;

(v) exercises complex, new high precision, trade skills;

(vi) applies advanced computer numerical control techniques in machining;

(vii) exercises intermediate CAD/CAM skills;

(viii) commissions and fault finds on new equipment and approves first off samples; or

(ix) performs or assists in design work involving drafting or planning (e.g. preparation of cutting lists).

(c) **Responsibility**

An employee at this level will work competently either individually or in a team environment and will be responsible for the quality and accuracy of their own work and (subject to the relevant leading hand provisions) may be required to monitor the work of others.

(d) **Training**

An employee at this level will be provided with skill development consistent with national competency standards relevant to this level to enable the employee to perform duties within the range specified for this level.

**Schedule B - Classification Definitions - Pulp and Paper Stream**

B.1 **Indicative tasks/skills**

B.1.1 Employees engaged in the classifications contained in this Schedule will work to the level of their skills, competence and

training and will perform work within the scope of their level as follows:

B.1.2 **Level 1 (relativity 85%)**

Employee undertakes induction training sufficient to allow the employee to participate in work training. Can undertake tasks under direct supervision and to the level provided in the induction training.

Induction may include information on:

- the workplace and the industry
- conditions of employment
- training and career path opportunities
- plant layout
- work and documentation procedures
- work health and safety
- environmental issues
- housekeeping
- basic paper manufacturing
- waste control
- cost and quality assurance
- equal employment opportunity and harassment.

After induction the employee:

- has been trained and can apply safe working practices required to adhere to standard operating procedures;
- performs duties essentially of a manual nature; and
- exercises minimal judgement in line with training provided.

B.1.3 **Level 2 (relativity 90%)**

Employee has completed structured training as defined for Level 1 to enable work to be performed at this level.

- Has been trained and can apply safe working practices required to adhere to standard operating procedures
- Works under direct supervision and instruction
- Communicates basic information effectively and can interact with other employees
- Understands the need to report workplace hazards and the process to perform personal risk assessments
- Able to record established production and quality indicators which may require keyboard operation
- Understands basic process control procedures
- Understands and applies the minor mechanical procedures that can be performed at this level.

B.1.4 **Level 3 (relativity 93%)**

Performs work above and beyond the skills of a Level 2 and to the level of competency exhibited and assessed.

- Works under general supervision and as directed and operates within strict guidelines
- Able to communicate process information verbally and in written form
- Can interact with other employees and has developed interpersonal skills
- Performs routine duties
- Applies safe working practices
- Can report workplace hazards and performs personal risk assessments
- Understands and applies basic quality requirements of function
- Keyboard skills sufficient to access and use documents
- Can use mechanical plant and lifting equipment to level of competency
- Carries out minor mechanical maintenance requirements where it is efficient to do so.

B.1.5 **Level 4 (relativity 96%)**

Performs work above and beyond the skills required of a Level 3 and to the level of competency exhibited and assessed.

- Works under general supervision and exercises limited discretion within the scope of skills and training
- Understands the need for accurate, timely and technically correct communication. Communicates verbally and in written form and understands group decision making processes
- Uses electronic facilities and technology competently for production activities

- Understands the need to maintain a safe working environment
- Accurately assesses raw materials used
- Understands the impact of quality standards on product
- Operates mechanical plant and lifting equipment to level of competence
- Carries out minor mechanical maintenance.

B.1.6 **Level 5 (relativity 100%)**

Performs work above and beyond the skills of a Level 4 and to the level of competency exhibited and assessed.

- Works under limited supervision and operates with limited discretion.
- Communicates technical information correctly to supervisor and fellow operators and including the use of electronic facilities. Can participate in group decision making processes
- Actively pursues a safe, hazard free workplace
- Uses and understands detailed information on production and quality indicators and recommends improvements
- Understands and applies quality control techniques and quality standards
- Provides technical/production instruction as directed
- Able to operate mechanical plant including lifting equipment to level of competence
- Organises repairs and maintenance in accordance with the principles of minor mechanical maintenance.

B.1.7 **Level 6 (relativity 105%)**

Performs work above and beyond the skills of a Level 5 and to the level of competency exhibited and assessed.

- Works under limited supervision and/or general direction, exercises initiative and judgement with discretion
- Able to communicate at production senior level to an acceptable standard and undertakes group decision making processes and dynamics
- Observes work health and safety and environmental policies, supervises other employees in safe working practices
- Trained in statistical process control techniques to use detailed information on production and quality indicators, and make improvements
- Detects errors, investigates causes, recommends preventative action
- Understands and applies quality control techniques
- Operates lifting equipment to level of competence
- Provides technical/production instruction as required
- Plans, directs and organises others in the repair or maintenance of equipment within the scope of minor mechanical maintenance principles where it is efficient to do so.

B.1.8 **Level 7 (relativity 110%)**

Performs work above and beyond the skills of a Level 6 and to the level of competency exhibited and assessed.

- Can supervise the work of others, and also works under broad principles and limited supervision
- Works from complex instruction
- Communication skills at a level appropriate to facilitate supervision, training and technical knowledge both at a production and senior level
- Can lead group decision making processes and understands the need for and processes of consultation
- Carries out risk assessments, rectifies identified hazards, applies work health and safety and environmental policies, and ensures safe working practices are followed
- Undertakes quality control and work organisation and implements improvements and preventative action to improve product quality
- Provides technical/production training
- Operates lifting equipment that requires certification
- Applies statistical process control techniques
- Determines the need for equipment to be repaired or maintained. Can organise resources necessary to effect maintenance and repair.

B.1.9 **Level 8 (relativity 115%)**

Performs work above and beyond the skills of a Level 7 and to the level of competency exhibited and assessed.

- Can supervise the work of others and works under broad policies and general supervision

- Assesses, evaluates and implements changes to processes within process control parameters or complex instructions
- High level of communication skill to ensure clear and concise instruction, delivery of training to employees and imparting of technical knowledge to supervisors and employees
- Can undertake consultation within established consultation procedures
- Leads group decision making processes
- Applies work health and safety and environmental policies and/or legislation and ensures safe working practices are followed
- Ensures hazards are identified and rectification has been carried out
- Ensures risk assessments are carried out when alteration to equipment or new equipment is provided
- Provides training to employees
- Operates lifting equipment that requires certification
- Applies statistical process control techniques and other actions required to improve processes and products
- Supervises repairs and maintenance to ensure appropriate resources are used at all times to ensure efficiency and best use of labour in accordance with minor mechanical principles.

B.1.10 **Level 9 (relativity 120%)**

Performs work above and beyond the skills of a Level 8 and to the level of competency exhibited and assessed.

- Supervises the work of others
- Works under broad policies and organisational principles
- Communicates throughout organisation using established communication methods
- Consults other employees using established consultation policies and procedures
- Can establish safe working procedures and systems and participates in the establishment of work health and safety and environmental policies
- Establishes and maintains quality assurance processes and activities
- Plans and organises training to ensure efficient use of labour
- Plans and supervises repairs and maintenance to ensure appropriate resources are used at all times to ensure efficiency and best use of labour.

## Schedule C - School-based Apprentices

C.1 This schedule applies to school-based apprentices. A school-based apprentice is a person who is undertaking an apprenticeship in accordance with this schedule while also undertaking a course of secondary education.

C.2 A school-based apprenticeship may be undertaken in the trades covered by this award under a training agreement or contract of training for an apprentice declared or recognised by the Department of Training and Workforce Development.

C.3 The relevant minimum wages for full-time junior and adult apprentices provided for in this award, calculated hourly, will apply to school-based apprentices for total hours worked including time deemed to be spent in off-the-job training.

C.4 For the purposes of clause C.3, where an apprentice is a full-time school student, the time spent in off-the-job training for which the apprentice must be paid is **25%** of the actual hours worked each week on-the-job. The wages paid for training time may be averaged over the semester or year.

C.5 A school-based apprentice must be allowed, over the duration of the apprenticeship, the same amount of time to attend off-the-job training as an equivalent full-time apprentice.

C.6 For the purposes of this schedule, off-the-job training is structured training delivered by a Registered Training Organisation separate from normal work duties or general supervised practice undertaken on the job.

C.7 The duration of the apprenticeship must be as specified in the training agreement or contract for each apprentice but must not exceed 6 years.

C.8 School-based apprentices progress through the relevant wage scale at the rate of 12 months progression for each 2 years of employment as an apprentice or at the rate of competency-based progression, if provided for in this award.

C.9 The apprentice wage scales are based on a standard full-time apprenticeship of 4 years (unless the apprenticeship is of 3 years duration) or stages of competency-based progression, if provided for in this award. The rate of progression reflects the average rate of skill acquisition expected from the typical combination of work and training for a school-based apprentice undertaking the applicable apprenticeship.

C.10 If an apprentice converts from school-based to full-time, the successful completion of competencies (if provided for in this award) and all time spent as a full-time apprentice will count for the purposes of progression through the relevant wage scale in addition to the progression achieved as a school-based apprentice.

C.11 School-based apprentices are entitled pro rata to all of the other conditions in this award.

## Schedule D - No Reduction

D.1 An employee (including a casual employee) who was employed under this award or any of the superseded awards listed in D.2 as at 1 July 2026 and who continues to be employed under this award with the same employer after that date, must

not be paid less than they would have been paid for the same work under the provisions of this award or any of the superseded awards as they stood prior to 1 July 2026.

D.2 For the purpose of clause D.1, the awards are:

(a) *Particle Board Employees' Award, 1964*;

(b) *Plywood and Veneer Workers' Award, 1952*;

(c) *Saw Servicing Establishments Award No. 17 of 1977*; and

(d) *Case and Box Makers' Award, 1952*.

**2026 WAIRC 00397**

**TIMBER WORKERS AWARD NO. 36 OF 1950**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | | |
|---|---|---|
| **CITATION** | **:** | 2026 WAIRC 00397 |
| **CORAM** | **:** | SENIOR COMMISSIONER R COSENTINO |
| **HEARD** | **:** | FRIDAY, 12 JUNE 2026 |
| **DELIVERED** | **:** | TUESDAY, 16 JUNE 2026 |
| **FILE NO.** | **:** | APPL 60 OF 2025 |
| **BETWEEN** | **:** | THE AUSTRALIAN WORKERS UNION, WEST AUSTRALIAN BRANCH, INDUSTRIAL UNION OF WORKERS (AWU)<br>Applicant<br>AND<br>A.G.& A.M. BROOK & OTHERS<br>Respondent |

| | | |
|---|---|---|
| CatchWords | **:** | Industrial Law (WA) - Application to vary award - Section 40B of the *Industrial Relations Act 1979* (WA) - *Timber Workers Award No. 36 of 1950* - To consolidate three separate awards into a single award - Application of Statement of Principles - Principle 10 - Equity and substantial merits - Award varied |
| Legislation | **:** | *Equal Opportunity Act 1984* (WA)<br>*Industrial Relations Act 1979* (WA)<br>*Minimum Conditions of Employment Act 1993*(WA) |
| Result | **:** | Award varied |

**Representation:**

Counsel:

Mr C Dunne on behalf of the applicant

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

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

***Commission's Own Motion*** [2025] WAIRC 00365; (2025) 105 WAIG 1184

***Local Government, Racing and Cemeteries Union (WA) v Western Australian Municipal, Administrative, Clerical and Services Union and others*** [2024] WAIRC 00349; 104 WAIG 835

*Reasons for Decision*

1 The Australian Workers' Union, West Australian Branch, Industrial Union of Workers (**AWU**) has applied to vary the *Timber Workers **Award** No. 36 of 1950* to:

(a) rename the Award the Timber Industry (AWU) State Award.

(b) vary the scope of the Award to cover (and replace) two other timber industry awards to which the AWU is party, effectively consolidating all three awards; and

(c) rectify the terms and conditions contained in the Award that are obsolete, discriminatory or need updating.

2 Section 40 of the *Industrial Relations Act 1979 (WA)* (**IR Act**) empowers the Western Australian Industrial Relations Commission to vary an award.

3 The AWU is a party bound by the Award and, therefore, has standing to bring the application: s 40(2) of the IR Act.

4 The Award nor any provision of it is limited as to its duration and therefore s 43 is no barrier to the variations sought by the AWU.

5 Section 37C of the IR Act imposes limits on varying private sector awards. Section 37C is not engaged as the application does not seek to vary the Award to extend and bind a class of employees who has not been traditionally covered by awards due to the seniority of their role, or who otherwise perform work that is not of a similar nature to work traditionally regulated by such awards; nor to fix the scope of the Award by reference to an industry carried on by an employer; nor to extend the scope of the Award to bind employees or employers who are covered by a public sector award or enterprise award.

6 The amendments proposed affect a substantive change to the scope of the Award. The application, therefore, attracts the requirements of s 29A of the IR Act for publication of the proposed amendments and service on the s 29A parties. A notice of the application was published in the Industrial Gazette on 25 March 2026 and on the Commission's website on 10 March 2026 and served on the s 29A parties accordingly.

7 The application was served on seven named respondents to the Award. The remaining eleven named respondents were identified as being deregistered or dissolved.

8 The Private Sector Labor Relations division of the Department of Local Government, Industry Regulation and Safety on behalf of the Minister for Industrial Relations (PSLR), advised the Commission it supported the variations sought by the AWU. PSLR provided significant assistance to the AWU in drafting the proposed variations.

9 No other respondent or party sought to be heard or filed any response to the application. The application is unopposed.

10 The application was prompted by the Commission having, of its own motion under s 40B of the IR Act, commenced APPL 49 of 2023 to vary the Award for the purposes set out in s 40B. The variations sought by the AWU are more comprehensive than variations that can be made to an award under s 40B. The variations would supersede APPL 49 of 2023, making further variations under s 40B unnecessary because the variations would ensure that the Award does not contain outdated, obsolete or discriminatory provisions to which s 40B is directed.

11 I must apply and follow the Statement of Principles published by the Commission in Court session as part of the State Wage Case in the exercise of my jurisdiction under the IR Act to set wages, salaries, allowances or other remuneration of employees: ***Robe River Iron Associates v The Amalgamated Metal Workers & Shipwrights' Union of Western Australia*** (1993) 73 WAIG 1993, 1998-1999; IR Act s 50A(1)(d). The Statement of Principles ensures that there is consistency and equity in relation to the variation of awards. It sets out for the Commission, and the parties appearing before it, the approach under s 26(1) to be followed: ***Commission's own motion*** [2007] WAIRC 00517; (2007) 87 WAIG 1487 (***2007 State Wage Order***) [124]. A failure to apply the Statement of Principles is a jurisdictional error: ***The Breweries and Bottleyards Employees' Industrial Union of Workers of Western Australia v Kirin Australia Pty Ltd*** [2002] WAIRC 05011; (2002) 82 WAIG 412 [132].

12 The current Statement of Principles in ***Commission's Own Motion*** [2025] WAIRC 00365; (2025) 105 WAIG 1184 provides:

> **1. Application of the Statement of Principles**
>
> 1.1 This Statement of Principles is to be applied and followed when the Commission is making or varying an award or making an order in relation to the exercise of the jurisdiction under the Act to set the wages, salaries, allowances or other remuneration of employees or the prices to be paid in respect of their employment.
>
> 1.2 In these Principles, wages, salaries, allowances or other remuneration of employees or the prices to be paid in respect of employment will be referred to as "wages".
>
> 1.3 In making a decision in respect of any application brought under these Principles, the primary consideration in all cases will be the merits of the application in accordance with equity, good conscience and the substantial merits of the case pursuant to section 26(1)(a) of the Act.
>
> 1.4 These Principles do not have application to Enterprise Orders made under section 42I of the Act or to applications made under section 40A of the Act to incorporate industrial agreement provisions into an award by consent.
>
> 1.5 This Statement of Principles will operate until reviewed under section 50A(1)(d) of the Act.
>
> …
>
> **10. Making or Varying an Award or issuing an Order which has the effect of varying wages or conditions above or below the award minimum conditions**
>
> 10.1 An application or reference for a variation in wages which is not made by an applicant under any other Principle and which is a matter or concerns a matter to vary wages above or below the award minimum conditions may be made under this Principle.
>
> 10.2 Claims may be brought under this Principle irrespective of whether a claim could have been brought under any other Principle.

13 The AWU has explained that the application is made pursuant to Principle 10 of the Statement of Principles.

14 In ***Local Government, Racing and Cemeteries Union (WA) v Western Australian Municipal, Administrative, Clerical and Services Union and others*** [2024] WAIRC 00349; 104 WAIG 835, I said:

> 17 Principle 10 has been described as 'the procedural gateway for award increases that fall outside the scope of other principles': 2007 State Wage Order [91], [93].
>
> 18 The Full Bench has also described Principle 10 in Western Australian Municipal, Administrative, Clerical and Services Union of Employees v Aboriginal Alcohol and Drug Service (AADS) (Inc) [2013] WAIRC 00795; (2013) 93 WAIG 1380 at [13] as a principle 'of deliberately broad application':

> It is not easy to anticipate in advance the many different kinds of circumstances which may warrant consideration of a wage increase to an award beyond that prescribed in State Wage Case proceedings. The Commission in Court Session has deliberately chosen not to be prescriptive, in case so a circumstance which deserves consideration on merit is unable to be considered because it does not meet criteria set out in Principle 10.

19 In Western Australian Prison Officers' Union of Workers v The Minister for Corrective Services [2009] WAIRC 01361; (2009) WAIG 94, Chief Commissioner Beech observed at [32]:

> Principle 10 is to be read in the context of the Principles as a whole; although Principle 10 permits a matter to be considered irrespective of whether it could have been brought under any other Principle, it does not mean that those other Principles are irrelevant. The strict test in Principle 7.2 for an alteration in wage rates cannot be avoided by invoking Principle 10.

15 The AWU outlined that the proposed amendments are intended to:

a) Ensure consistency between the terms of the Award and the *Minimum Conditions of Employment Act* 1993 (WA) (**MCE Act**).

b) Bring the Award into close alignment with the *Timber Industry Award 2020* (**Modern Award**) thus enhancing industrial efficiency and providing greater certainty across the timber industry and fairness to both employees and employers resulting from the alignment of key terms and conditions.

c) Aligning the terms and conditions contained in the award with those anticipated to be the subject of variations to the *Timber Yard Workers Award No 11 of 1951* in APPL 23 of 2026.

d) Generally updating allowances that are outdated and have not maintained modern relevance.

16 Other than increases in the wages contained in the Award as a result of the State Wage Case and the Location Allowance from the annual Location Allowance General Order, the Award has not been substantively varied in over 20 years. As a result, there is a significant difference between the Award's conditions and the conditions that apply under the Modern Award to national system employees. For example, the Award currently provides for a first aid allowance of $7.10, compared with a first aid allowance of $21.37 under clause 22.9 of the Modern Award.

17 Between the Award, the *Plywood and Veneer Workers Award* and the *Particle Board Industry Award* which will be consolidated by the proposed variations, there are well over one hundred different pay rates. This is because currently, pay rates for drivers depend on the size and capacity of the vehicle being operated. The proposed variations will significantly reduce the number of classifications and pay rates that apply. However, no existing employee will be worse off, because of the No Reduction provisions in proposed Schedule D.

18 On behalf of the Minister, it was submitted that there is significant benefit in making the proposed variations. It was submitted that the variations would greatly enhance the Award. In particular, the variations will ensure the Award complies with the MCE Act, the IR Act, the *Termination, Change and Redundancy General Order* and the State minimum adult award wage. The proposed variations would restore relativities between classifications noting that currently, several classifications are associated with the same pay rate although they involve different skill levels.

19 It is not known how many employees or employers are covered by the Award, nor by the two awards which would be replaced by the variations. It is safe to say that the Award's coverage is likely to be relatively limited, as most businesses operating in the timber industry will be national system employers. In light of the limited coverage, consolidation of the awards would be beneficial because:

(a) there will be fewer State awards that cover workers in the timber industry in the State industrial relations system;

(b) the award consolidation will likely make things easier for employers and employees to find the applicable terms and conditions of employment; and

(c) the variations will be of particular benefit to businesses that are involved in activities that span more than one of the awards.

20 It is appropriate that the terms and conditions of employment of workers engaged in the timber industry in the State system have conditions aligned with timber industry workers generally in the State. As I said in ***Local Government, Racing and Cemeteries Union (WA) v Western Australian Municipal, Administrative, Clerical and Services Union*** [27], significant disparities in terms and conditions for workers engaged in the same work, across the State and national systems, and within the State system, is inimical to equity and the substantial merits of the case.

21 I am satisfied that it is appropriate to make the variations sought in accordance with Principle 10 of the Statement of Principles.

22 I am satisfied that the variations sought are consistent with the primary consideration of the merits of the application in accordance with equity, good conscience and the substantial merits of the case in accordance with s 26(1)(a) of the IR Act and Principle 1.3 of the Statement of Principles.

23 An Order will issue in the following terms:

(a) That the *Timber Workers Award No. 36 of 1950* be varied in accordance with the following schedule and that the variations shall have effect from 1 July 2026.

SCHEDULE

Delete the entire contents of the following of the *Timber Industry Workers Award No 36 of 1950* (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:

**Timber Industry (AWU) State Award**

**Table of Contents**

**Part 1 - Application and Operation of this Award**

1. Title
2. Definitions
3. The *Minimum Conditions of Employment Act 1993* and this award
4. Area and Scope
5. Exclusions
6. Requests for flexible working arrangements

**Part 2 - Types of Employment and Classifications**

7. Types of employment
8. Full-time employees
9. Part-time employees
10. Casual employees
11. Piecework - General Timber Stream
12. Apprentices
13. Classifications

**Part 3 - Hours of Work**

14. Ordinary hours of work
15. Rostering arrangements
16. Breaks

**Part 4 - Wages and Allowances**

17. Minimum rates
18. Minimum Adult Award Wage
19. Supported Wage System
20. Payment of wages
21. Wage-related allowances
22. Expense-related allowances
23. Accident Pay
24. Superannuation

**Part 5 - Overtime and Penalty Rates**

25. Overtime
26. Penalty rates and shiftwork arrangements

**Part 6 - Leave and Public Holidays**

27. Annual leave
28. Personal leave
29. Bereavement leave
30. Parental leave and related entitlements
31. Family and domestic violence leave
32. Public holidays

**Part 7 - Workplace Delegates, Consultation and Dispute Resolution**

33. Workplace delegates' rights
34. Consultation about major workplace change and rosters
35. Dispute resolution
36. Dispute resolution procedure training

**Part 8 - Termination of Employment and Redundancy**

37. Termination of employment
38. Redundancy

**Part 9 – Named Parties**

39. Named parties to the award

**Schedule A - Classification Definitions - General Timber Stream**

**Schedule B - Classification Definitions - Pulp and Paper Stream**

**Schedule C - School-based Apprentices**

**Schedule D - No Reduction**

**Part 1 - Application and Operation of this Award**

**1. Title**

1.1 This award is the *Timber Industry (AWU) State Award*.

**2. Definitions**

2.1 In this award, unless the contrary intention appears:

**adult apprentice** means an apprentice 21 years of age or over.

**all purposes** means the payment will be included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties or loadings or payment while they are on annual leave.

**casual employee** means an employee engaged and paid as such, applying section 7B of the *Industrial Relations Act 1979*.

**Commission** means the Western Australian Industrial Relations Commission.

**continuous work** means work carried on with consecutive shifts of persons throughout the 24 hours of each of at least 6 consecutive days without interruptions except during breakdowns or meal breaks or due to unavoidable causes beyond the control of the employer.

**engine driver** means any person who operates or drives any engine or engines, the motive power of which is either steam, gas, oil, water, compressed air or electricity, and includes any person who is called upon in the ordinary course of their duty to do engine driver's work other than simply stopping or starting an engine under the supervision of an engine driver.

**estimator** means an employee who has served an apprenticeship to any of the building trades or as a draughtsperson who is engaged in preparing cutting lists of timber for use in the manufacture of building components from builders, architects, or other plans.

**examiner** (Timber tradesperson - Level 5 or above) means an employee who is capable of using all measuring equipment and who is sufficiently versatile to examine and check any kind of product normally produced. They may be called upon to work under supervision but are not expected to exercise discretion and are only required to accept or reject those articles which conform or fail to conform to clearly defined standards.

**greaser or oiler** means any person substantially engaged in greasing or oiling any engine, machinery or shafting.

**head faller** means an employee who selects timber for falling, exercises supervision over 2 or more other fallers and/or who sharpens fallers' saws used in bush operations.

**inspector** (Timber tradesperson—Level 6 or above) means a tradesperson who is engaged to inspect components or finished products whilst in production or upon completion as to their conformity with a specific standard of quality and accuracy and who is authorised to exercise and does exercise discretion to pass components which may not conform to that standard.

**leading hand** means an employee who, while working, has charge or control of any adult person or persons not apprentices and who has been appointed by the employer to take charge or control. This definition does not apply to engine drivers, firemen or greasers.

**machinist A grade** (Timber tradesperson - Level 5) means a tradesperson wood machinist who has served the prescribed apprenticeship to wood machining as set out in this or previous awards, or an adult by reason of training for 4 years or more and experience is, at the time of engagement or subsequent thereto, deemed by the employer to be capable and is willing to perform the work of a tradesperson wood machinist. Work which will include the work of operating and setting up and/or grinding the knives and cutters of any of the following machines upon which the employee is employed notwithstanding that the employee may not be called upon to perform all such work:

(a) automatic profile sander;

(b) shaper who works freehand or automatic shaper (other than grooving and/or slotting in box and case making);

(c) boult's carver;

(d) buzzer and/or jointer (using other than straight knives and cutters);

(e) crossgrainer;

(f) computerised automatic 2 dimensional dividing and squaring saw;

(g) double edgebander and/or double ended tenoner;

(h) edgebander;

(i) dowel machine (multiple type);

(j) drum sander (4 or more drums);

(k) general joiner;

(l) lindemann gluer and jointer;

(m) longitudinal grooving machine;

(n) lock angle machine;

(o) mosaic flooring machine (other than assembling machine);

(p) moulder;

(q) multi-headed boring machine, with 3 or more bits;

(r) panel line machine;

(s) planer—3 heads or more (other than box);

(t) planer, box (4 heads or more);

(u) polisher including a person who is responsible for the setting up and operation of a curtain coating machine;

(v) sets up and operates any programmed and/or computerised high output wood machine not mentioned herein;

(w) responsible person in charge of radio frequency gluing equipment and radio frequency gluing operations;

(x) router, working freehand;

(y) shaper (other than grooving and/or slotting in box and case making);

(z) spoke throater;

(aa) tenoner (using scribing irons, other than an automatic tenoner);

(bb) upholsterer who is capable of and does spring canvas, first and second stuff cover finish;

(cc) trusser or crozier;

(dd) variety turning on lathes other than automatic lathes;

(ee) v-grooving machine;

(ff) v-line folding machine;

(gg) vinyl or melamine laying machine;

(hh) wood chipper;

(ii) wood carver; and

(jj) wood turner who grinds cutters and/or sets up and operates or who works freehand and a turner who sets up and operates a copying or automatic lathe.

An employee operating any of the following machines: automatic shaper; boult's carver; buzzer and/or jointer; general joiner; lindeman gluer and jointer; and a router will be a **machinist A grade** notwithstanding the employee does not set up and/or grind the knives and cutters.

**machinist B grade** means an adult employee other than a tradesperson, operating and setting up and/or grinding the knives or cutters of any of the following machines:

(a) automatic lathe;

(b) band and/or jig saw (other than sawmilling);

(c) belt sander and bobbin sander;

(d) belt sander on veneers;

(e) borer (3 or more spindles);

(f) buzzer and/or jointer (using straight knives or cutters);

(g) circular saw;

(h) copying lathe;

(i) dovetailer;

(j) dowel machine (single type);

(k) drum sander (double or triple drums);

(l) end matcher, finger jointer and all other male and female profile machines;

(m) glue jointer and/or automatic dowel driving machine;

(n) mechanical cutting veneer guillotine and veneer press

(o) microplaner;

(p) morticer (chain or hollow chisel of any kind or any other);

(q) panel line machine;

(r) planer (one or 2 heads) other than box;

(s) planer, box (less than 4 heads);

(t) pole scarfing (including operator of such machine who also operates a pole boring or pole capping machine);

(u) radial head using saws or cutters in the making of component parts for pre-cut buildings or of roof trusses or any other form of trusses;

(v) relisher;

(w) router (working from templates, dies, jigs or fences);

(x) sets up and operates a tenoner, other than double ended tenoner;

(y) shaper (grooving and/or slotting in box and case making);

(z) slicer (box);

(aa) spiking machine (incisor);

(bb) thicknesser;

(cc) timber bending machine;

(dd) v-grooving machine;

(ee) v-line folding machine;

(ff) vinyl or melamine laying machine;

(gg) wood chipping machine (other than log chipper); and

(hh) wood wool machine.

**measurer** means an employee who measures and records dimensions and number of pieces of sawn timber.

**millwright** means a tradesperson engaged in installing and/or maintaining machinery.

**on-hire** means the on-hire of an employee by their employer to a client, where the employee works under the general guidance and instruction of the client or a representative of the client.

**order** means the demand of a customer or of the employer, or someone on the employer's behalf, to the orderperson for an expressed size and class or expressed sizes and classes of timber.

**ordinary hourly rate** means the minimum hourly rate for an employee's classification specified in clause 17 – Minimum rates (excluding any casual loading), plus any allowances specified as being included in the employee's ordinary hourly rate or payable for all purposes.

**rostered shift** means a shift of which the employee concerned has had at least 48 hours' notice.

**sawbenches classifications**:

(a) **breaking down bench** includes a circular saw, a band saw, twin saws, horizontal saw or vertical frame saw when any of the saws are used for the purposes of reducing a log to flitches;

(b) **no. 1 bench** means any bench which takes flitches from the breaking down bench;

(c) **no. 2 bench** means any bench which is fed directly from a no. 1 bench or an edger sawbench, and which is not being used as a picket bench within no. 4 bench;

(d) **no. 3 bench** means any bench which is fed directly from a no. 2 bench and which is not being used as a picket bench within no. 4 bench; and

(e) **no. 4 bench** means a bench on which timber is cut into pickets, lathes, droppers, palings, staves or other small sizes which do not exceed 7.6 cm by 3.8 cm by 2.7 metres or the equivalent in section by 2.7 metres.

**saw doctor** means an employee who may be required to manufacture from blank ribbon steel band saws of varying widths and who punches teeth, grinds teeth, swages and sets, hard tips teeth, tensions and levels circular saws, grinds, sharpens and sets circular saws, maintains chainsaw chains, hand saws and frame saws and who when required, is responsible for the training of other employees.

**saw sharpener** means an employee who sharpens, sets and tensions saws only, using either hand or automatic grinding equipment, file setting lever and setting gauge saw sharpener.

**standard rate** means the 'Minimum weekly rate (full-time) employee' for a Level 5 in clause 17 – Minimum rates.

**timber tradesperson millwright**—special class means an employee who installs, repairs and maintains complex machinery and equipment including machinery which utilises hydraulic or pneumatic principles and who in the course of that work is required to read and understand hydraulic and pneumatic circuitry which controls fluid power systems; who has completed appropriate training as described in the classification descriptions of this award.

**training agreement** means a traineeship or apprenticeship agreement that is registered with the Department of Training and Workforce Development under the provisions of the *Vocational Education and Training Act 1996*.

**3. The *Minimum Conditions of Employment Act 1993* and this award**

3.1 The Minimum Conditions of Employment Act 1993 (MCE Act) and this award contain the minimum conditions of employment for employees covered by this award.

3.2 Where this award refers to a condition of employment provided for in the MCE Act, the MCE Act applies.

3.3 The employer must ensure that copies of this award and the MCE Act are available to all employees to whom they apply, either on a notice board which is conveniently located at or near the workplace or through accessible electronic means.

**4. Area and Scope**

4.1 This award applies throughout the South West Land Division of Western Australia, excluding the area within a radius of 45 kilometres from the G.P.O. Perth.

4.2 This award covers employers in the Timber Industry, as defined in clause 4.3, and to the work and persons performing that work as listed in the skill grade structures, as described in clause 2 - Definitions. Without limiting the scope of this award, it applies to the types of work listed in clause 4.3 in the forest and building products, manufacturing and merchandising, and pulp and paper sectors and persons performing that work or employed in connection with the following work, to the exclusion of any other award.

4.3 **Timber Industry** means any of the following industry sectors, but does not include any work covered by the awards specified in clause 5(b). In reality each sector may overlap and include any or all activities from other sectors.

(a) **Harvesting and forestry management sector**

(i) Harvesting timber, processing of harvested timber, operating any machinery or vehicle in connection with harvesting, lifting, processing and transporting timber.

(ii) Routine maintenance of equipment or vehicle.

(iii) Preparation of forest for harvesting operations, maintenance of forest during harvesting and activities associated with the rejuvenation of forest during and after harvesting operations, where carried out by employers engaged in harvesting operations.

(iv) General forestry and forest management work where carried out by employers engaged in harvesting operations.

(b) **Milling and processing sector**

(i) Processing of logs and other forms of raw timber into building timber and other value-added products in timber mills, factories, merchant's premises and other locations.

(ii) Processing includes lifting, sorting, stacking, storing, warehousing transporting, debarking, sawing, dressing, drying, machining, laminating, jointing, chipping, treating and carrying out any grading and labelling functions associated with processing.

(iii) Operation of any machinery used in processing or in connection with processing including plant and infrastructure and any maintenance associated with that machinery, plant or infrastructure.

(iv) Assembling and construction of products from processed timber.

(v) Supervision, co-ordination and planning of the processing activities and processing infrastructure.

(c) **Panel products sector**

(i) Manufacturing of boards, panels or veneer from timber and timber products.

(ii) Handling, sorting, stacking, lifting, treating, cutting, pressing, gluing, edging, trimming, painting, laminating and processing in any manner, board, panel or veneer.

(iii) Transporting and storing board, panels or veneer.

(iv) Operating and maintaining any or all machinery associated with board, panel or veneer manufacture including manufacturing plant and infrastructure.

(v) Planning, setting-up and assembling products from board, panel or veneer and associated components.

(d) **Manufacturing sector**

(i) All activities listed in the milling and processing sector in clause 1.1(b).

(ii) Machining timber in any manner to produce components and articles.

(iii) Planning, setting-up and assembling wood components and associated attachments into products.

(iv) Manufacturing frames, trusses and doors.

(v) Measuring, estimating, designing and manufacturing products for building and other purposes.

(vi) Manufacturing wooden sporting goods including for cricket, hockey, lacrosse, polocrosse, and/or badminton.

(vii) Wood machining, wood turning, wood carving, finishing, polishing, upholstering and other work carried out in or in connection with preparing, packing, assembling, manufacturing repairing or fixing, whether new or second hand, musical instruments and toys; where any of them are made of wood or timber, manufactured wood or timber products; and any other product made from wood other than furniture.

(e) **Merchandising and retailing sector**

(i) All activities listed in the manufacturing sector in clause 1.1(d).

(ii) Displaying, demonstrating, preparing, handling, providing advice and selling timber and timber related products, hardware and building products in wholesale and timber merchant/retail outlets.

(iii) Activities associated with the importing and wholesaling of timber products.

(iv) Calculating and processing customer orders and dealing with customers generally.

(f) **Pulp and paper sector**

The manufacture, process and supply of: pulp and recycled pulp; plastic materials where obtained from the wood and cooking chemicals derived from the manufacture, processing and supply of pulp and recycled pulp; paper, including paper board, strawboard, paper bags or any similar commodity, brown papers, copy paper, envelope grade paper, hardboard paper, kraft paper, linerboard, publication and printing papers, sackcraft, security papers, watermark papers, fruit trays, egg cartons, wine trays, paper towel, facial tissue, toilet tissue, paper napkins, printed tissue products (including printed and laminated) where printing and conversion occurs in conjunction with the processing of pulp for tissue manufacture.

4.4 Reference to timber and/or wood in this award without in any way limiting the ordinary meaning of the words, will also include any artificial, laminated or manufactured material now in existence or hereafter coming into existence from whatever materials made or constructed or manufactured, which is or can be used in the place of wood or timber and worked in a similar manner as wood or timber.

4.5 This award covers any employer which supplies labour on an on-hire basis in the industry sectors described in clause 4.3 in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in those industry sectors. Clause 4.5 operates subject to the exclusions from coverage in this award.

4.6 This award covers employers which provide group training services for apprentices and/or trainees engaged in the industry sectors and/or parts of those industry sectors set out at clause 4.3, and those apprentices and/or trainees engaged by a group training service hosted by a business to perform work at a location where the activities described in clause 4.3 are being performed. Clause 4.6 operates subject to the exclusions from coverage in this award.

4.7 This award replaces the:

(a) Plywood and Veneer Workers Award No. 28 of 1981

(b) Particle Board Industry Award No. 10 of 1978

**5. Exclusions**

This award does not apply to:

(a) employers and employees who are subject to the national industrial relations system;

(b) employees who are covered by another award of the Commission, including the:

(i) Building Trades and Labourers (Construction) Award;

(ii) Building Trades and Labourers (General) Award;

(iii) Commercial Sales Representatives' Award;

(iv) Furniture Trades Industry Award;

(v) Shop and Warehouse (Wholesale and Retail Establishments) State Award; and

(vi) Timber Industry (CFMEU) State Award.

**6. Requests for flexible working arrangements**

Requests for flexible working arrangements are provided for in Part 4A of the *Minimum Conditions of Employment Act 1993*.

**Part 2 - Types of Employment and Classifications**

**7. Types of employment**

7.1 Employees under this award will be employed in one of the following categories:

(a) full-time;

(b) part-time;

(c) piecework (see clause 11 - Piecework - General Timber Stream); or

(d) casual.

**8. Full-time employees**

8.1 A full-time employee is engaged to work an average of 38 hours per week.

8.2 Full-time employees are employed by the week.

**9. Part-time employees**

9.1 A part-time employee:

(a) is engaged to work less than an average of 38 ordinary hours per week; and

(b) has a regular pattern of hours.

9.2 Before commencing part-time employment, the employee and employer must agree upon the hours to be worked by the employee, the days upon which they will be worked and the starting and finishing times for the work.

9.3 The terms of the part-time work and any agreed variation will be recorded in writing and retained by the employer. The employer will provide a copy of the agreement and any variation to it to the employee.

9.4 An employer is required to roster a regular part-time employee for a minimum of 3 consecutive hours on any shift.

9.5 A part-time employee will be paid at the minimum hourly rate for the grade of work performed.

9.6 Subject to this clause, all of the provisions of this award will apply to a part-time employee.

**10. Casual employees**

10.1 A casual employee engaged for a part of any day will be entitled to a minimum of 4 hours' pay per day whether the casual employee is required to work for 4 hours or less than 4 hours.

10.2 **Casual loading**

For each hour worked, a casual employee must be paid:

(a) the ordinary hourly rate; and

(b) a loading of 25% of the ordinary hourly rate, for the classification in which they are employed.

10.3 A casual employee who works overtime will be paid at the appropriate overtime rate provided in clause 25. Overtime based on the casual rate of pay (including the casual loading provided for in clause 10.2).

**11. Piecework - General Timber Stream**

11.1 **Definition**

A pieceworker is an employee who is not a weekly employee but who is engaged to work away from the employer's mill, yard or other place of business in or in connection with felling, snigging, hauling or other obtaining of logs, billets, chips or other timber at rates of remuneration depending only on the amount of work performed, irrespective of the hours or times concerned.

11.2 **Remuneration**

The remuneration payable to a pieceworker will be fixed by agreement between the employee and the employer at rates which would enable an employee of average capacity to earn, for an ordinary week's work, not less than 25% above the appropriate weekly base rate for the class of work performed.

11.3 **Chainsaw and other additional costs**

(a) Pieceworkers who, with the agreement of the employer, supply, operate and maintain their own chainsaws will be reimbursed for the supply of that equipment as per clause 11.3(b).

(b) Pieceworkers will be reimbursed for all costs incidental to and directly connected with piecework in one of the following methods as agreed between the employer and the employee concerned:

(i) incorporating the costs into the piecework rate;

(ii) by calculating the costs and applying an additional flat rate or percentage rate to the piecework rate; or

(iii) by reimbursement of the actual amount involved.

11.4 The following clauses of this award do not apply to pieceworkers:

| Clause Title | Clause number |
|---|---|
| Ordinary hours of work | 14 |
| Rostering arrangements | 15 |
| Breaks | 16 |
| Minimum rates | 17 |
| Wage-related allowances | 21 |
| Expense-related allowances (except for Protective clothing, footwear and covering) | 22 |
| Accident Pay | 23 |
| Overtime | 25 |
| Penalty rates and shiftwork arrangements | 26 |

11.5 **Shifting haulers**

Pieceworkers will be paid at the award rate plus 25% for time occupied shifting haulers from one landing to another except in cases where the piecework rates are arranged to include time occupied in shifting haulers.

11.6 **Sleepers—loading and turning**

When sleepers are being inspected whilst they are being loaded into trucks by pieceworkers and, at the request of the employer or of a government inspector or of the buyer, the sleepers are turned for inspection or reinspection, the loaders will receive turning rates whilst turning sleepers and loading rates whilst loading those sleepers.

11.7 **Measurement of logs**

All logs felled or hauled at piecework rates will be measured or weighed at the mill landing or elsewhere by agreement. Particulars of the logs so measured or weighed will be given to the pieceworker at least once a fortnight unless otherwise agreed upon by the employer and employee. These particulars will set out the name of the mill supplied, the name of the employee, the date, the brand, the length, the girth or the weight or the cubic meterage of those logs scaled according to the prevailing practice.

11.8 **Subsistence allowance**

(a) The employer will make every reasonable effort to ensure that the logs are not unduly delayed by stockpiling in the bush. Where logs are stockpiled in excess of 14 days in the bush the pieceworkers affected may be paid, by agreement, a subsistence allowance based on the estimated tonnage of the logs in the pieceworkers' pile agreed to between the pieceworkers and the employer.

(b) If the actual tonnage turns out to be greater than or less than the estimated tonnage after weighing, an adjustment will be made for the differences in the employee's next pay or otherwise as agreed to between the employer and the employee concerned.

11.9 **Royalty payment**

Where the employee obtaining the timber pays royalty on behalf of the employer, the employer will reimburse the royalty to the employee in addition to piecework rates.

11.10 **Payslips**

The employer must provide a payslip to piecework employees in accordance with section 49DA of the *Industrial Relations Act 1979*. In addition to the requirements of section 49DA of the *Industrial Relations Act 1979*, the payslip must include the following information:

(a) tonnes cut—saw log—pulp log;

(b) classification;

(c) adjustments;

(d) conversion factor tonnes/metre.

11.11 **Pieceworker reimbursement**

All pieceworkers will be reimbursed for all costs incidental to and directly connected with piecework in one of the following methods as agreed between the employee and employer concerned:

(a) incorporating the costs into the piecework rate;

(b) by calculating the costs and applying an additional flat rate or percentage rate to the piecework rate; or

(c) by reimbursement of the actual amount involved. The amount will be a minimum of **9.6%** of the standard rate.

**12. Apprentices**

12.1 **Supervision and training**

An employer will ensure that each apprentice has appropriate arrangements made at an enterprise level to meet the apprentices' training requirements and adequate access to and supervision from tradespersons has been arranged.

12.2 **Apprenticeship arrangements**

Apprenticeship arrangements will be as per the requirements of the Department of Training and Workforce Development (or any successor organisation) and/or the Vocational Education and Training Act 1996. This includes form and registration of indenture.

12.3 **Period of apprenticeship**

The term of apprenticeship is determined by the rate by which an apprentice gains the required competence and the starting level of competence of the apprentice. An apprenticeship will end once an apprentice displays the competency required under the apprenticeship agreement.

12.4 **Overtime and public holiday rates**

(a) An employer requiring an apprentice to work overtime will pay the apprentice double time for all overtime. No apprentice will be required to work overtime for more than 8 hours in any one week, or more than 16 hours in any 4 weeks, and the overtime must not prevent the apprentice attending any technical school.

(b) An employer may roster an apprentice to work on a public holiday if the apprentice willingly agrees to work that day, in which case the apprentice must be paid double time and one half for the shift. The work on the public holiday will not exceed the ordinary hours of work and will not be included in the calculation of 8 and 16 hours in clause 12.4(a).

12.5 **Travel payment for block release training**

(a) Where an apprentice is required to attend block release training for training identified in or associated with their training contract, and the training requires an overnight stay, the employer must pay for the excess reasonable travel costs incurred by the apprentice in the course of travelling to and from the training. Provided that clause 12.5 will not apply where the apprentice could attend an alternative Registered Training Organisation (RTO) and the use of the more distant RTO is not agreed between the employer and the apprentice.

(b) For the purposes of clause 12.5(a) above, excess reasonable travel costs include the total costs of reasonable

transportation (including transportation of tools where required), accommodation costs incurred while travelling (where necessary) and reasonable expenses incurred while travelling, including meals, which exceed those incurred in travelling to and from work. Excess travel costs do not include payment for travelling time or expenses incurred while not travelling to and from block release training.

(c) The amount payable by an employer under clause 12.5(a) may be reduced by an amount the apprentice is eligible to receive for travel costs to attend block release training under a Government apprentice assistance scheme. This will only apply if an apprentice has either received that assistance or their employer has advised them in writing of the availability of the assistance.

12.6 **Payment of fees and textbooks**

(a) All training fees charged by an RTO for prescribed courses and the cost of all prescribed textbooks (excluding those textbooks which are available in the employer's technical library) for the apprenticeship, which are paid by an apprentice, shall be reimbursed by the employer within 6 months of the commencement of the apprenticeship or the relevant stage of the apprenticeship, or within 3 months of the commencement of the training provided by the RTO, whichever is the later, unless there is unsatisfactory progress.

(b) An employer may meet its obligations under clause 12.6(a) by paying any fees and/or cost of textbooks directly to the RTO.

12.7 **Other apprentice conditions of employment**

(a) An apprentice is entitled to be released from work without loss of continuity of employment and to payment of the appropriate wages to attend any training and assessment specified in, or associated with, the training contract.

(b) Time spent by an apprentice in attending any training and/or assessment specified in, or associated with, the training contract is to be regarded as time worked for the employer for the purposes of calculating the apprentice's wages and determining the apprentice's employment conditions. Clause 12 operates subject to the provisions of Schedule C - School-based Apprentices.

(c) No apprentice will, except in an emergency, work or be required to work overtime or shiftwork at times which would prevent their attendance at training consistent with their training contract.

**13. Classifications**

The definitions of the classification levels in clause 17 - Minimum rates, are contained in Schedule A - Classification Definitions - General Timber Stream and Schedule B - Classification Definitions - Pulp and Paper Stream.

**Part 3 - Hours of Work**

**14. Ordinary hours of work**

14.1 **Ordinary hours and roster cycles - day workers**

(a) Ordinary hours of work for a full-time employee shall be an average of 38 per week and will be worked between the hours of 6.00 am and 6.00 pm Monday to Friday in one of the following manners:

(i) 38 hours within a work cycle of one week;

(ii) 76 hours within a work cycle of 2 weeks;

(iii) 114 hours within a work cycle of 3 weeks; or

(iv) 152 hours within a work cycle of 4 weeks.

(b) Different methods of implementation of a 38 hour week may apply to various groups or sections of employees in the establishment concerned.

(c) (i) By agreement between the employer and the majority of affected employees, the ordinary hours of work can be worked on any day of the week, Saturday and Sunday inclusive.

(ii) Notwithstanding clause 14.1(c)(i), where the ordinary hours of work in a particular workplace or part thereof were already being performed on Saturdays and/or Sundays before [insert the relevant date these award changes become operative], those arrangements may continue to operate.

(d) The ordinary hours of work for a part-time employee will be in accordance with clause 9 - Part-time employees. The ordinary hours of work for a casual employee will be in accordance with clause 10 - Casual employees.

14.2 **Ordinary hours and roster cycles – shiftworkers**

(a) The ordinary hours of work for a full-time shiftworker are an average of 38 hours per week.

(b) Different methods of working shifts may apply to various groups or sections of employees in the establishment concerned.

(c) (i) Where agreement exists between the employer and the majority of affected employees, ordinary hours can be worked on any day of the week, including Saturday and/or Sunday.

(ii) Notwithstanding clause 14.2(c)(i), where the ordinary hours of work in a particular workplace or part thereof were already being performed on Saturdays and/or Sundays before [insert the relevant date these award changes become operative], those arrangements may continue to operate.

(d) Clause 26 - Penalty rates and shiftwork arrangements provides for shiftwork arrangements.

14.3 **Ordinary hours – watchpersons**

(a) A watchperson may be employed on the basis of 152 hours in a 4 week cycle provided that not more than 48 hours may be worked in any one week or 80 hours in a fortnight without payment for overtime.

(b) Clause 14.1 will not apply to a watchperson.

15. **Rostering arrangements**

15.1 **Rostered days, or shifts, off**

(a) Notwithstanding provisions elsewhere in this award and subject to clause 34 - Consultation about major workplace change and rosters, the employer and the majority of affected employees may agree to establish a system of rostered days off to provide that an employee may elect, with the consent of the employer to:

(i) take a rostered day, or shift, off at any time;

(ii) take rostered days, or shifts, off in part day amounts; or

(iii) accrue some or all rostered days off for the purpose of creating a bank to be drawn upon by the employee at times mutually agreed by the employer, or subject to reasonable notice by the employee or the employer.

(b) Clause 15.1(a) is subject to the employer informing each union which has members employed at the particular enterprise of its intention to introduce an enterprise system of rostered day off flexibility and providing a reasonable opportunity for the union to participate in negotiations.

(c) Once a decision has been taken to introduce a system of rostered day off flexibility in accordance with this clause 15.1(a) its terms must be set out in the time and wages records.

(d) An employer must record rostered day off arrangements in the time and wages record each time this provision is used.

15.2 **Notice of rostered days, or shifts, off**

In cases where, by virtue of the arrangement of the ordinary hours of work, an employee is entitled to a rostered day, or shift, off during the work cycle, the employee must be advised by the employer at least 4 weeks in advance of the day, or shift, to be taken off.

15.3 **Flexibility in relation to rostered days, or shifts, off**

By agreement between the employer and an employee, rostered days or shifts, off may be accumulated up to a maximum of 5 days or shifts, and may be taken in a manner agreed upon between the employer and the employee.

15.4 **Rostered days or shifts off - substitute days or shifts**

(a) **Rostered day off not to coincide with public holiday**

(i) Rostered days off must not be scheduled to coincide with a public holiday observed in accordance with clause 32.2 Public holidays.

(ii) An employee working continuous shiftwork who by the arrangement of ordinary hours of work is entitled to a rostered shift off which falls on a public holiday prescribed by clause 32.2 Public holidays will at the discretion of the employer, receive an additional day's pay or have an additional day added to their annual leave entitlement. This provision will not apply when the public holiday on which the employee is rostered off falls on a Saturday or Sunday.

(b) **Substitute days**

(i) An employer and an individual employee, or the employer and a majority of affected employees, may agree to substitute the day the employee or affected employees are to take off during a work cycle for another day.

(ii) An apprentice who is required to attend trade school on a rostered day off will be entitled to a substitute day as soon as practicable following the attendance at trade school.

(c) **Work on a rostered day, or shift, off**

Unless a rostered day off is substituted for another day off in accordance with clause 15.4(b), work performed on the rostered day off will be paid in accordance with clause 25 - Overtime.

15.5 **Rostered days off and averaging of pay**

For enterprises implementing a system of rostered days off based on a 19 day, 4 week cycle or in an enterprise where rostered days off based on a 19 day, 4 week cycle exist the following system of averaging pay will apply:

(a) Averaging of pay over 4 weeks for all ordinary hours worked so that in the week during which an employee takes a rostered day off there is no reduction in pay.

(b) Under this system each person works 8 ordinary hours of work each day for 19 days in any 4 week cycle. An amount of pay equivalent to 0.4 hours of pay is held over for each day an employee is at work or absent from work on paid leave. This amount will be used to pay for the rostered day off during the week the employee takes a rostered day off.

**16. Breaks**

16.1 **Meal breaks - ordinary hours**

(a) Employees will be allowed an unpaid meal break of one hour or other time as may be agreed.

(b) An employee must not be required to work more than 5 ordinary hours without a meal break.

16.2 **Alteration of meal breaks**

In any establishment where the ordinary hours of work are worked on the basis of 4 days of 8 ordinary hours each and one day of 6 ordinary hours in a weekly work cycle, the employer and the majority of affected employees may agree that the 6 ordinary hour day may be worked without a meal break.

16.3 **Payment for work done during meal breaks**

(a) All work done during an employee's meal break must be paid for at double time.

(b) All work done after the time for the meal break until a meal break is allowed must be paid at:

(i) for employees in the Pulp and Paper Stream—double time; or

(ii) for all other employees – time and one half.

16.4 **Crib breaks during overtime**

(a) Overtime on weekdays

(i) An employee working overtime on a weekday will be allowed a paid crib break as follows, provided the employee continues to work after the crib break:

| Stream | Number of continuous hours of overtime worked | Length of crib break |
|---|---|---|
| Pulp and Paper Stream employees | Up to 4 hours | No break |
| | After 4 hours | 20 minutes |
| All other employees | Up to 4.5 hours | No break |
| | After 4.5 hours | 20 minutes |

(ii) Unless the period of overtime is 2 hours or less, an employee must be allowed a meal break after working ordinary hours and before starting overtime, which will be paid for at ordinary rates. The length of the meal break is:

| Stream | Length of meal break |
|---|---|
| Pulp and Paper Stream employees | 30 minutes |
| All other employees | 20 minutes |

(iii) An employer and an employee may agree to any variation of this provision to meet the circumstances of the work in hand; provided that the employer will not be required to make any payment in respect of any time allowed in excess of 20 minutes, or 30 minutes in the case of an employee in the Pulp and Paper Stream.

(b) **Saturdays, Sundays and public holidays**

(i) An employee working overtime on a Saturday, Sunday or public holiday will be allowed a paid crib break as follows, provided the employee continues to work after the crib break:

**Saturdays**

| Stream | Number of continuous hours of overtime worked | Length of crib break |
|---|---|---|
| Pulp and Paper Stream employees | Up to 4 hours | No break |
| | After 4 hours | 20 minutes |
| All other employees | Up to 4.5 hours | No break |
| | After 4.5 hours | 20 minutes |

**Sundays and public holidays**

| Stream | Number of continuous hours of overtime worked | Length of crib break |
|---|---|---|
| Pulp and Paper Stream employees | Up to 4 hours | No break |
| | After 4 hours | 30 minutes |
| All other employees | Up to 4.5 hours | No break |
| | After 4.5 hours | 20 minutes |

16.5 **Paid crib breaks—continuous work**

Where a shift roster provides for continuous work over 24 hours of the day, a 20 minute paid crib break will be allowed to shiftworkers each shift and will be counted as time worked. The crib break will be taken at a time and in a method agreed upon between the employer and the individual employee or majority of affected employees so as to meet the

needs of the establishment.

16.6 **Determination of next meal break**

A meal break will not be regarded as time worked for the purpose of determining when the next meal break falls due.

16.7 **Minimum break after overtime**

Breaks after overtime will be provided in accordance with clause 25.9.

**Part 4 - Wages and Allowances**

**17. Minimum rates**

17.1 An employer must pay adult employees the following minimum rates for ordinary hours worked by the employee (not including penalties and allowances):

(a) **General Timber Stream**

| Employee classification | Minimum weekly rate (full-time employee) | Minimum hourly rate |
|---|---|---|
| | $ | $ |
| Level 2 | 998.30 | 26.27 |
| Level 3 | 1029.10 | 27.08 |
| Level 4 | 1062.90 | 27.27 |
| Level 5 | 1119.10 | 29.45 |
| Level 6 | 1154.30 | 30.38 |
| Level 7 | 1221.10 | 32.13 |

(b) **Pulp and Paper Stream**

| Employee classification | Minimum weekly rate (full-time employee) | Minimum hourly rate |
|---|---|---|
| | $ | $ |
| Level 1 | 1013.50 | 26.67 |
| Level 2 | 1046.90 | 27.55 |
| Level 3 | 1067.30 | 28.09 |
| Level 4 | 1087.40 | 28.62 |
| Level 5 | 1119.10 | 29.45 |
| Level 6 | 1154.30 | 30.38 |
| Level 7 | 1189.40 | 31.30 |
| Level 8 | 1221.10 | 32.13 |
| Level 9 | 1256.20 | 33.06 |

17.2 **Apprentices (other than saw doctor apprentices)**

(a) The minimum rates for ordinary hours worked by apprentices (other than saw doctor apprentices) are as follows:

(i) **Apprentices that have completed year 12**

| 4 year term | 3.5 year term | 3 year term | % of award rate for Level 5 |
|---|---|---|---|
| 1st year | 0 – 6 months | | 55 |
| 2nd year | 7 – 18 months | 1st year | 65 |
| 3rd year | 19 – 30 months | 2nd year | 75 |
| 4th year | 31 – 42 months | 3rd year | 90 |

(ii) **Apprentices that have not completed year 12**

| 4 year term | 3.5 year term | 3 year term | % of award rate for Level 5 |
|---|---|---|---|
| 1st year | 0 – 6 months | | 50 |
| 2nd year | 7 – 18 months | 1st year | 60 |
| 3rd year | 19 – 30 months | 2nd year | 75 |
| 4th year | 31 – 42 months | 3rd year | 90 |

(b) Where an apprentice is under the age of 21 years on the expiry of the apprenticeship, the apprentice will be paid at not less than the adult ordinary hourly rate prescribed for the skill level on which the employee is employed.

17.3 **Saw doctor apprentices**

(a) The minimum rates for ordinary hours worked by saw doctor apprentices are as follows:

(i) **Apprentices that have completed year 12**

| 4 year term | 3.5 year term | 3 year term | % of award rate for Level 6 |
|---|---|---|---|
| 1st year | 0 – 6 months | | 55 |
| 2nd year | 7 – 18 months | 1st year | 65 |
| 3rd year | 19 – 30 months | 2nd year | 75 |
| 4th year | 31 – 42 months | 3rd year | 90 |

(ii) **Apprentices that have not completed year 12**

| 4 year term | 3.5 year term | 3 year term | % of award rate for Level 6 |
|---|---|---|---|
| 1st year | 0 – 6 months | | 50 |
| 2nd year | 7 – 18 months | 1st year | 60 |
| 3rd year | 19 – 30 months | 2nd year | 75 |
| 4th year | 31 – 42 months | 3rd year | 90 |

(b) Where an apprentice is under the age of 21 years on the expiry of the apprenticeship, the apprentice will be paid at not less than the adult ordinary hourly rate prescribed for the skill level on which the employee is employed.

17.4 **Adult apprentices**

(a) The minimum rate of an adult apprentice who is in the first year of their apprenticeship must be **80%** of the relevant Level 5 rate, or the relevant rate prescribed by clauses 17.2 or 17.3 for the relevant year of the apprenticeship, whichever is the greater.

(b) The minimum rate of an adult apprentice who is in the second and subsequent years of their apprenticeship must be the rate for the lowest relevant adult classification in clause 17.1, or the relevant rate prescribed by clauses 17.2 or 17.3 for the relevant year of the apprenticeship, whichever is the greater.

(c) A person aged 21 year or older who has been employed by an employer under this award for at least 6 months as a full-time employee or 12 months as a part-time or regular casual employee immediately prior to entering into an apprenticeship with the employer, must not suffer a reduction in their minimum rate by virtue of entering into the apprenticeship. For the purpose only of fixing a minimum rate, the adult apprentice must continue to receive the minimum rate that applies to the classification specified in this clause in which the adult apprentice was engaged immediately prior to entering into the apprenticeship.

17.5 **Unapprenticed juniors**

The minimum rates for ordinary hours worked by unapprenticed juniors are the following percentages of the ordinary hourly rate for the applicable adult classification of Level 2, for the classification stream in which the junior is employed.

| Age | % of Level 2 award rate |
|---|---|
| | % |
| 16 years and under | 50 |
| 17 years | 60 |
| 18 years | 70 |
| 19 years and over | 100 |

17.6 **School based apprentices**

For school-based apprentices, see Schedule C – School-based Apprentices.

17.7 **Higher duties**

(a) An employee engaged for more than 2 hours during one day or shift on duties carrying a higher rate than the ordinary classification of that employee, will be paid the higher rate for that day or shift. If engaged for 2 hours or less during one day or shift the employee will be paid the higher rate for the time so worked.

(b) For the purpose of clause 17.7(a), the work carrying a higher rate need not be performed during a continuous period but will be based on the aggregate of the time worked during a particular day or shift.

(c) Where an employee is transferred, without having received at least 7 days' written notice, to a grade of work carrying a lower rate than that at which the employee is usually employed, the employee will be paid at the higher rate until the 7 day notice period if provided would have expired.

17.8 **National training wage**

(a) Schedule E to the Miscellaneous Award 2020 sets out minimum wage rates and conditions for employees undertaking traineeships.

(b) This award incorporates the terms of Schedule E to the Miscellaneous Award 2020. Provided that any reference to "this award" in Schedule E to the Miscellaneous Award 2020 is to be read as referring to the Timber Industry (AWU) State Award and not the Miscellaneous Award 2020.

Note: The Miscellaneous Award 2020 is a modern award that applies to employers and employees in the national industrial relations system. The rates of pay for trainees are usually adjusted from 1 July each year.

**18. Minimum Adult Award Wage**

18.1 No employee aged 21 or more shall be paid less than the minimum adult award wage unless otherwise provided by this clause.

18.2 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 $998.30 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 $998.30 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 2026.

18.3 The minimum adult award wage is deemed to include all State Wage order adjustments from State Wage Case decisions.

18.4 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.

18.5 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.

18.6 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.

18.7 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.

18.8 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.

18.9 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.

18.10 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 $828.90 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 $828.90 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.

**19. Supported Wage System**

19.1 In this clause:

**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.

**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.

**disability support pension** means the Commonwealth 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.

**relevant minimum wage** means the minimum wage prescribed in this award for the class of work for which an employee is engaged.

**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.

**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.

19.2 **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 schedule 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 employment.

19.3 **Supported wage rates**

(a) Employees to whom this clause applies will be paid the applicable percentage of the relevant minimum wage 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 be not less than the amount set by the Commission under section 50A(1)(a)(iii) of the *Industrial Relations Act 1979*.

(c) Where an employee's assessed capacity is **10%**, they must receive a high degree of assistance and support.

19.4 **Assessment of capacity**

(a) For the purpose of establishing the percentage of the relevant minimum wage, 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, a union which the employee is eligible to join.

(b) All assessments made under this schedule must be documented in a SWS wage assessment agreement, and retained by the employer as a time and wages record.

19.5 **Lodgement of SWS wage assessment agreement**

(a) All SWS wage assessment agreements under the conditions of this clause, including the appropriate percentage of the relevant minimum 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.

19.6 **Review of assessment**

The assessment of the applicable percentage should be subject to annual or more frequent review on the basis of a reasonable request for such a review. The process of review must be in accordance with the procedures for assessing capacity under the SWS.

19.7 **Other terms and conditions of employment**

Where an assessment has been made, the applicable percentage will apply to the relevant minimum wage only. Employees covered by the provisions of this clause will be entitled to the same terms and conditions of employment as other employees covered by this award on a pro rata basis.

19.8 **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 re-design of job duties, working time arrangements and work organisation in consultation with other employees in the area.

19.9 **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 that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage 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 Commission under section 50A(1)(a)(iii) of the *Industrial Relations Act 1979*.

(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 clause 19.4.

**20. Payment of wages**

20.1 Section 49DA of the *Industrial Relations Act 1979* sets out the requirements for pay slips and the content of pay slips.

20.2 **Period of payment**

Wages will be paid either weekly or fortnightly, either according to the:

(a) actual ordinary hours worked each week or fortnight; or

(b) average number of ordinary hours worked each week or fortnight.

20.3 **Method of payment**

Wages must be paid by cash, cheque or electronic funds transfer into the employee's bank or other recognised financial institution account.

20.4 **Day off coinciding with pay day**

Where an employee is paid wages by cash or cheque and the employee is, by virtue of the arrangement of their ordinary hours, to take a day off on a day which coincides with pay day, the employee must be paid no later than the working day immediately following pay day. However, if the employer is able to make suitable arrangements, wages may be paid on the working day preceding pay day.

20.5 **Wages to be paid during work hours**

(a) Where an employee is paid wages by cash or cheque, the wages are to be paid during ordinary working hours.

(b) If an employee is paid wages by cash and is kept waiting for their wages on pay day after the usual time for ceasing work, the employee is to be paid at overtime rates for the period they are kept waiting.

20.6 **Absences from duty under an average system**

Where a full-time employee's ordinary hours in a week are greater or less than 38 hours and the employee's pay is averaged to avoid fluctuating wage payments, the following is to apply:

(a) the employee will accrue a credit for each day they work ordinary hours in excess of the daily average;

(b) the employee will not accrue a credit for each day of absence from duty, other than on paid leave; and

(c) an employee absent for part of a day, other than on paid leave, accrues a proportion of the credit for the day, based on the proportion of the working day that the employee was in attendance.

20.7 **Payment on termination of employment**

(a) (i) When an employee is dismissed (other than for misconduct) or lawfully terminates their employment, the employee will be paid all moneys that are owing to them on the day of termination, unless that payment is prevented because of circumstances beyond the control of the employer.

(ii) For termination in circumstances other than in clause 20.7(a)(i), payment of moneys owing must be made no later than 7 days after the day of termination. Where an employee is paid by cash or cheque, moneys due shall be sent by registered post to the employee's last known address.

(b) In the case of an employee who is paid average pay and who has not taken time off due to them during the work cycle in which their employment is terminated, the wages due shall include a total of credits accrued during the work cycle. Provided that where the employee has taken time off during the work cycle in which their employment is terminated, the wages due shall be reduced by the total of credits which have not accrued during the work cycle.

**21. Wage-related allowances**

21.1 Employers must pay to an employee the wage-related allowances the employee is entitled to under this clause.

21.2 **All-purpose allowances**

Allowances paid for **all purposes** are included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties or loadings or payment while they are on annual leave. The following allowances are paid for all purposes under this award:

(a) forest work allowance; and

(b) low loader allowance.

21.3 **Forest work allowance**

(a) A forest work allowance equal to the amount prescribed in clause 22.3(a) of the Timber Industry Award 2020 is payable to an employee (other than a pieceworker) who is working in forests.

Note: The Timber Industry Award 2020 is a modern award that applies to employers and employees in the national industrial relations system. The forest work allowance contained in clause 22.3(a) of the Timber Industry Award 2020 is usually adjusted from 1 July each year.

(b) This allowance will be paid for all purposes of this award.

(c) This allowance compensates for all disabilities encountered in this type of work (including difficult terrain and dense undergrowth) whilst so engaged.

21.4 **Low loader allowance**

(a) An allowance equal to the amount prescribed in clause 22.4(a) of the Timber Industry Award 2020 per each additional complete tonne over 43 tonnes GCM is payable to an employee when driving a low loader

Note: The Timber Industry Award 2020 is a modern award that applies to employers and employees in the national industrial relations system. The low loader allowance contained in clause 22.4(a) of the Timber Industry Award 2020 is usually adjusted from 1 July each year.

(b) This allowance will be paid for all purposes of this award.

21.5 **Leading hands**

A leading hands allowance equal to the amount prescribed in clause 22.5 of the Timber Industry Award 2020 is payable to a leading hand.

Note: The Timber Industry Award 2020 is a modern award that applies to employers and employees in the national industrial relations system. The leading hands allowance contained in clause 22.5 of the Timber Industry Award 2020 is usually adjusted from 1 July each year.

21.6 **Other wage related allowances**

The following allowances as set out in clause 22 of the Timber Industry Award 2020 (as varied from time to time) are incorporated into this award and must be provided to employees who qualify for the allowance:

- Cleaning of boilers and associated equipment allowance (clause 22.6)
- Repairs inside boilers and associated equipment allowance (clause 22.7)
- Additional allowances for engine drivers/firemen (clause 22.8)
- First aid allowance (clause 22.9)
- Charred timber (clause 22.10)
- Dirty work allowance (clause 22.11)
- Wet places allowance (clause 22.12)
- Hot work allowance (clause 22.13)
- Cold places allowance (clause 22.14)
- Confined spaces allowance (clause 22.15)
- Height money allowance (clause 22.16)

Note: The Timber Industry Award 2020 is a modern award that applies to employers and employees in the national industrial relations system. The wage related allowances contained in clause 22 of the Timber Industry Award 2020 are usually adjusted from 1 July each year.

**22. Expense-related allowances**

22.1 The following allowances as set out in clause 23 of the Timber Industry Award 2020 (as varied from time to time) are incorporated into this award and must be provided to employees who qualify for the allowance:

- Vehicle allowance (clause 23.2)
- Meal allowance - overtime (clause 23.3)
- Tool allowances (clause 23.4)
- Camping allowance (clause 23.5)
- Damage to clothing, tools and other items (clause 23.6)
- Protective clothing, footwear and covering allowance (clause 23.7)
- Travelling expenses (clause 23.8)
- Work away from usual place of employment allowance (clause 23.9)

- Travelling allowance - daily travel (clause 23.10)
- Travelling allowance - change of residence (clause 23.11)
- Travelling allowance - distant work (clause 23.12)
- Travelling allowance - bushworkers other than pieceworkers (clause 23.13)
- Training and skill development allowances (clause 23.14)

Note: The Timber Industry Award 2020 is a modern award that applies to employers and employees in the national industrial relations system. The expense related allowances contained in clause 23 of the Timber Industry Award 2020 are usually adjusted from 1 July each year.

**23. Accident Pay**

23.1 Should an employee, in either the General Timber Stream or the Pulp and Paper Stream of this Award, experience an accident at the place of employment and weekly payments of compensation are paid to the employee under the *Workers Compensation and Injury Management Act 2023*, the employee shall have the amount of compensation increased by the employer to the employee's usual weekly rate of pay under this Award (not including over award payments, shift loadings or overtime).

23.2 The payment made by the employer shall be limited to a maximum period of 39 weeks in the case of an employee in the General Timber Stream, and 52 weeks in the case of an employee in the Pulp and Paper Stream.

23.3 For the purpose of this clause, **place of employment** shall include travelling directly from or to their place of employment.

23.4 Casual employees' accident pay shall be based on the number of hours worked per week over the last month, with the present employer, or if less than one month the average for the time worked. The amount to be paid is the usual weekly rate of pay including the casual loading prescribed by clause 10.2 of this Award but not including over award payments, shift loadings or overtime.

23.5 If an employee entitled to accident pay under this clause returns to work on reduced hours or modified duties, the amount of accident pay due will be reduced by any amounts paid for the performance of that work.

**24. Superannuation**

24.1 **Superannuation legislation**

The Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth) and the *Superannuation Industry (Supervision) Act 1993* (Cth), deals with the superannuation rights and obligations of employers and employees.

24.2 **Employer contributions**

(a) An 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.

(b) Contributions must be paid into one of the following funds:

(i) any complying fund nominated by the employee; or

(ii) the employee's stapled fund; or

(iii) AustralianSuper, which will become the "nominated fund" if no fund is nominated by the employee and there is no stapled fund.

24.3 **Employee's options**

(a) Within 14 days of commencing employment, the employer must notify the employee of the employee's entitlement to nominate a complying fund.

(b) Any failure by the employee to nominate a fund will not affect the employee's eligibility to receive contributions.

(c) The employee and employer will 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.

(d) The employer must not unreasonably refuse to agree to a change of complying fund requested by an employee.

24.4 **Voluntary employee contributions**

(a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 24.2.

(b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee.

(c) The employer must pay the amount authorised under clauses 24.4(a) or 24.4(b) at the same time the employer makes their compulsory superannuation contributions on behalf of the employee.

24.5 **Absence from work**

Subject to the governing rules of the relevant superannuation fund, the employer must also make the superannuation contributions provided for in clause 24.2 and pay the amount authorised under clauses 24.4(a) or 24.4(b):

(a) **Paid leave**—while the employee is on any paid leave;

(b) **Work-related injury or illness**—for the period of absence from work (subject to a maximum of 52 weeks) of the employee due to work-related injury or work-related illness provided that:

(i) the employee is receiving workers' compensation payments or is receiving regular payments directly from the employer in accordance with the statutory requirements; and

the employee remains employed by the employer.

**Part 5 - Overtime and Penalty Rates**

**25. Overtime**

25.1 **Definition of overtime**

(a) All time worked by employees in excess of, or outside of, the ordinary hours of work as prescribed by this award will be overtime**.**

(b) A part-time employee who works in excess of the daily hours fixed by agreement between the employer and the employee will be paid at overtime rates.

25.2 **Payment for working overtime – day workers**

(a) All overtime worked by day workers between Monday and Saturday will be paid for at the rate of time and one half for the first 2 hours and double time after 2 hours.

(b) All overtime worked by day workers on Sunday will be paid for at double time.

(c) When computing overtime each day's work will stand alone.

(d) When computing overtime the hourly rate will be determined by dividing the appropriate weekly rate by 38.

25.3 **Shiftwork payments for overtime (excluding the pulp and paper stream)**

All overtime worked by shiftworkers (excluding pulp and paper shiftworkers) will be paid as follows:

(a) Monday to Saturday

(i) If on continuous work - at double time for all hours.

(ii) If on other than continuous work - time and one half for the first 2 hours on any one day and double time after 2 hours.

(b) Sunday

All overtime worked by shiftworkers (whether continuous or otherwise) on a Sunday will be paid for at double time.

(c) Shiftwork payments for overtime do not apply when the time is worked:

by arrangement between the employees themselves; or

for the purpose of effecting the customary rotation of shifts.

(d) When not less than 8 hours' notice has been given to the employer by a reliever that the employee will be absent from work and the employee who should be relieved is not relieved and is required to continue to work on a rostered day off, the unrelieved employee will be paid at double time.

25.4 **Pulp and Paper Stream—payment for shiftworkers working overtime**

For all work outside the ordinary hours, or in excess of the normal duration of the shift, overtime will be paid to a shiftworker in the pulp and paper stream at the rate double time, except in cases where that time is worked by arrangement between the employees themselves. Provided that:

(a) Where an employee is given notice to work on the employee's rostered day off and the notice is cancelled within 16 hours of the time due for them to commence, the employee will be paid 4 hours' ordinary pay.

(b) Where an employee is given notice to work the succeeding shift and the notice is cancelled, and as a consequence of the notice the employee has remained on the premises until the prescribed starting time, the employee will be paid 4 hours' ordinary pay.

(c) **Sunday allowance**

In consideration of the Sunday overtime required in the industry, an employee who works not less than 8 hours on a Sunday outside the employee's ordinary hours of work prescribed in this award and has worked not less than 8 hours on either of the immediately preceding 2 Sundays outside ordinary hours will be paid in respect of the first-mentioned Sunday a special allowance of 4 hours' pay at ordinary time.

25.5 **Non-accumulation of penalty rates**

The rates prescribed in this clause will be in substitution for and not cumulative upon the shift rates prescribed elsewhere in this award.

25.6 **Payment for work on rostered day off - all employees**

All work performed on a rostered day off on the instructions of the employer will be paid for at time and one half for

the first 2 hours and double time after 2 hours, with a minimum payment for 3 hours at that rate. If the rostered day off is a Sunday, all work must be paid for at double time, with a minimum payment for 3 hours.

25.7 **Watchpersons**

All overtime for a watchperson will be paid for at time and one half.

25.8 **Reasonable overtime**

(a) An employer may require an employee to work reasonable overtime hours at overtime rates.

(b) An employee may refuse to work overtime in circumstances where the working of the overtime would result in the employee working hours which are unreasonable having regard to:

(i) any risk to the employee's health and safety that might reasonably be expected to arise if the employee worked the overtime;

(ii) the employee's personal circumstances (including any family responsibilities);

(iii) the conduct of the operations or business in relation to which the employee is required or requested to work the overtime;

(iv) any notice given by the employer of the requirement or request that the employee work the overtime;

(v) any notice given by the employee of the employee's intention to refuse to work the overtime;

(vi) whether any of the overtime is on a public holiday in the area of the State where the employee is required or requested to work the overtime;

(vii) the employee's hours of work over the 4 weeks ending immediately before the employee is required or requested to work the overtime; and

(viii) any other relevant matter.

25.9 **Rest period after overtime**

(a) When overtime work is necessary, it must, whenever reasonably practicable, be arranged so that employees have at least 10 consecutive hours off duty between the work of successive days.

(b) Where an employee works so much overtime that there are fewer than 10 consecutive hours between finishing overtime on one day and commencing ordinary work on the next day, the employee will be released until they have had at least 10 consecutive hours off duty without loss of pay for ordinary working time occurring during the absence.

(c) If, on the instructions of the employer, an employee resumes or continues work without having had 10 consecutive hours off duty, the employee will be paid at double time until they are released from duty and they are then entitled to be absent until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during that absence.

(d) In the case of a shiftworker the provisions of this subclause will apply as if 8 hours were substituted for 10 hours when overtime is worked:

(i) for the purpose of changing shift rosters;

(ii) where a shiftworker does not report for duty and a day worker or a shiftworker is required to replace the shiftworker; or

(iii) where a shift is worked by arrangement between the employees themselves.

25.10 **Call-back**

(a) An employee recalled to work overtime after leaving the employer's business premises (whether notified before or after leaving the premises) will be paid for a minimum of 4 hours' work at the appropriate rate for the call-back except when the employee is entitled to payment for standing by in accordance with clause 25.11, in which case the employee will be paid for a minimum of 3 hours' work at the appropriate rate.

(b) The employee will not be required to work the full 4 hours' work if the work the employee was recalled to perform is completed in a shorter period, except in unforeseen circumstances.

25.11 **Standing by**

When an employee is required by the employer to be in readiness for a call-back to work the employee will, until released by the employer or notified of the requirement to attend for duty, be paid for standing by time at ordinary rates from the time held in readiness.

25.12 **Recall without notice – pulp and paper stream**

An employee in the pulp and paper stream recalled without notice to work overtime will be paid at the rate of ordinary time from the time of receipt of notice of recall until the employee reports for duty. Provided the employee reports for duty without unreasonable delay.

25.13 **Transport for employees after overtime**

(a) Where an employee working overtime is required to remain on duty to a time which precludes the employee from using any reasonable means of transport to the employee's home, the employer must pay the cost of transport for the employee to get home free of charge and pay the employee's current rate until transport is

available.

(b) Clause 25.13(a) will not apply to an employee who lives within reasonable walking distance from the point at which the employee is employed or otherwise has their own transport.

25.14 **Time off instead of payment for overtime**

(a) An employee and employer may agree to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.

(b) The period of time off that an employee is entitled to take is equivalent to the overtime payment that would have been made.

EXAMPLE: An employee who worked 2 overtime hours at time and one half is entitled to 3 hours' time off.

(c) Time off must be taken within 6 months of the overtime being worked at a time or times agreed by the employee and employer.

(d) If the employee requests at any time to be paid for overtime covered by an agreement under this subclause but not taken as time off, the employer must pay the employee for the overtime in the next pay period following the request, at the applicable overtime rate.

(e) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in clause 25.14(c), the employer must pay the employee for the overtime in the next pay period following those 6 months, at the applicable overtime rate.

(f) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.

(g) If, on the termination of the employee's employment, time off for overtime worked by the employee to which this subclause applies has not been taken, the employer must pay the employee for the overtime at the applicable overtime rate.

**26. Penalty rates and shiftwork arrangements**

26.1 **Penalty rates for day workers**

An employer must pay a day worker the following penalty rates for work performed during ordinary hours:

(a) **Payment for work on Saturdays**

All ordinary hours of work performed by a day worker on a Saturday will be paid for at the rate of time and one half for the first 2 hours and double time after 2 hours, with a minimum payment for 3 hours.

(b) **Payment for work on Sundays**

All ordinary hours of work performed by a day worker on a Sunday will be paid for at double time, with a minimum payment for 3 hours.

(c) **Payment for work on public holidays**

Except as prescribed by clause 32 – Public holidays, all work performed by a day worker on a public holiday will be paid for at the rate of double time and one half, with a minimum payment for 3 hours.

Note: For casual employees the 25% casual loading is added to, but not compounded on, the above penalty rates.

26.2 **Shiftwork arrangements**

(a) **Twelve hour shifts**

(i) Employees may be required to work a continuous 12 hour shift subject to:

(ii) proper health monitoring procedures being introduced;

(iii) suitable roster arrangements being made;

(iv) proper supervision being provided;

(v) adequate breaks being provided; and

(vi) an adequate trial or review process being implemented through the consultative process at the workplace.

(b) **Changes to shifts**

(i) **Consultation**

Where an employer proposes to change an employee's regular roster or ordinary hours of work, the employer must comply with clause 34 – Consultation about major workplace change and rosters.

(ii) **Day worker changing to shiftwork**

Where a day worker commences shiftwork at the instruction of the employer without 7 days' notice (or a reduced period of 48 hours' notice where the transfer to shiftwork is necessitated by absenteeism), the employer will pay the employee at time and one half for all ordinary hours worked until the required notice period would have expired. This payment will be in place of any shift rates payable under clause 26.3.

Note: All ordinary hours worked on Sunday must still be paid at double time.

(iii) **Change of shift rosters**

Where the employer does not provide a shiftworker with 48 hours' notice of any change to the employee's shift roster, the employer will pay the employee at time and one half for all ordinary hours worked until the 48 hour notice period would have expired. This payment will be in place of any shift rates payable under clause 26.3.

Note: All ordinary hours worked on Sunday must still be paid at double time.

(iv) **Termination of shiftwork**

An employer must give a shiftworker 7 days' notice of the cessation of the shiftwork. If 7 days' notice is not given, the employer will pay the employee the shift rates payable under this clause for all ordinary hours worked until the 7 days' notice would have expired.

26.3 **Penalty rates for shiftworkers**

(a) **Definitions**

(i) **Afternoon shift** means any shift finishing after 6.00 pm and at or before midnight.

(ii) **Day shift** means any shift that is not an afternoon shift or a night shift.

(iii) **Night shift** means any shift finishing after midnight or commencing before 6.00 am.

(iv) **Rostered shift** means a shift of which the employee concerned has had at least 48 hours' notice.

(v) **Continuous work** means work carried on with consecutive shifts of persons throughout the 24 hours of each of at least 6 consecutive days without interruptions except during breakdowns or meal breaks or due to unavoidable causes beyond the control of the employer.

(b) **Afternoon and night shifts to be consecutive**

(i) Where any particular process is carried out on shifts other than day shift, and less than five consecutive afternoon or five consecutive night shifts are worked on that process, the employees employed on such afternoon or night shifts must be paid at overtime rates.

(ii) Provided that where the ordinary hours of work in an establishment are performed on less than five days per week, the provisions of paragraph (i) will be as if four consecutive shifts were substituted for five consecutive shifts.

(iii) The sequence of work will not be deemed to be broken under paragraphs (i) or (ii) above because work on the process is not carried out on a Saturday, Sunday, public holiday, rostered day off or non-working day.

(c) **Payment for ordinary hours - Monday to Friday**

(i) **Day shift**

A shiftworker whilst on day shift will be paid the ordinary hourly rate for all hours of that shift.

(ii) **Afternoon shift**

A shiftworker whilst on afternoon shift will be paid a **15%** loading on the ordinary hourly rate for all hours of that shift.

(iii) **Night shift – rotating**

A shiftworker whilst on a night shift roster which rotates with other shift types will be paid a **15%** loading on the ordinary hourly rate for all hours of a night shift.

(iv) **Night shift - non-rotating**

A shiftworker who works night shifts only will be paid a **30%** loading on the ordinary hourly rate for all hours of a night shift.

(d) **Payment for ordinary hours - Saturday and Sunday**

(i) Ordinary hours of work performed by a shiftworker on a Saturday will be paid for at time and one half.

(ii) Ordinary hours of work performed by a shiftworker on a Sunday will be paid for at double time.

(e) **Payment for ordinary hours - public holidays**

Ordinary hours of work performed by a shiftworker on a public holiday will be paid for at double time.

Note: For casual employees the 25% casual loading is added to, but not compounded on, the above penalty rates.

**Summary of penalty rates – day workers**

| Time of hours worked | Full-time and part-time employees | Casual employees |
|---|---|---|
| | additional % of ordinary hourly rate | additional % of ordinary hourly rate (inclusive of casual loading) |
| Monday to Friday | 0% | 25% |

| | | |
|---|---|---|
| Saturday - first 2 hours | 50% | 75% |
| Saturday - after 2 hours | 100% | 125% |
| Sunday - all hours | 100% | 125% |
| Public holiday - all hours | 150% | 175% |

**Summary of penalty rates - shiftworkers**

| **Time of hours worked** | **Full-time and part-time employees** | **Casual employees** |
|---|---|---|
| | additional % of ordinary hourly rate | additional % of ordinary hourly rate (inclusive of casual loading) |
| Monday to Friday - day shift | 0% | 25% |
| Monday to Friday - afternoon shift | 15% | 40% |
| Monday to Friday - night shift (rotating) | 15% | 40% |
| Monday to Friday - night shift (non-rotating) | 30% | 55% |
| Saturday - all hours | 50% | 75% |
| Sunday - all hours | 100% | 125% |
| Public holiday - all hours | 100% | 125% |

## Part 6 - Leave and Public Holidays

### 27. Annual leave

27.1 Annual leave is provided for in the *Minimum Conditions of Employment Act 1993*. Annual leave does not apply to a casual employee.

Note: The provisions of this clause only detail annual leave provisions that are additional to and/or more favourable than what is contained in the *Minimum Conditions of Employment Act 1993*.

27.2 **Additional leave for shiftworkers**

Shiftworkers who are regularly rostered to work on Sundays and public holidays are entitled to an additional one week of annual leave per annum. This annual leave accrues pro rata on a weekly basis.

27.3 **Payment for annual leave**

(a) **Employees other than pieceworkers**

(i) An employee must be paid the rate they would have received in respect of the ordinary hours the employee would have worked had the employee not been on leave during the relevant period.

(ii) Subject to clause 27.3(a)(iii), the rate to be paid must be worked out on the basis of what the employee would have been paid under this award for working ordinary hours during the period of annual leave, including allowances, loadings and penalties paid for all purposes of the award, first aid allowance and any other wages payable under the employee's contract of employment including any over-award payment.

(iii) The employee is not entitled to payments in respect of overtime, special rates or any other payment which might have been payable to the employee as a reimbursement for expenses incurred.

(b) **Pieceworkers**

In the case of a pieceworker the rate of pay for annual leave is whichever is the higher of:

(i) the rate then currently prescribed by the award for the ordinary weekly hours for the classification in which the employee was classified by the employer immediately prior to commencing leave, plus **25**%;

(ii) the rate payable under the employee's contract of employment; or

(iii) the rate calculated according to the employee's average weekly earnings during the 365 days immediately before the leave is taken (or during the employee's employment if less than 365 days).

Note: Section 18A of the *Minimum Conditions of Employment Act 1993* outlines the process for calculating the rate of pay for paid leave for an employee paid wholly by commission or percentage reward or at piece rates.

27.4 **Loading on annual leave—employees other than pieceworkers**

(a) During a period of annual leave an employee will receive a loading calculated on the minimum wage prescribed by clause 17 – Minimum rates, in the following manner:

(i) **Day workers**

An employee who would have worked on day work only had the employee not been on leave will receive a loading of **17.5%,** or in the case of an employee in the Pulp and Paper Stream, a loading of **20%**.

(ii) **Shiftworkers**

Where an employee would have worked on shiftwork had the employee not been on annual leave, the employee will be paid a loading for each shift equal to the greater of:

- **17.5%** (or **20%** in the case of an employee in the Pulp and Paper Stream); or
- the shift allowances that would have been payable to the employee for those shifts under clause 26 - Penalty rates and shiftwork arrangements.

(b) Annual leave loading will not apply to any public holiday occurring during a period of annual leave.

(c) Annual leave loading will, upon termination of the employment for any reason, also apply in respect of leave not taken for a full 12 months qualifying period of service by the employee with the employer.

(d) Annual leave loading will not apply to proportionate payment on termination under clause 37 – Termination of employment, except in the case of an employee with not less than 3 months' service with an employer whose services are terminated by the employer through no fault of the employee.

27.5 **Annual leave in advance**

(a) An employer and employee may agree in writing to the employee taking a period of paid annual leave before the employee has accrued an entitlement to the leave.

(b) An agreement must:

(i) state the amount of leave to be taken in advance and the date on which leave is to commence; and

(ii) be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

(c) The employer must keep a copy of any agreement under clause 27.5 as an employee record.

(d) If an employee's employment terminates and the employee has taken a period of annual leave that exceeds what the employee has accrued, the employee is liable to pay the employer an amount representing the annual leave not accrued.

Note: Under the *Minimum Conditions of Employment Act 1993* annual leave accrues pro rata on a weekly basis.

**28. Personal leave**

28.1 Personal leave is provided for in the *Minimum Conditions of Employment Act 1993*.

Note: The provisions of this clause only detail personal leave provisions that are additional to and/or more favourable than what is contained in the *Minimum Conditions of Employment Act 1993*

28.2 **Adjustment of personal leave**

If, in the first or successive years of service with the employer, an employee is absent on personal leave for a period longer than the employee's accrued entitlement to paid personal leave, payment may be adjusted at the end of that 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.

28.3 **Replacement of paid personal leave during annual leave**

(a) Subject to the provisions of this subclause, an employee who suffers personal ill health or injury during annual leave may apply for and the employer must grant paid personal leave in place of paid annual leave.

(b) An application to replace annual leave with paid personal leave:

(i) must be made within 7 days of resuming work; and

(ii) is only available if the employee produces a certificate from a medical practitioner confirming they were confined to their residence or a hospital as a result of personal ill health or injury for a period of 7 consecutive days or more.

(c) Replacement of paid annual leave by paid personal leave must not exceed the period of paid personal leave the employee was entitled to and will not be made with respect to fractions of a day.

(d) Where paid personal leave has been granted by the employer in accordance with this clause, that portion of the annual leave equivalent to the paid personal leave is replaced by the paid personal leave.

(e) Payment for replaced annual leave is to be at the rate of pay applicable at the time the leave is subsequently taken, provided that if annual leave loading has already been paid to the employee pursuant to clause 27 – Annual Leave, the leave loading is deemed to have been paid with respect to the replaced annual leave.

28.4 If an employee is terminated by their employer and is re-engaged by the same employer within a period of 6 months then the employee's unclaimed balance of paid personal leave continues from the date of re-engagement.

**29. Bereavement leave**

Bereavement leave is provided for in the *Minimum Conditions of Employment Act 1993*.

**30. Parental leave and related entitlements**

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

**31. Family and domestic violence leave**

Family and domestic violence leave is provided for in Division 7 of Part 2-2 of the *Fair Work Act 2009* (Cth) and the *Minimum Conditions of Employment Act 1993*.

**32. Public holidays**

32.1 (a) An employee is entitled to be absent from work without loss of pay on a day or part of a day that is a public holiday mentioned in Schedule 1 of the *Minimum Conditions of Employment Act 1993*.

(b) When any of the days mentioned in clause 32.1(a), other than Easter Sunday, falls on a Saturday or a Sunday the public holiday shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday the public holiday shall be observed on the next succeeding Tuesday. In each case the substituted day shall be a public holiday without deduction of pay and the day for which it is substituted shall not be a public holiday.

32.2 **Substitution of public holidays by agreement**

An employer and employee may agree to substitute another day for a day that would otherwise be a public holiday.

32.3 **Rostered day off falling on public holiday**

Where a full-time employee's ordinary hours of work are structured to include a rostered day off on a weekday and that day off falls on a public holiday, the employee is entitled, at the discretion of the employer, to either:

(a) 7.6 hours of pay at the ordinary time rate;

(b) 7.6 hours of extra annual leave; or

(c) a substitute day off on an alternative weekday.

32.4 **Full-time employees working non-standard hours**

(a) Clause 32.4 applies to full-time workers who do not regularly work a 5 day, Monday to Friday week.

(b) **Public holidays falling upon days employees not working**

When a public holiday falls upon a day when the employee would not be working in any event the employee will receive:

(i) a day's paid leave to be taken on another day or added to annual leave (to be mutually agreed between the employer and the employee); or

(ii) an additional day's wage.

(c) **Christmas Day loading**

If employees are rostered to work on a Saturday or Sunday that is a Christmas Day and are required to work, the employee will receive the normal Saturday or Sunday rate plus a loading of one-half of a normal day's wages for the full day's work and be entitled to the substitute day.

32.5 **Part-time employees**

(a) Where the normal roster of a part-time employee includes a day that is a public holiday, the employee will receive either a paid day off for the hours the employee would otherwise have worked that day or receive the appropriate public holiday rate for working that day.

(b) For part-time employees whose normal roster includes a Saturday or Sunday that would be a prescribed holiday but for the substitution of an alternative day, the following will apply:

(i) the employee will be granted leave with pay on the "actual day" without any substitution; or

(ii) the employee works on the "actual day" at normal Saturday or Sunday rates (if the Saturday or Sunday is Christmas Day the Christmas Day loading will apply) and is allowed to take another day with pay, which may or may not be the prescribed substitute day, as a holiday; or

(iii) the employee works on the "actual day" at normal Saturday or Sunday rates (if the Saturday or Sunday is Christmas Day the Christmas Day loading will apply) and receives, in addition, payment at ordinary time rates for an additional day of equal length (with no substitution of an alternative day).

**Part 7 - Workplace Delegates, Consultation and Dispute Resolution**

**33. Workplace delegates' rights**

33.1 In this clause:

(a) **employer** means the employer of the workplace delegate;

(b) **delegate's organisation** means the employee organisation in accordance with the rules of which the workplace delegate was appointed or elected; and

(c) **eligible workers** means members and persons eligible to be members of the workplace delegate's organisation who work in a particular enterprise.

33.2 Before exercising entitlements under this clause, a workplace delegate must give the employer written notice of their appointment or election as a workplace delegate. If requested, the workplace delegate must provide the employer with evidence that would satisfy a reasonable person of their appointment or election.

33.3 An employee who ceases to be a workplace delegate must give written notice to the employer within 14 days.

33.4 **Right of representation**

A workplace delegate may represent the industrial interests of eligible workers who wish to be represented by the workplace delegate in matters including:

(a) consultation about major workplace change;

(b) consultation about changes to rosters or hours of work;

(c) resolution of disputes;

(d) disciplinary processes;

(e) enterprise bargaining where the workplace delegate is assisting the delegate's organisation with enterprise bargaining; and

(f) any process or procedure within an award, enterprise agreement or policy of the employer under which eligible workers are entitled to be represented and which concerns their industrial interests.

33.5 **Entitlement to reasonable communication**

(a) A workplace delegate may communicate with eligible workers in relation to their industrial interests under clause 33.4. This includes discussing membership of the delegate's organisation and representation with eligible workers.

(b) A workplace delegate may communicate with eligible workers during working hours or work breaks, or before or after work.

33.6 **Entitlement to reasonable access to the workplace and workplace facilities**

(a) The employer must provide a workplace delegate with access to or use of the following workplace facilities:

(i) a room or area to hold discussions that is fit for purpose, private and accessible by the workplace delegate and eligible workers;

(ii) a physical or electronic noticeboard;

(iii) electronic means of communication ordinarily used in the workplace by the employer to communicate with eligible workers and by eligible workers to communicate with each other, including access to Wi-Fi;

(iv) a lockable filing cabinet or other secure document storage area; and

(v) office facilities and equipment including printers, scanners and photocopiers.

(b) The employer is not required to provide access to or use of a workplace facility under clause 33.6(a) if:

(i) the workplace does not have the facility;

(ii) due to operational requirements, it is impractical to provide access to or use of the facility at the time or in the manner it is sought; or

(iii) the employer does not have access to the facility at the enterprise and is unable to obtain access after taking reasonable steps.

33.7 **Entitlement to reasonable access to training**

Employers who employ 15 or more employees must provide a workplace delegate with access to up to 5 days of paid time during normal working hours for initial training and at least one day each subsequent year, to attend training related to representation of the industrial interests of eligible workers, subject to the following conditions:

(a) In each year commencing 1 July, the employer is not required to provide access to paid time for training to more than one workplace delegate per 50 eligible workers.

(b) The number of eligible workers will be determined on the day a delegate requests paid time to attend training, as the number of eligible workers who are:

(i) full time or part time employees; or

(ii) casual employees.

(c) Payment for a day of paid time during normal working hours is payment of the amount the workplace delegate would have been paid for the hours the workplace delegate would have been rostered or required to work on that day if the workplace delegate had not been absent from work to attend the training.

(d) The workplace delegate must give the employer not less than 5 weeks' notice (unless the employer and delegate agree to a shorter period of notice) of the dates, subject matter, the daily start and finish times of the training, and the name of the training provider.

(e) If requested by the employer, the workplace delegate must provide the employer with an outline of the training content.

(f) The employer must advise the workplace delegate not less than 2 weeks from the day on which the training is scheduled to commence, whether the workplace delegate's access to paid time during normal working hours to attend the training has been approved. Such approval must not be unreasonably withheld.

(g) The workplace delegate must, within 7 days after the day on which the training ends, provide the employer with evidence that would satisfy a reasonable person of their attendance at the training.

33.8 **Exercise of entitlements**

(a) A workplace delegate's entitlements under this clause are subject to the conditions that the workplace delegate must, when exercising those entitlements:

(i) comply with the reasonable policies and procedures of the employer, including reasonable codes of conduct and requirements in relation to occupational health and safety and acceptable use of ICT resources;

(ii) not hinder, obstruct or prevent eligible workers exercising their rights to freedom of association.

(b) When exercising any entitlements under this clause, a workplace delegate must, other than in the reasonable exercise of those entitlements:

(i) comply with their duties and obligations as an employee; and

(ii) not hinder, obstruct or prevent the normal performance of work.

(c) This clause does not require the employer to provide a workplace delegate with access to electronic means of communication in a way that provides individual contact details for eligible workers.

(d) This clause does not require an eligible worker to be represented by a workplace delegate without the worker's agreement.

**34. Consultation about major workplace change and rosters**

**Consultation about major workplace change**

34.1 If an employer makes a definite decision to make major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must:

(a) give notice of the changes to all employees who may be affected by them, and if an employee nominates a union to represent them, the union; and

(b) discuss with affected employees and their union (if nominated):

(i) the introduction of the changes; and

(ii) their likely effect on employees; and

(iii) measures to avoid or minimise the adverse effects of the changes on employees; and

(c) commence discussions as soon as practicable after a definite decision has been made.

34.2 For the purposes of the discussion under clause 34.1(b), the employer must give in writing to the affected employees and the union (if nominated) all relevant information about the changes including:

(a) their nature; and

(b) their expected effect on employees; and

(c) any other matters likely to affect employees.

34.3 Clause 34.2 does not require an employer to disclose any confidential information if its disclosure would be adverse to the employer's interests.

34.4 The employer must promptly consider any matters raised by the employees or their union (if nominated) about the changes in the course of the discussion under clause 34.1(b).

34.5 In this clause **significant effects**, on employees, includes any of the following:

(a) termination of employment; or

(b) major changes in the composition, operation or size of the employer's workforce or in the skills required; or

(c) loss of, or reduction in, job or promotion opportunities; or

(d) loss of, or reduction in, job tenure; or

(e) alteration of hours of work; or

(f) the need for employees to be retrained or transferred to other work or locations; or

(g) job restructuring.

34.6 Where this award makes provision for alteration of any of the matters defined at 34.5, the alteration is taken not to have significant effect.

**Consultation about changes to rosters or hours of work**

34.7 (a) This subclause applies if an employer proposes to change the regular roster or ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic or unpredictable.

(b) The employer must consult with any employees affected by the proposed change and if an employee nominates a union to represent them, the union.

(c) For the purpose of the consultation, the employer must:

(i) provide to the employees and the union (if nominated) information about the proposed change (for example, information about the nature of the change and when it is to begin); and

(ii) invite the employees to give their views about the impact of the proposed change on them (including any impact on their family or caring responsibilities) and also invite the union (if nominated) to give their views about that impact.

(d) The employer must consider any views given under clause 34.7(c)(ii).

(e) Clause 34.7 is to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.

35. **Dispute resolution**

35.1 The following procedure applies to any question, dispute or difficulty arising under this award.

35.2 The parties to the question, difficulty or dispute must first try to resolve the dispute at the workplace through discussion between the employee or employees concerned and the relevant supervisor.

35.3 If the dispute is not resolved through discussion as mentioned in clause 35.2, the parties to the dispute must then try to resolve it in a timely manner at the workplace through discussion between the employee or employees concerned and more senior levels of management, as appropriate.

35.4 If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses 35.2 and 35.3, the dispute may be referred to the Commission, provided that the persons involved in the question, dispute or difficulty must confer among themselves and make reasonable attempts to resolve questions, disputes or difficulties before taking those matters to the Commission.

35.5 A party to the question, dispute or difficulty may appoint a person, organisation or association to support and/or represent them in any discussion or process under this clause.

35.6 While procedures are being followed under this clause in relation to a dispute:

(a) work must continue in accordance with this award; and

(b) an employee must not unreasonably fail to comply with any direction given by the employer about performing work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

35.7 This clause is subject to any applicable work health and safety legislation.

**36. Dispute resolution procedure training**

36.1 An eligible employee representative who will be involved in dispute resolution will be allowed to be trained in order to assist the employee to settle disputes as per this clause. The employee must arrange for suitable training and apply in writing with a minimum of 6 weeks' notice (or less amount by agreement) for up to 5 days leave with pay each calendar year, non-cumulative.

36.2 The notice to the employer must include details of the type, content and duration of the course to be attended. The employer must have a reasonable opportunity to:

(a) consult with the eligible employee representative and/or the training provider regarding dispute resolution training; and

(b) participate in the development of the dispute resolution training course.

36.3 Leave of absence granted pursuant to this clause will count as service for all purposes.

36.4 The time of taking leave will be arranged so as to minimise any adverse effect on the employer's operations.

36.5 For the purpose of determining the entitlement of employee representatives to dispute resolution procedure training leave, an **eligible employee representative** is an employee who is a shop steward, a delegate, or an employee representative duly elected or appointed by the employees in an enterprise or workplace generally or collectively for all or part of an enterprise or workplace for the purpose of representing those employees in the dispute resolution procedure.

**Part 8 - Termination of Employment and Redundancy**

**37. Termination of employment**

37.1 **Notice of termination by an employer – full-time and part-time employees**

(a) An employer must give the employee notice of termination in accordance with the following table.

**Period of notice**

| Employee's period of continuous service with the employer at the end of the day the notice is given | Period of notice |
|---|---|
| Not more than 1 year | 1 week |
| More than 1 year but not more than 3 years | 2 weeks |
| More than 3 years but not more than 5 years | 3 weeks |
| More than 5 years | 4 weeks |

(b) An employee who at the time of being given notice is over 45 years of age and who at the date of termination has completed 2 years' continuous service with the employer, is entitled to one week's notice in addition to the notice prescribed in clause 37.1(a).

(c) Payment in lieu of the notice prescribed in clauses 37.1(a) and 37.1(b) must be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu.

(d) 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:

(i) the employee's ordinary hours of work (even if they are not standard hours);

(ii) the amounts ordinarily payable to the employee in respect of those hours, including for example, allowances, loadings and penalties; and

(iii) any other amounts payable under the employee's contract of employment.

(e) The period of notice in this subclause does not apply to those employees who are exempt from receiving notice under Subdivision A of Division 11 of Part 2-2 of the *Fair Work Act 2009* (Cth), as amended from time to time.

(f) For the purpose of this subclause an employee's continuity of service has the same meaning as prescribed in section 22 of the *Fair Work Act 2009* (Cth).

37.2 **Notice of Termination by Employee – full-time and part-time employees**

The notice of termination required to be given by an employee is the same as that required of an employer, except that there is no additional notice based on the age of the employee concerned

37.3 **Job search entitlement**

(a) Where an employer has given notice of termination to an employee, the employee must be allowed time off without loss of pay of up to one day each week for the purpose of seeking other employment. The time off is to be taken at times that are convenient to the employee after consultation with the employer.

(b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or they shall not receive payment for the time absent. For this purpose, a statutory declaration will be sufficient.

37.4 **Transport of employees on termination of employment**

Where means of transport to the bush or bush sawmills is provided by the employer, on the termination of service of an employee, the employee, the employee's family and goods and chattels will be transported within 48 hours of receipt by the employer of notice that the transport is required, and the employee will be reimbursed the cost of the transport if not provided by the employer. An employee will not be entitled to free transport on a route along which the public is regularly transported for payment, however the employee will not be charged a rate on the route in excess of that regularly charged to the public.

37.5 **Casual employees**

An employer or employee may terminate a casual employment arrangement with one hour's notice.

37.6 **Statement of employment**

An employer must, in the event of termination of employment, provide upon request to the employee who has been terminated, a written statement specifying the period of employment and the classification or type of work performed by the employee.

**38. Redundancy**

38.1 **Consultation before terminations**

(a) Where an employer has made a decision that the employer no longer wishes the job the employee has been doing to be done by anyone and that decision may lead to termination of employment, the employer must consult with the employees directly affected and, if an employee nominates a union to represent them, the union.

(b) The consultation must take place as soon as is practicable and cover, amongst other matters, the reasons the proposed terminations are required, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any terminations on the employees.

(c) For the purposes of the consultation the employer must, as soon as practicable, provide in writing to the employees concerned and, if an employee nominates a union to represent them, the union, all relevant information about the proposed terminations, including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of employees normally employed and the period over which the terminations are likely to be carried out.

(d) The employer is not required to disclose confidential information the disclosure of which would be adverse to the employer's interests.

38.2 **Transfer to lower paid duties**

(a) Where an employee is transferred to lower paid duties for reasons of redundancy, the employee is entitled to the same period of notice of transfer they would have been entitled to if they had been terminated.

(b) The employer may, at the employer's option, make payment in lieu of notice for an amount equal to the difference between the former amounts the employer would have been liable to pay and the new lower amount the employer is liable to pay the employee for the number of weeks of notice still owing.

(c) The amounts must be worked out on the basis of:

(i) the ordinary working hours to be worked by the employee; and

(ii) the amounts payable to the employee for the hours including for example, allowances, loading and penalties; and

(iii) any other amounts payable under the employee's contract of employment.

38.3 **Severance pay**

(a) **Employers with 15 or more employees**

In addition to the period of notice provided in clause 37 – Termination of employment, and subject to any further order of the Commission, employers who employ 15 or more employees must pay the following amount of severance to any full-time or part-time employee whose employment is terminated by reason of redundancy.

| **Period of continuous service** | **Severance pay** |
|---|---|
| Less than 1 year | nil |
| 1 year and less than 2 years | 4 weeks' pay |
| 2 years and less than 3 years | 6 weeks' pay |
| 3 years and less than 4 years | 7 weeks' pay |
| 4 years and less than 5 years | 8 weeks' pay |
| 5 years and less than 6 years | 10 weeks' pay |
| 6 years and less than 7 years | 11 weeks' pay |
| 7 years and less than 8 years | 13 weeks' pay |
| 8 years and less than 9 years | 14 weeks' pay |
| 9 years and less than 10 years | 16 weeks' pay |
| 10 years and over | 12 weeks' pay |

(b) **Employees with fewer than 15 employees**

In addition to the period of notice provided in clause 37 – Termination of employment, and subject to any further order of the Commission, employers who employ fewer than 15 employees must pay the following amount of severance to any full-time or part-time employee whose employment is terminated by reason of redundancy.

| **Period of continuous service** | **Severance pay** |
|---|---|
| Less than 1 year | nil |
| 1 year and less than 2 years | 4 weeks' pay |
| 2 years and less than 3 years | 6 weeks' pay |
| 3 years and less than 4 years | 7 weeks' pay |
| 4 years and over | 8 weeks' pay |

(c) "Weeks' pay" means the ordinary time rate of pay for the employee concerned. Provided that this rate excludes:

(i) overtime;

(ii) penalty rates;

(iii) disability allowances;

(iv) shift allowances;

(v) special rates;

(vi) fares and travelling time allowances;

(vii) bonuses; and

(viii) any other ancillary payments of a like nature.

(d) Severance payments will not exceed the amount which the employee would have earned if employment with the employer had proceeded to the employee's normal retirement date.

(e) For the purpose of this clause continuity of service will not be broken on account of:

(i) any interruption or termination of the employment by the employer if the interruption or termination has been made with the intention of avoiding the obligations of this clause in respect of leave;

(ii) any absence from work where leave has been granted by the employer; or

(iii) any absence with reasonable cause, if the employee can supply sufficient proof.

Provided that in the calculation of continuous service any time an employee is absent from work, except time for which the employee is entitled to claim paid leave, will not count as time worked.

(f) Service by an employee with a business which has been transferred from one employer to another will also constitute continuous service for the purpose of this clause, provided the employee's service has been deemed continuous in accordance with Part II, Division 3 of the *Long Service Leave Act 1958*.

38.4 **Employee leaving during notice**

Where an employee is terminated because of redundancy, the employee may resign from their employment during the period of notice and, if so, will be entitled to the same benefits and payments under this clause as they would be if they had remained with the employer until the expiry of the notice. However, in this situation, the employee will not be entitled to payment in lieu of notice in accordance with clause 37 – Termination of employment.

38.5 **Alternative employment**

An employer, in a particular redundancy case, may apply to the Commission to have the severance payment varied if the employer obtains acceptable alternative employment for an employee.

38.6 **Transmission of business**

(a) The provisions of this clause are not applicable where a business is transferred from one employer to another employer in any of the following circumstances:

(i) Where the employee accepts employment with the new employer which recognises the period of continuous service which the employee had with the old employer (and any other prior employers for that business) to be continuous service of the employee with the new employer; or

(ii) Where the employee rejects an offer of employment with the new employer:

(aa) in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the old employer; and

(bb) which recognises the period of continuous service which the employee had with the old employer (and any other prior employers for that business) to be continuous service with the new employer.

(b) The Commission may vary the provisions of clause 38.6(a) if it is satisfied that it would operate unfairly in a particular case.

38.7 **Notice to Centrelink**

Where a decision has been made to terminate employees due to redundancy, the employer must notify Centrelink as soon as possible giving all relevant information about the proposed terminations, including a written statement of the reasons for the terminations, the number and categories of the employees likely to be affected, the number of employees normally employed and the period over which the terminations are intended to be carried out.

38.8 **Employees exempted**

(a) This clause does not apply where employment is terminated as a consequence of conduct that justifies instant dismissal or to casual employees.

(b) Apart from the requirement to consult with affected employees in accordance with clause 38.1, this clause does not apply to apprentices, trainees, probationary employees or employees engaged for a specific period of time or for a specified task or tasks.

38.9 **Incapacity to pay**

An employer in a particular redundancy case may apply to the Commission to have the severance pay varied on the basis of the employer's incapacity to pay.

**Part 9 – Named Parties**

**39. Named parties to the award**

Union Party

The Australian Workers' Union, West Australian Branch, Industrial Union of Workers.

**Schedule A - Classification Definitions - General Timber Stream**

**A.1 Level 2 (Adult Minimum Wage)**

**Level 2 – employee new to industry**

The following provisions apply to a Level 2 employee who is new to the industry.

A.1.1 **General**

(a) A new employee at this level:

(i) will complete a program of induction training;

(ii) will complete a program of skills training to meet the requirement of being able to competently perform work within the scope of Level 2; and

(iii) where required by statute or regulation will obtain the necessary licenses, permits or other authorisations.

(b) **General description of skills required**

A new Level 2 employee will exercise the following skills:

(i) the ability to follow instructions;

(ii) manual handling skills; and

(iii) the ability to follow standards and procedures.

(c) **General description of knowledge required**

A new Level 2 employee will develop the following:

(i) broad knowledge of the industry sector and operations at the enterprise level;

(ii) broad understanding of all functions carried out in the enterprise;

(iii) understanding of health and safety regulations and procedures relevant to the level;

(iv) an understanding of the employment conditions set out in the award, and enterprise policies and procedures relating to conditions;

(v) knowledge of the resources used in the sector; and

(vi) knowledge of the range and uses of basic hand tools.

(d) **Induction training**

Induction training will cover the following:

(i) basic work health and safety;

(ii) first aid;

(iii) conditions of employment; and

(iv) organisation policies and objectives.

(e) **Level of responsibility**

New Level 2 employees will work under direct supervision at all times and will be expected to exercise minimal judgement.

**Level 2 - competent**

A.1.2 **General**

The following provisions apply to a competent Level 2 employee.

(a) At this level an employee:

(i) will have a broad general knowledge of the industry and the functions carried out in the workplace;

(ii) works under direct supervision either individually or in a team environment;

(iii) understands and undertakes basic quality control/assurance procedures including the ability to recognise basic quality deviations/faults;

(iv) in the harvesting forest management sector, understands and utilises basic environmental procedures in accordance with relevant forest codes of practice;

(v) understands and utilises basic process control procedures;

(vi) may assist skilled trainers in the provision of on-the-job training; and

(vii) should be given the opportunity to participate in ongoing skills training to enable progress to Level 3.

(b) **Indicative tasks**

An employee at this level will perform any or all of the tasks listed below and after suitable training, will be expected to operate flexibly between work stations at this level.

(i) **Harvesting sector**

- landing builder or repairer;
- operates a chainsaw at a basic level ancillary to normal duties;
- crosscut and trim logs on the landing/dump;
- segregation of logs and sleepers;
- loader trimming and cutting logs in pine plantations;
- loader or turner sleepers over 1.5 metres long;
- pulpwood cutter and/or splitter;
- spar or plank road builder;
- woodcutter for charcoal or firewood; and
- log measurer.

(ii) **Milling and processing sector**

- sorts, stacks and binds materials;
- uses selected hand tools;
- racks timber (manually or mechanically);
- assembles boxes and crates;
- grades round poles and peels posts for preservation;
- operates manual transfer equipment;
- produces beams using nail plates;
- operates a range of basic pre-set wood machines as prescribed within the current definitions of the award appropriate to this level;
- assists in preparing timber orders by selecting pre-cut timber from stocks;
- operates chainsaw at a basic level ancillary to normal duties;
- watchperson who does not attend boilers; and

- greases or oils any engine, machinery or shafting.

(iii) **Panel products sector**

- uses selected hand tools;
- centre feeder and/or core feeder and/or coverlayer and/or assistant in glue spreading;
- veneer joiner and/or repairer where the work is done by hand with less than one year's experience;
- tapeless veneer joining machine with less than one year's experience;
- operator on power-operated veneer edge truing or trimming machine (saw, cutter block or guillotine) where the machinist is never required to set up the machine nor to grind the knives and cutters but is merely an operator or feeder of the machine;
- assembling veneers with film glue;
- plywood and veneer grader grading into 3 or more classes;
- flat press operators and assistants not elsewhere specified;
- operates manual transfer equipment;
- assistant to lathe or slicer operator;
- plywood scarfing machine where the machinist is never required to set up the machine nor to grind the knives and cutters but is merely an operator;
- assistant to veneer kiln drier or re-drier operator who operates a drying kiln;
- other operators of immunising plant;
- assistant on veneer clipper machine;
- taping and glue thread machinist with less than one year's experience;
- operator of plywood trimming machine using parallel saws;
- belt sander in sanding of plywood faced with rotary peel veneer;
- edge gluing veneer by hand or roller for tapeless joining machine;
- guillotine operator not elsewhere included;
- feeder and/or assistant on automatic core assembling machine;
- operator of folding machine; and
- glue spreading spray gun operator.

(iv) **Manufacturing sector**

- assists in assembling wall frames and roof trusses;
- sorts, stacks and binds materials;
- uses and maintains selected hand tools;
- racks timber (manually or mechanically);
- assembles boxes and crates or trellis;
- primes and paints;
- operates door and/or panel trimming machines where the operator is not required to set up the machine nor to grind the knives and cutters and operates punching and notching machines;
- operates manual and motorised transfer equipment while holding appropriate permits/licences/certification;
- produces beams using nail plates;
- points posts;
- operates a range of basic pre-set wood machines as prescribed within the current definitions of the award appropriate to this level;
- operates chainsaw at a basic level ancillary to normal duties;
- operates cross cut and bench saws in box and case factories;
- measures and records sawn timber; and
- assists sawyer to change bandsaw.

(v) **Merchandising sector**

- sorts, stacks and binds materials;
- uses and maintains selected hand tools;
- operates a chainsaw at a basic level ancillary to normal duties;
- assists sawyer to change bandsaw;
- operates manual and motorised transfer equipment;
- assists in assembling wall frames and roof trusses;
- primes and paints; and
- operates a range of basic pre-set wood machines as prescribed within the current definitions of the award appropriate to this level.

(c) **General description of skills required**

(i) manual handling skills;

(ii) the ability to make judgements visually of size and shape;

(iii) in the panel products sector, the ability to make judgements by measurement coupled to quality control procedures;

(iv) ability to operate basic, pre-set cutting equipment;

(v) ability to use hand power tools safely; and

(vi) problem solving skills.

(d) **General description of knowledge required:**

(i) basic knowledge of timber use and value;

(ii) in the harvesting forest management sector, awareness and understanding of relevant Forest Codes of Practice;

(iii) in the panel products sector, basic knowledge of timber, veneer and plywood use and value;

(iv) awareness of work health and safety procedures for pre-set cutting equipment, and other health and safety procedures; and

(v) knowledge of the functions and use of hand tools and base technology saws/machine/equipment for this level.

(e) **Level of responsibility**

An employee at this level will be:

(i) responsible for identifying and solving minor problems which occur in the work process the Level 2 worker is directly responsible for;

(ii) required to work to predetermined standards and outcomes; and

(iii) responsible for keeping own work area safe and clean.

(f) **Promotional criteria**

An employee remains at this level until capable of effectively performing through assessment or appropriate certification the tasks required of the next level so as to enable progress as a position becomes available.

**A.2 Level 3 (relativity 87.4%)**

A.2.1 **General**

(a) An employee at this level performs work above and beyond the skills of an employee at Level 2 and is competent to perform work within the scope of this level.

At this level an employee:

(i) is responsible for the quality of own work subject to general supervision;

(ii) works under general supervision either individually or in a team environment;

(iii) exercises discretion within own level of skills and training;

(iv) operates flexibly between work stations and machines;

(v) may assist skilled trainers in the provision of on-the-job training;

(vi) in the harvesting forest management sector, understands and utilises environmental control procedures in accordance with relevant Forest Codes of Practice; and

(vii) should be given the opportunity to participate in ongoing skills training to enable progression to Level 4.

(b) **Indicative tasks**

An employee at this level will perform any or all of the tasks listed below and will be expected after suitable training to operate flexibly between work stations at this level.

(i) **Harvesting and forest management sector**

- operate mechanical debarking equipment;
- operate chipping machines;
- operate log splitting machine;
- offsider to logging tractor or bulldozer driver;
- faller - pine plantation;
- pole handler; and
- operate and maintain chainsaws.

NOTE: Employees must hold appropriate licence/certification.

(ii) **Milling and processing sector**

- preliminary processing of logs;
- operates and maintains mechanical debarking equipment;
- demonstrates basic keyboard skills;
- assembles pallets, boxes and crates;
- controls the flow of materials through mill;
- operates, resets and maintains planing machines;
- operates recovery bench, breaking down rig (no sizing mode), bench controls;
- operates and maintains drilling machines, static press, snatcher, tilt hoist;

- operates and maintains chipping machines;
- assists breaking down sawyer;
- sets up single multi-rip saws, band resaw and circular saws;
- prepares preservation solution and appropriate paperwork at the appropriate level;
- operates and maintains chainsaws to a higher level than Level 2;
- prepares timber orders and tallies timber;
- where the employee has completed a recognised grading course, grades timber visually according to quality;
- operates pulpwood processing equipment;
- laminates, fabricates or assembles timber, plywood and veneers;
- assists a tradesperson to carry out their duties;
- sets up and operates a range of wood machines as prescribed within the current definitions of the award appropriate to this level;
- operates waste chipper/hogger;
- sorts on boardline or similar process;
- operates traverser machine;
- tails out moulder, planer or equivalent machinery and pulls out behind sawbenches;
- operates docking and/or trim saws to eliminate defects;
- attends a boiler;
- a greaser or oiler who under the supervision of an engine driver stops or starts an engine or engines, but does not include any greaser or oiler who does so only in cases of necessity or emergency;
- operates pneumatic tyred tractor not using power operated attachments 35 kW brake power and under; and
- operates steam engine or suction gas and other internal combustion engine under 35 kW brake power.

(iii) **Panel products sector**

- centre layer and/or corelayer and/or coremaker building up solid timber and/or veneer centres;
- veneer joiners and/or repairers where the work is done by hand with one year's experience;
- operator on power-operated veneer edge truing or trimming machine (cutter block or guillotine) where the machinist has not been required to grind the knives and cutters but is at any time required to set up the machine and then only from the time the employee is required to act;
- operator of hot press who sets the pressure and temperature but is not required to calculate areas and pressures and control temperatures;
- operator of rotary veneer peeling lathe or slicing veneer machine;
- plywood scarfing machinist where the machinist has not been required to grind the knives and cutters, but is at any time required to set up the machine and then only from the time the employee is required to do so;
- veneer kiln drier heat plant operator or re-drier operator who operates a drying kiln drier or re-drier or who may be required to make temperature readings and records;
- veneer clipper operator in conjunction with rotary peeling lathe or slicing machine;
- operates and maintains mechanical debarking equipment including grinding and sharpening blades;
- taping glue thread, edge glued machinist with more than one year's experience;
- band sawyer using band saw up to 90 cm capacity, rough cutting and trimming;
- operator of the belt sander in sanding of plywood faced with fancy sliced veneer;
- operator employed on gluing jigs and/or cramps for the laminating fabrication or assembling of veneers, timber and plywood;
- operator of power-operated veneer edge truing or trimming machine saw (saw type) where the operator is required to set up and sharpen the saw;
- veneer splicing machine; and
- adhesive solution mixer where test control procedures are not required.

(iv) **Manufacturing sector**

- assembles cable drums;
- demonstrates basic keyboard skills;
- assembles pallets, boxes and crates appropriate to this level;
- assembles wall and roof trusses appropriate to this level;
- assists in setting up jig for standard 'A' roof trusses;
- sets up and operates a range of saws including docking saws appropriate to this level;
- tails out, checks timber and docks out faults;
- sets up and operates a range of wood machines as prescribed in the current definitions of the award appropriate to this level;
- surfaces floors;
- bends timber by hand and machine;
- assists in preparation of logs in log cabin manufacture;

- operates spray painting machine;
- operates and maintains chainsaws to a higher level than Level 2;
- prepares timber orders and tallies timber;
- where the employee has completed a recognised grading course, grades timber visually according to quality;
- operates door and/or panel machines appropriate to this level;
- assembler;
- assistant or other operator to a laminated beam maker;
- laminates, fabricates or assembles timber, plywood and veneers;
- assists a tradesperson to carry out duties;
- removes and replaces saw blades on dresser;
- operates traverser machine;
- tails out moulder, planer or equivalent machinery and pulls out behind sawbenches;
- operates docking and/or trim saws to eliminate defects;
- operates but does not set up: a computerised automatic 2 dimensional dividing and squaring saw, double ended tenoner, a multi-headed boring machine with 3 or more bits, v-grooving machine, vinyl or melamine laying machine, v-line folding machine, longitudinal grooving machine, edgebander and/or double edgebander and any programmed and/or computerised high output wood machine not mentioned herein;
- spray hand engaged on finishing coats;

(v) **Merchandising sector**

- demonstrates basic keyboard skills;
- size and straighten timber to feed dresser;
- tails out, moulder, planer or equivalent machinery and pulls out behind sawbenches;
- checks timber and operates docking and/or trim saw to eliminate defects;
- sets up and operates a range of wood machines as prescribed within the current definitions of the award appropriate to this level;
- sets up and operates a range of saws including docking saws appropriate to this level;
- where the employee has completed a recognised grading course, grades timber visually according to quality;
- prepares timber orders and tallies timber;
- assists a tradesperson to carry out duties;
- assembles wall and roof trusses appropriate to this level;
- assists in setting up jig for standard 'A' roof trusses;
- responds to customer routine enquiries and lays out stock for delivery driver; and
- removes and replaces saw blades on dresser.

(c) **General description of skills required**

In addition to those outlined in Level 2:

(i) ability to interpret and follow plans and procedures;

(ii) problem solving skills;

(iii) ability to operate machinery/saws/equipment according to prescribed procedures and standards appropriate to this level;

(iv) ability to grade timber according to obvious defects and to exercise quality control;

(v) in the panel products sector, the ability to grade timber veneer and plywood according to obvious defects and to exercise quality control; and

(vi) ability to record in writing simple information relating to lengths and species of timber.

(d) **General description of knowledge required**

In addition to that outlined in Level 2:

(i) knowledge of commonly used timbers, their value, and what products they can be used for;

(ii) in the panel products sector, knowledge of commonly used timbers, veneers;

(iii) in the harvesting forest management sector, awareness and understanding of relevant Forest Codes of Practice;

(iv) knowledge of storage, stacking and drying technique;

(v) knowledge of the functions and use of saws, machines and equipment for this level;

(vi) knowledge of health and safety procedures/regulations appropriate to this level;

(vii) knowledge of the industry standards for tasks performed at this level; and

(viii) knowledge of quality control standards appropriate to this level.

(e) **Level of responsibility**

(i) An employee at this level will operate under general direction for the whole job. Individual tasks will be completed according to clear, set procedures and standards. An employee will be responsible for the quality of work within these limits.

(ii) The employee will also be responsible for identifying and solving problems which occur in the work process the Level 3 worker is directly responsible for, and for identifying and reporting problems outside own work process.

(f) **Promotional criteria**

An employee remains at this level until capable of effectively performing through assessment or appropriate certification the tasks required of the next level so as to enable progress as a position becomes available.

**A.3 Level 4 (relativity 92.4%)**

A.3.1 **General**

(a) An employee at this level performs work above and beyond the skills of an employee at Level 3 and is competent to perform work within the scope of this level.

At this level an employee:

(i) works from complex instructions and procedures;

(ii) may assist skilled trainers in provision of on-the-job training;

(iii) in the harvesting forest management sector, ensures application of sound forest environmental practices in accordance with relevant Forest Codes of Practice;

(iv) works in a team environment or works individually under general supervision;

(v) is responsible for assuring the quality of their own work; and

(vi) should be given the opportunity to participate in ongoing skills training to enable progress to Level 5.

(b) **Indicative tasks**

An employee at this level will perform any or all of the tasks listed below or as described for machinist B grade. They will be expected after suitable training to operate flexibly between work stations at this level.

(i) **Harvesting and forest management sector**

- operation of mobile equipment appropriate to this level up to and including 13 500 kg;
- operator of tree harvester;
- operator of bucker-limber-buncher machine (logma);
- faller who works alone, selects trees and sharpens own saws;
- faller other;
- operates and maintains chipping machines;
- pole dresser;
- performs non-trade carpentry functions; and
- spotter at spot mills.

NOTE: Employees must hold appropriate licences/certification to operate machinery.

(ii) **Milling and processing sector**

- maintains and fault finds on plant and equipment (including lubrication);
- maintains mill buildings;
- performs non-trade carpentry functions;
- operates and maintains mobile equipment (multi-skilled operator-loader, forklift, crane, mobile crane with lifting capacity not exceeding 20 tonnes) while holding appropriate licenses/certifications;
- demonstrates intermediate keyboard skills including CNC operations in saws and/or machines where the operator controls one process only;
- sets up, monitors and operates twin edgers, single and double bandsaws, bench saw not cutting to size;
- operates optimising docker (computerised) and finger jointer;
- where the employee has completed a recognised stress grading course, grades timber (includes mechanical stress grader);
- undertakes primary conversion of logs (no sizing);
- analyses log moisture content and selects preservation method;
- prepare preservation solution and appropriate paperwork at the appropriate level;
- loads/unloads cylinder and monitors faulty operation at the appropriate level;
- laminated beam maker—responsible for setting up machine, setting out product and operating machine other than on a continuous basis;
- selects, grades and marks materials for re-manufacture and from stock for filling orders, including tallying, measuring and checking of complete orders and compiling for dispatch;
- storeperson including: inventory and stores control, VDU operation and use of other electronic equipment, e.g., scanner or using intermediate keyboard skills to carry out stores work, storing and

packing of goods and materials in accordance with appropriate procedures and/or regulations; preparation and receipt of appropriate documentation including liaison with suppliers; allocating and retrieving goods from specific warehouse areas; periodic stock-checks;

- gatekeeper in control of movement of persons, vehicles, stock and material at gatehouses and similar locations including vehicles carrying goods of any description, to ensure that the quantity and description of those goods is in accordance with the requirements of the relevant document/gate pass; utilising monitoring and operating computer based systems requiring data input, or other advanced monitoring system;
- operates and maintains hydraulic debarking equipment;
- attends boiler/kilns as required and responsible for temperature readings and records, including a watchperson who attends boilers;
- sharpens saws (with or without tensioning), chainsaws, hand tools, knives, grinds and sharpens debarker/chipper blades and operates punching press for saws (without tipping);
- operates and maintains mechanical stacking and sorting equipment;
- attends to 2 or more boilers or 2 or more suction gas generators, or one boiler the evaporation capacity of which attributed thereto by the maker exceeds 5 000 kg but less than 45 000 kg of steam per hour, or one gas generator supplying a total engine load capacity attributed thereto by the maker of not less than 740 kW;
- operates suction gas and other internal combustion engine 35 kW brake power or over; and
- operates any of the following items of mechanical plant: crawler tractor using power operated attachments up to 8000 pounds shipping weight, excavator up to and including 0.5 cubic metre capacity, grader, power operated below 35 kW brake power, loaders, front end and overhead, over 2.25 cubic metres up to and including 4.5 cubic metres, pneumatic tyred tractor using power operated attachments in excess of 110 kW brake power.

(iii) **Panel products sector**

- maintains and fault-finds on plant and equipment (including lubrication);
- adhesive solution mixer where the employee is required to mix, test, control and check in operation and is responsible for its proper use;
- veneer matcher responsible for selecting and setting out fancy sliced veneers to design or specification;
- operator of power-driven veneer edge truing or trimming machine (cutter block or guillotine) where the operator is required to grind the knives and cutters and set up the machine;
- employee in charge of hot process who sets pressures and temperatures and who is responsible for calculating areas and pressures and controlling temperatures and operators of specialty presses;
- rotary veneer peeling lathe or slicing machine operator who sharpens knives and/or sets up the machine;
- sharpens lathe knives, pressure bars, clipper blades and chipper;
- plywood scarfing machinist where the machinist is ever required to set up the machine and grind the knives and cutters and then only from the time as the employee is required to do so;
- employee in charge of veneer kiln heat plant operator or re-drier (plate roller or conveyor type) who is required to adjust temperatures, humidity, conditions, calculate moisture contents, test and control;
- immunising plant operator who is required to control temperatures, preservative contents in solution and analyse treated timbers and/or veneer samples;
- operator of torwegge or similar automatic core assembling machine who is required to set up and adjust the machine and is fully responsible for the operation of the machine;
- employee in charge of paper honeycomb making machine;
- operator in graining machine where the operator is required to set up the machine and sharpen the blades;
- operates and maintains mobile equipment appropriate to this level;
- demonstrates intermediate keyboard skills including CNC operations in saws and/or machines where the operator controls one process only; and
- operates and maintains hydraulic debarking equipment.

(iv) **Manufacturing sector**

- maintains and fault-finds on plant and equipment (including lubrication);
- operates high frequency machine and edge band as a gluer;
- operates and maintains mobile equipment appropriate to this level while holding appropriate licenses/certifications;
- demonstrates intermediate keyboard skills including CNC operations in saws/and or machines where the operator controls one process only;
- sets up, monitors and operates twin edgers, single and double bandsaws, circular saws;
- operates optimising docker (computerised);
- where the employee has completed a recognised grading course, grades timber (both quality and stress);
- assembles wall frames and roof trusses appropriate to this level including operation and

responsibility for wall frame fabricating machines manually controlled;

- sharpens saws (with or without tensioning), chainsaws, hand tools, knives and dresser blades and operates punching press for saws (without tipping);
- bends timber using own forms and equipment and operates machine;
- assembles prepared pieces of timber (as defined);
- glazes;
- operates log preparing machine and fabricates modules—log cabin manufacture;
- makes knives from beginning to end as a sawmaker;
- operates gluing jigs for laminating veneers or timber;
- laminated beam maker—responsible for setting up machine, setting out product and operating machine other than on continuous process;
- selects, grades and marks materials for re-manufacture and from stock for filling orders, including tallying, measuring and checking of complete orders and compiling for dispatch;
- operates and maintains mechanical stacking and sorting equipment; and
- cricket bat operations—spindle machinist and or wood turner with handles fitted by hand.

(v) **Merchandising sector**

- maintains and fault finds on plant and equipment (including lubrication);
- operates mobile equipment appropriate to this level while holding appropriate licences/certifications;
- demonstrates intermediate keyboard skills including CNC operations in saw/and or machines where the operator controls one process only;
- where the employee has completed a recognised grading course, grades timber (both quality and stress);
- selects grades and marks materials for re-manufacturing and from stock for filling orders including tallying, measuring and checking of complete orders and compiling for dispatch;
- collects payment for goods from customer;
- maintains delivery schedules;
- sets up, monitors and operates band or circular saw;
- assembles wall frames and roof trusses appropriate to this level including operation and responsibility for wall frame fabricating machines manually controlled; and
- sharpens saws (with or without tensioning) chainsaws, hand tools, knives, grinds and sharpens debarker/chipper blades and operate punching press for saws (without tipping).

(c) **General description of skills required**

In addition to that outlined in Level 3:

(i) ability to set up and adjust machines to produce a specific product;

(ii) ability to drive and operate mobile machinery;

(iii) ability to complete simple clerical tasks;

(iv) in the harvesting forest management sector, awareness and understanding of relevant Forest Codes of Practice;

(v) problem solving skills;

(vi) ability to select suitable methods for completing tasks and plan the order in which to complete them; and

(vii) ability to assess timber, or timber veneer and plywood, for cutting giving regard to quality and the purpose it will be used for.

(d) **General description of knowledge required**

In addition to that outlined in Level 3:

(i) knowledge of saws, machinery and equipment used at this level;

(ii) knowledge of health and safety legislation and procedures appropriate to this level; and

(iii) knowledge of the industry standards for tasks performed at this level.

(e) **Level of responsibility**

(i) An employee at this level will operate under general direction for the whole job. In completing individual tasks an employee will work to set standards. An employee will be responsible for the quality of work in own area.

(ii) The employee will also be responsible for identifying and solving problems which occur in the work process the Level 4 worker is directly responsible for, and in conjunction with others for identifying and solving problems in the work area.

(f) **Promotional criteria**

An employee remains at this level until capable of effectively performing through assessment or appropriate certification the tasks required of the next level so as to enable progress as a position becomes available.

**A.4 Level 5 (relativity 100%)**

A.4.1 **General**

(a) An employee at this level may be employed under one of the following categories:

(i) Timber tradesperson; or

(ii) Harvesting and forest management sector, Milling and processing sector, Manufacturing sector or Merchandising sector employee.

(b) An employee at this level works above and beyond an employee at Level 4 and is competent to perform work within the scope of this level.

(c) At this level an employee:

(i) understands and applies quality control techniques;

(ii) exercises good interpersonal and communication skills;

(iii) exercises keyboard skills at a level higher than Level 4;

(iv) exercises discretion within the scope of this level;

(v) performs work under limited supervision either individually or in a team environment;

(vi) in the harvesting sector applies skills acquired through successful completion of requisite certification relating to plant and equipment used in forest harvesting;

(vii) in the harvesting sector ensures application of sound forest environmental practices in accordance with forest codes of practice;

(viii) is able to inspect products and/or materials for conformity with established operational standards; and

(ix) conducts training in conjunction with a skilled trainer as required.

A.4.2 **Timber tradesperson Level 5**

(a) A Timber tradesperson Level 5 or machinist A grade is an employee who holds a Trade Certificate or Tradespersons Rights Certificate as a tradesperson in one of the classes identified appropriate to the sector in which they work and is able to exercise the skills and knowledge of that trade and may be required to supervise other employees.

(i) **Milling and processing sector trades**

- Timber tradesperson—sawdoctor;
- Timber tradesperson—wood machinist; and
- Timber tradesperson—millwright.

(ii) **Merchant sector trades**

- Timber tradesperson—grinder;
- Timber tradesperson—wood machinist;
- Timber tradesperson—wood turner; and
- Timber tradesperson—sawdoctor.

(iii) **Manufacturing sector trades**

- Timber tradesperson—grinder;
- Timber tradesperson—sawdoctor;
- Timber tradesperson—wood machinist;
- Timber tradesperson—wood turner; and
- Timber tradesperson—carpenter/joiner;

(b) **Indicative tasks**

A Timber tradesperson Level 5 at this level will perform any or all of the tasks listed below and will be expected, after suitable training, to operate flexibly between work stations at this level:

(i) **Milling and processing sector, Manufacturing sector and Merchandising sector: Timber tradesperson Level 5**

- understands and applies quality control techniques for self and others;
- exercises good interpersonal and communication skills;
- exercises keyboard skills at a level higher than Level 4;
- exercises discretion within the scope of this level;
- performs work under limited supervision either individually or in a team environment;
- operates all lifting equipment incidental to own work;
- performs non-trade tasks incidental to own work;
- performs work which, while primarily involving the skills of the employee's trade, is incidental or peripheral to the primary task and facilitates the completion of the whole task; the incidental or peripheral work would not require additional formal technical training;
- performs work within the definition of machinist A grade;
- performs work of a motor mechanic;
- performs work of a glazier;

- inspects products and/or materials for conformity with established operational standards as required; and
- sets up, monitors and operates a range of pre-set wood machines appropriate to this level including multi headed square dresser.

(c) **Level of responsibility**

(i) An employee at this level has greater responsibility than those at Level 4 in that the employee may be responsible for the work of others through the monitoring role. The employee will be responsible for work outcomes regarding quantity and quality in own area, including own work and the work of others. The employee may be required to supervise others in groups in the training situation. An employee at this level will be required to exercise discretion in the planning and carrying out of work.

(ii) The employee will also be responsible, with others, for identifying and solving problems in their work areas; if supervising others for initiating, co-ordinating and monitoring problem solving in own work area; for identifying and reporting problems in other work areas where they affect activity in own work area.

(d) **Promotional criteria**

An employee remains at this level until capable of effectively performing through assessment or appropriate certification the tasks required of the next level so as to enable progress as a position becomes available.

A.4.3 **Harvesting, milling and processing, Manufacturing or Merchandising employee Level 5**

(a) **General**

An employee at this level performs work above and beyond the skills of a Level 4 employee and is competent to perform work within the scope of this level.

At this level an employee:

(i) understands and applies quality control techniques;

(ii) exercises good interpersonal and communication skills;

(iii) exercises keyboard skills at a level higher than Level 4;

(iv) exercises discretion within the scope of this level;

(v) performs work under limited supervision either individually or in a team environment;

(vi) able to inspect products and/or materials for conformity with established operational standards; and

(vii) conducts training in conjunction with a skilled trainer as required.

(b) **Indicative tasks**

An employee at this level will perform any or all of the tasks listed below and will be expected after suitable training to operate flexibly between work stations at this level:

(i) **Harvesting and forest management sector**

- able to inspect logs for conformity with established operational standards (grade and segregate);
- operates harvesting and extraction equipment in a mechanical harvesting environment appropriate to this level;
- operation of mobile equipment to a level higher than Level 4 over 13 500 kg;
- fall and process trees of any species which are possible to work safely;
- broad axeperson;
- axeperson;
- axeperson employed using chopping axe taking off bark and lumps from logs for use in veneer mills;
- rigger or tree climber;
- head faller;
- forwarder log handling machine; and
- operator of grapple saw.
- Driving an articulated vehicle with 3 axles and GCM of 22.4 tonnes or less.
- Driving a rigid truck and heavy trailer combination with more than 3 axles and a GCM greater than 22.4 tonnes - over 15 tonnes up to 21 tonnes capacity.
- Driving an articulated vehicle with more than 3 axles and a GCM greater than 22.4 tonnes - capacity up to or over 22 tonnes.
- Driving a low loader with GCM up to or over 43 tonnes.
- Driver of a double articulated vehicle up to and including 53.4 tonne GCM, including B doubles.

(ii) **Milling and processing sector**

- operates a breaking down rig (primary conversion with sizing);
- operating no. 1 bench;
- supervision of kiln operations;

- hardens/tempers/beats out saws;
- weighs and records loads of timber and maintains security of the premises;
- operates ship loading equipment;
- laminated beam maker—responsible for setting up machine, setting out product and operating machine on a continuous process;
- sets up and operates a range of wood machines within the current definitions of the award appropriate to this level; and
- operates mechanical plant and mobile equipment including, crawler tractor with a shipping weight exceeding 80 000 pounds, excavator over 2.25 cubic metres, power operated grader over 70 kW brake power, loaders over 4.5 cubic metres capacity, mobile cranes with a lifting capacity over 20 tonnes and not exceeding 100 tonnes.

(iii) **Manufacturing sector**

- operates and maintains mobile equipment appropriate to this level while holding appropriate licences/certifications;
- estimator;
- laminated beam maker - responsible for setting up machine, setting out product and operating machine on a continuous process;
- hardens/tempers/beats out saws;
- weighs and records loads of timber and maintains security of the premises;
- sets up and operates door and/or panel trimming machine and grinds knives and cutters;
- operates CNC wall frame fabricating machine;
- sets up truss jigs;
- breaks down and finishes on anvils;
- prepares cutting list of timber for use in the manufacture of building components from builders, architects, or other plans; and
- sets up, monitors and operates a range of wood machines as prescribed within the current definitions of machinist A grade of the award appropriate to this level including multi-headed square dresser.

(iv) **Merchandising sector**

- prepares cutting lists of timber for use in the manufacture of building components from builders, architects, or other plans; and
- sets up, monitors and operates a range of wood machines within the current definitions of the award appropriate to this level including multi-headed square dresser.

(c) **General description of skills required**

In addition to those outlined in Level 4:

(i) ability to make decisions regarding work processes and implement them in own work area;

(ii) ability to use judgement based on experience to optimise productivity in own work area;

(iii) ability to supervise workers in the training situation;

(iv) ability to set up, operate and monitor mechanical and CNC equipment used in work area;

(v) ability to work to standards requiring precision and attention to detail; and

(vi) problem solving skills.

(d) **General description of knowledge required**

In addition to that outlined in Level 4:

(i) detailed knowledge of the sector and work undertaken at the enterprise;

(ii) in the Harvesting forest management sector, awareness and understanding of relevant Forest Codes of Practice;

(iii) understanding of quality control techniques;

(iv) knowledge of industry standards for product and/or materials;

(v) thorough knowledge of equipment/machinery used in the work area;

(vi) knowledge of work health and safety, safety techniques and legislation for work undertaken at this level;

(vii) detailed knowledge of product used; and

(viii) knowledge of training principles and practices.

(e) **Level of responsibility**

(i) An employee at this level has greater responsibility than at Level 4 in that the employee may be responsible for the work of others through the monitoring role. The employee will be responsible for work outcomes regarding quantity and quality in own area, including own work and the work of others. The employee may be required to supervise others in groups in the training situation. An employee at this level will be required to exercise discretion in the planning and carrying out of work.

(ii) The employee will also be responsible, with others, for identifying and solving problems in their work areas; if supervising others for initiating, co-ordinating and monitoring problem solving in own work area; for identifying and reporting problems in other work areas where they affect activity in own work area.

(f) **Promotional criteria**

An employee remains at this level until capable of effectively performing through assessment or appropriate certification the tasks required of the next level so as to enable progress as a position becomes available.

**A.5 Level 6 (relativity 105%)**

A.5.1 **General**

(a) An employee at this level may be employed under one of the following categories:

(i) Timber tradesperson; or

(ii) production or merchant employee.

(b) A Timber tradesperson at this level works above and beyond an employee at Level 5 and is competent to perform work within the scope of this level.

(c) At this level an employee:

(i) understands and applies quality control techniques;

(ii) exercises good interpersonal and communication skills;

(iii) exercises keyboard skills at a level higher than Level 5;

(iv) exercises discretion within the scope of this level;

(v) performs work under limited supervision either individually or in a team environment;

(vi) will be responsible for planning own work and the work of others and for the quantity and quality of the results of that work; and

(vii) conducts training as required.

A.5.2 **Timber tradesperson**

(a) A Timber tradesperson Level 6 is a saw doctor tradesperson who has completed an appropriate post trade course in maintaining high tension saws and stellite tipping, or a wood machinist tradesperson who has completed an appropriate post trade course (or equivalent) in CNC and PLC machinery operations and CAD design systems and is able to exercise the skills and knowledge of that trade and may be required to supervise other employees, or a millwright—special class who has completed 3 appropriate modules of post-trade training in addition to the Level 5 qualification requirements.

(b) **Indicative tasks**

An employee at this level will perform any or all of the tasks listed below and will be expected, after suitable training, to operate flexibly between work stations at this level:

(i) **Milling and processing sector, Manufacturing sector and Merchandising sector: Timber tradesperson Level 6**

- exercises the skills attained through satisfactory completion of the training prescribed for this classification subject to the standards of this award;
- exercises discretion within the scope of this level;
- works under limited supervision either individually or in a team environment;
- understands and implements quality control techniques;
- provides trade guidance and assistance as part of a work team;
- exercises trade skills relevant to the specific requirements of the enterprise at a level higher than Timber tradesperson Level 5;
- supervision and training of employees as required; and
- ability to plan, conduct and evaluate training both on and off-the-job, one-to-one and in groups.

(c) **Level of responsibility**

An employee at this level will be responsible in conjunction with others for identifying and solving problems in own work area. If supervising others the employee will be responsible for initiating, co-ordinating and monitoring problem solving in own work area. The employee will be responsible for identifying and reporting problems in other work areas where they affect activity in own work area.

A.5.3 **Harvesting and forest management, Milling and processing, Manufacturing or Merchandising employee**

**General**

An employee at this level performs work above and beyond the skills of a Level 5 Production employee and is competent to perform work within the scope of this level and has acquired skills recognised by the employer.

At this level an employee:

(i) understands and applies quality control techniques;

(ii) exercises good interpersonal and communication skills;

(iii) exercises keyboard skills at a level higher than Level 5;

(iv) exercises discretion within the scope of this level;

(v) performs work under limited supervision either individually or in a team environment;

(vi) will be responsible for planning own work and the work of others and for the quantity and the quality of the results of that work; and

(vii) conducts training as required.

**Indicative tasks**

An employee at this level will perform any or all of the tasks listed below and will be expected after suitable training to operate flexibly between work stations at this level:

**Harvesting and forest management, Milling and processing sector, Manufacturing sector, Merchandising sector**

- operates a wide range of complex machines, saws and/or equipment in the work place;
- exercises the skills attained through satisfactory completion of the training prescribed for this classification subject to the standards of this award;
- exercises discretion within the scope of this level;
- works under limited supervision either individually or in a team environment;
- understands and implements quality control techniques;
- supervision and training of employees as required;
- ability to plan, conduct and evaluate training both on and off-the-job, one-to-one and in groups; and
- operate a mobile crane with a lifting capacity over 100 tonnes and not exceeding 180 tonnes.
- Driver of a rigid vehicle with trailer combinations or articulated vehicle with trailer combinations exceeding 94 tonne GCM.

**A.6 Timber tradesperson millwright - special class Level 7 (relativity 115%)**

A.6.1 **General**

(a) A Timber tradesperson millwright—special class Level 7, is a millwright who has completed 9 appropriate modules in addition to the requirements of Level 5; or 9 appropriate modules towards an Advanced Certificate; or 9 appropriate modules towards an Associate Diploma; or an AQF Level 4 National Certificate.

(b) **Duties**

An employee at this level performs trade and non-trade functions. In addition to the tasks required to be performed at Timber tradesperson Level 6, a Timber tradesperson Level 7 employee may perform the following indicative tasks:

(i) provides trade guidance and training;

(ii) provides training to other employees in the enterprise;

(iii) assists in the management/operation of a quality control/assurance program;

(iv) assists in the management/operation of best practice program;

(v) exercises complex, new high precision, trade skills;

(vi) applies advanced computer numerical control techniques in machining;

(vii) exercises intermediate CAD/CAM skills;

(viii) commissions and fault finds on new equipment and approves first off samples; or

(ix) performs or assists in design work involving drafting or planning (e.g. preparation of cutting lists).

(c) **Responsibility**

An employee at this level will work competently either individually or in a team environment and will be responsible for the quality and accuracy of their own work and (subject to the relevant leading hand provisions) may be required to monitor the work of others.

(d) **Training**

An employee at this level will be provided with skill development consistent with national competency standards relevant to this level to enable the employee to perform duties within the range specified for this level.

**Schedule B - Classification Definitions - Pulp and Paper Stream**

B.1 **Indicative tasks/skills**

B.1.1 Employees engaged in the classifications contained in this Schedule will work to the level of their skills, competence and training and will perform work within the scope of their level as follows:

B.1.2 **Level 1 (relativity 85%)**

Employee undertakes induction training sufficient to allow the employee to participate in work training. Can undertake tasks under direct supervision and to the level provided in the induction training.

Induction may include information on:

- the workplace and the industry
- conditions of employment
- training and career path opportunities
- plant layout
- work and documentation procedures
- work health and safety
- environmental issues
- housekeeping
- basic paper manufacturing
- waste control
- cost and quality assurance
- equal employment opportunity and harassment.

After induction the employee:

- has been trained and can apply safe working practices required to adhere to standard operating procedures;
- performs duties essentially of a manual nature; and
- exercises minimal judgement in line with training provided.

B.1.3 **Level 2 (relativity 90%)**

Employee has completed structured training as defined for Level 1 to enable work to be performed at this level.

- Has been trained and can apply safe working practices required to adhere to standard operating procedures
- Works under direct supervision and instruction
- Communicates basic information effectively and can interact with other employees
- Understands the need to report workplace hazards and the process to perform personal risk assessments
- Able to record established production and quality indicators which may require keyboard operation
- Understands basic process control procedures
- Understands and applies the minor mechanical procedures that can be performed at this level.

B.1.4 **Level 3 (relativity 93%)**

Performs work above and beyond the skills of a Level 2 and to the level of competency exhibited and assessed.

- Works under general supervision and as directed and operates within strict guidelines
- Able to communicate process information verbally and in written form
- Can interact with other employees and has developed interpersonal skills
- Performs routine duties
- Applies safe working practices
- Can report workplace hazards and performs personal risk assessments
- Understands and applies basic quality requirements of function
- Keyboard skills sufficient to access and use documents
- Can use mechanical plant and lifting equipment to level of competency
- Carries out minor mechanical maintenance requirements where it is efficient to do so.

B.1.5 **Level 4 (relativity 96%)**

Performs work above and beyond the skills required of a Level 3 and to the level of competency exhibited and assessed.

- Works under general supervision and exercises limited discretion within the scope of skills and training
- Understands the need for accurate, timely and technically correct communication. Communicates verbally and in written form and understands group decision making processes
- Uses electronic facilities and technology competently for production activities
- Understands the need to maintain a safe working environment
- Accurately assesses raw materials used
- Understands the impact of quality standards on product
- Operates mechanical plant and lifting equipment to level of competence

- Carries out minor mechanical maintenance.

B.1.6 **Level 5 (relativity 100%)**

Performs work above and beyond the skills of a Level 4 and to the level of competency exhibited and assessed.

- Works under limited supervision and operates with limited discretion.
- Communicates technical information correctly to supervisor and fellow operators and including the use of electronic facilities. Can participate in group decision making processes
- Actively pursues a safe, hazard free workplace
- Uses and understands detailed information on production and quality indicators and recommends improvements
- Understands and applies quality control techniques and quality standards
- Provides technical/production instruction as directed
- Able to operate mechanical plant including lifting equipment to level of competence
- Organises repairs and maintenance in accordance with the principles of minor mechanical maintenance.

B.1.7 **Level 6 (relativity 105%)**

Performs work above and beyond the skills of a Level 5 and to the level of competency exhibited and assessed.

- Works under limited supervision and/or general direction, exercises initiative and judgement with discretion
- Able to communicate at production senior level to an acceptable standard and undertakes group decision making processes and dynamics
- Observes work health and safety and environmental policies, supervises other employees in safe working practices
- Trained in statistical process control techniques to use detailed information on production and quality indicators, and make improvements
- Detects errors, investigates causes, recommends preventative action
- Understands and applies quality control techniques
- Operates lifting equipment to level of competence
- Provides technical/production instruction as required
- Plans, directs and organises others in the repair or maintenance of equipment within the scope of minor mechanical maintenance principles where it is efficient to do so.

B.1.8 **Level 7 (relativity 110%)**

Performs work above and beyond the skills of a Level 6 and to the level of competency exhibited and assessed.

- Can supervise the work of others, and also works under broad principles and limited supervision
- Works from complex instruction
- Communication skills at a level appropriate to facilitate supervision, training and technical knowledge both at a production and senior level
- Can lead group decision making processes and understands the need for and processes of consultation
- Carries out risk assessments, rectifies identified hazards, applies work health and safety and environmental policies, and ensures safe working practices are followed
- Undertakes quality control and work organisation and implements improvements and preventative action to improve product quality
- Provides technical/production training
- Operates lifting equipment that requires certification
- Applies statistical process control techniques
- Determines the need for equipment to be repaired or maintained. Can organise resources necessary to effect maintenance and repair.

B.1.9 **Level 8 (relativity 115%)**

Performs work above and beyond the skills of a Level 7 and to the level of competency exhibited and assessed.

- Can supervise the work of others and works under broad policies and general supervision
- Assesses, evaluates and implements changes to processes within process control parameters or complex instructions
- High level of communication skill to ensure clear and concise instruction, delivery of training to employees and imparting of technical knowledge to supervisors and employees
- Can undertake consultation within established consultation procedures

- Leads group decision making processes
- Applies work health and safety and environmental policies and/or legislation and ensures safe working practices are followed
- Ensures hazards are identified and rectification has been carried out
- Ensures risk assessments are carried out when alteration to equipment or new equipment is provided
- Provides training to employees
- Operates lifting equipment that requires certification
- Applies statistical process control techniques and other actions required to improve processes and products
- Supervises repairs and maintenance to ensure appropriate resources are used at all times to ensure efficiency and best use of labour in accordance with minor mechanical principles.

B.1.10 **Level 9 (relativity 120%)**

Performs work above and beyond the skills of a Level 8 and to the level of competency exhibited and assessed.

- Supervises the work of others
- Works under broad policies and organisational principles
- Communicates throughout organisation using established communication methods
- Consults other employees using established consultation policies and procedures
- Can establish safe working procedures and systems and participates in the establishment of work health and safety and environmental policies
- Establishes and maintains quality assurance processes and activities
- Plans and organises training to ensure efficient use of labour
- Plans and supervises repairs and maintenance to ensure appropriate resources are used at all times to ensure efficiency and best use of labour.

**Schedule C - School-based Apprentices**

C.1 This schedule applies to school-based apprentices. A school-based apprentice is a person who is undertaking an apprenticeship in accordance with this schedule while also undertaking a course of secondary education.

C.2 A school-based apprenticeship may be undertaken in the trades covered by this award under a training agreement or contract of training for an apprentice declared or recognised by the Department of Training and Workforce Development.

C.3 The relevant minimum wages for full-time junior and adult apprentices provided for in this award, calculated hourly, will apply to school-based apprentices for total hours worked including time deemed to be spent in off-the-job training.

C.4 For the purposes of clause C.3, where an apprentice is a full-time school student, the time spent in off-the-job training for which the apprentice must be paid is **25%** of the actual hours worked each week on-the-job. The wages paid for training time may be averaged over the semester or year.

C.5 A school-based apprentice must be allowed, over the duration of the apprenticeship, the same amount of time to attend off-the-job training as an equivalent full-time apprentice.

C.6 For the purposes of this schedule, off-the-job training is structured training delivered by a Registered Training Organisation separate from normal work duties or general supervised practice undertaken on the job.

C.7 The duration of the apprenticeship must be as specified in the training agreement or contract for each apprentice but must not exceed 6 years.

C.8 School-based apprentices progress through the relevant wage scale at the rate of 12 months progression for each 2 years of employment as an apprentice or at the rate of competency-based progression, if provided for in this award.

C.9 The apprentice wage scales are based on a standard full-time apprenticeship of 4 years (unless the apprenticeship is of 3 years duration) or stages of competency-based progression, if provided for in this award. The rate of progression reflects the average rate of skill acquisition expected from the typical combination of work and training for a school-based apprentice undertaking the applicable apprenticeship.

C.10 If an apprentice converts from school-based to full-time, the successful completion of competencies (if provided for in this award) and all time spent as a full-time apprentice will count for the purposes of progression through the relevant wage scale in addition to the progression achieved as a school-based apprentice.

C.11 School-based apprentices are entitled pro rata to all of the other conditions in this award.

**Schedule D - No Reduction**

D.1 An employee (including a casual employee) who was employed under this award or any of the superseded awards listed in D.2 as at 1 July 2026 and who continues to be employed under this award with the same employer after that date, must not be paid less than they would have been paid for the same work under the provisions of this award or any of the superseded awards as they stood prior to 1 July 2026.

D.2 For the purpose of clause D.1, the awards are:

(a) Plywood and Veneer Workers Award No. 28 of 1981

(b) Particle Board Industry Award No. 10 of 1978

[redacted]

**2026 WAIRC 00444**

**TIMBER WORKERS AWARD NO. 36 OF 1950**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | THE AUSTRALIAN WORKERS UNION, WEST AUSTRALIAN BRANCH, INDUSTRIAL UNION OF WORKERS (AWU) |
| | **APPLICANT** |
| | **-v-** |
| | A.G.& A.M. BROOKS & OTHERS |
| | **RESPONDENTS** |
| **CORAM** | SENIOR COMMISSIONER R COSENTINO |
| **DATE** | TUESDAY, 30 JUNE 2026 |
| **FILE NO/S** | APPL 60 OF 2025 |
| **CITATION NO.** | 2026 WAIRC 00444 |

| | |
|---|---|
| **Result** | Award varied |
| **Representation** | |
| **Applicant** | Mr C Dunne on behalf of the applicant |
| **Section 29B party** | Mr B Entrekin and with him Ms D Arntzen on behalf of the Honourable Minister for Industrial Relations |

*Order*

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

THAT the *Timber Workers **Award** No. 36 of 1950* be varied in accordance with the attached Schedule, and such variations to have effect on and from 1 July 2026

(Sgd.) R COSENTINO,
[L.S.] Senior Commissioner.

SCHEDULE

Delete the entire contents of the following of the *Timber Workers Award No. 36 of 1950* (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:

**Timber Industry (AWU) State Award**

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12. Apprentices
13. Classifications

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35. Dispute resolution

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**Schedule A - Classification Definitions - General Timber Stream**

**Schedule B - Classification Definitions - Pulp and Paper Stream**

**Schedule C - School-based Apprentices**

**Schedule D - No Reduction**

## Part 1 - Application and Operation of this Award

**1. Title**

1.1 This award is the *Timber Industry (AWU) State Award*.

**2. Definitions**

2.1 In this award, unless the contrary intention appears:

**adult apprentice** means an apprentice 21 years of age or over.

**all purposes** means the payment will be included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties or loadings or payment while they are on annual leave.

**casual employee** means an employee engaged and paid as such, applying section 7B of the *Industrial Relations Act 1979*.

**Commission** means the Western Australian Industrial Relations Commission.

**continuous work** means work carried on with consecutive shifts of persons throughout the 24 hours of each of at least 6 consecutive days without interruptions except during breakdowns or meal breaks or due to unavoidable causes beyond the control of the employer.

**engine driver** means any person who operates or drives any engine or engines, the motive power of which is either steam, gas, oil, water, compressed air or electricity, and includes any person who is called upon in the ordinary course of their duty to do engine driver's work other than simply stopping or starting an engine under the supervision of an engine driver.

**estimator** means an employee who has served an apprenticeship to any of the building trades or as a draughtsperson who is engaged in preparing cutting lists of timber for use in the manufacture of building components from builders, architects, or other plans.

**examiner** (Timber tradesperson - Level 5 or above) means an employee who is capable of using all measuring equipment and who is sufficiently versatile to examine and check any kind of product normally produced. They may be called upon to work under supervision but are not expected to exercise discretion and are only required to accept or reject those articles which conform or fail to conform to clearly defined standards.

**greaser or oiler** means any person substantially engaged in greasing or oiling any engine, machinery or shafting.

**head faller** means an employee who selects timber for falling, exercises supervision over 2 or more other fallers and/or who sharpens fallers' saws used in bush operations.

**inspector** (Timber tradesperson—Level 6 or above) means a tradesperson who is engaged to inspect components or finished products whilst in production or upon completion as to their conformity with a specific standard of quality and accuracy and who is authorised to exercise and does exercise discretion to pass components which may not conform to that standard.

**leading hand** means an employee who, while working, has charge or control of any adult person or persons not apprentices and who has been appointed by the employer to take charge or control. This definition does not apply to engine drivers, firemen or greasers.

**machinist A grade** (Timber tradesperson - Level 5) means a tradesperson wood machinist who has served the prescribed apprenticeship to wood machining as set out in this or previous awards, or an adult by reason of training for 4 years or more and experience is, at the time of engagement or subsequent thereto, deemed by the employer to be capable and is willing to perform the work of a tradesperson wood machinist. Work which will include the work of operating and setting up and/or grinding the knives and cutters of any of the following machines upon which the employee is employed notwithstanding that the employee may not be called upon to perform all such work:

(a) automatic profile sander;

(b) shaper who works freehand or automatic shaper (other than grooving and/or slotting in box and case making);

(c) boult's carver;

(d) buzzer and/or jointer (using other than straight knives and cutters);

(e) crossgrainer;

(f) computerised automatic 2 dimensional dividing and squaring saw;

(g) double edgebander and/or double ended tenoner;

(h) edgebander;

(i) dowel machine (multiple type);

(j) drum sander (4 or more drums);

(k) general joiner;

(l) lindemann gluer and jointer;

(m) longitudinal grooving machine;

(n) lock angle machine;

(o) mosaic flooring machine (other than assembling machine);

(p) moulder;

(q) multi-headed boring machine, with 3 or more bits;

(r) panel line machine;

(s) planer—3 heads or more (other than box);

(t) planer, box (4 heads or more);

(u) polisher including a person who is responsible for the setting up and operation of a curtain coating machine;

(v) sets up and operates any programmed and/or computerised high output wood machine not mentioned herein;

(w) responsible person in charge of radio frequency gluing equipment and radio frequency gluing operations;

(x) router, working freehand;

(y) shaper (other than grooving and/or slotting in box and case making);

(z) spoke throater;

(aa) tenoner (using scribing irons, other than an automatic tenoner);

(bb) upholsterer who is capable of and does spring canvas, first and second stuff cover finish;

(cc) trusser or crozier;

(dd) variety turning on lathes other than automatic lathes;

(ee) v-grooving machine;

(ff) v-line folding machine;

(gg) vinyl or melamine laying machine;

(hh) wood chipper;

(ii) wood carver; and

(jj) wood turner who grinds cutters and/or sets up and operates or who works freehand and a turner who sets up and operates a copying or automatic lathe.

An employee operating any of the following machines: automatic shaper; boult's carver; buzzer and/or jointer; general joiner; lindeman gluer and jointer; and a router will be a **machinist A grade** notwithstanding the employee does not set up and/or grind the knives and cutters.

**machinist B grade** means an adult employee other than a tradesperson, operating and setting up and/or grinding the knives or cutters of any of the following machines:

(a) automatic lathe;

(b) band and/or jig saw (other than sawmilling);

(c) belt sander and bobbin sander;

(d) belt sander on veneers;

(e) borer (3 or more spindles);

(f) buzzer and/or jointer (using straight knives or cutters);

(g) circular saw;

(h) copying lathe;

(i) dovetailer;

(j) dowel machine (single type);

(k) drum sander (double or triple drums);

(l) end matcher, finger jointer and all other male and female profile machines;

(m) glue jointer and/or automatic dowel driving machine;

(n) mechanical cutting veneer guillotine and veneer press

(o) microplaner;

(p) morticer (chain or hollow chisel of any kind or any other);

(q) panel line machine;

(r) planer (one or 2 heads) other than box;

(s) planer, box (less than 4 heads);

(t) pole scarfing (including operator of such machine who also operates a pole boring or pole capping machine);

(u) radial head using saws or cutters in the making of component parts for pre-cut buildings or of roof trusses or any other form of trusses;

(v) relisher;

(w) router (working from templates, dies, jigs or fences);

(x) sets up and operates a tenoner, other than double ended tenoner;

(y) shaper (grooving and/or slotting in box and case making);

(z) slicer (box);

(aa) spiking machine (incisor);

(bb) thicknesser;

(cc) timber bending machine;

(dd) v-grooving machine;

(ee) v-line folding machine;

(ff) vinyl or melamine laying machine;

(gg) wood chipping machine (other than log chipper); and

(hh) wood wool machine.

**measurer** means an employee who measures and records dimensions and number of pieces of sawn timber.

**millwright** means a tradesperson engaged in installing and/or maintaining machinery.

**on-hire** means the on-hire of an employee by their employer to a client, where the employee works under the general guidance and instruction of the client or a representative of the client.

**order** means the demand of a customer or of the employer, or someone on the employer's behalf, to the orderperson for an expressed size and class or expressed sizes and classes of timber.

**ordinary hourly rate** means the minimum hourly rate for an employee's classification specified in clause 17 – Minimum rates (excluding any casual loading), plus any allowances specified as being included in the employee's ordinary hourly rate or payable for all purposes.

**rostered shift** means a shift of which the employee concerned has had at least 48 hours' notice.

**sawbenches classifications:**

(a) **breaking down bench** includes a circular saw, a band saw, twin saws, horizontal saw or vertical frame saw when any of the saws are used for the purposes of reducing a log to flitches;

(b) **no. 1 bench** means any bench which takes flitches from the breaking down bench;

(c) **no. 2 bench** means any bench which is fed directly from a no. 1 bench or an edger sawbench, and which is not being used as a picket bench within no. 4 bench;

(d) **no. 3 bench** means any bench which is fed directly from a no. 2 bench and which is not being used as a picket bench within no. 4 bench; and

(e) **no. 4 bench** means a bench on which timber is cut into pickets, lathes, droppers, palings, staves or other small sizes which do not exceed 7.6 cm by 3.8 cm by 2.7 metres or the equivalent in section by 2.7 metres.

**saw doctor** means an employee who may be required to manufacture from blank ribbon steel band saws of varying widths and who punches teeth, grinds teeth, swages and sets, hard tips teeth, tensions and levels circular saws, grinds, sharpens and sets circular saws, maintains chainsaw chains, hand saws and frame saws and who when required, is responsible for the training of other employees.

**saw sharpener** means an employee who sharpens, sets and tensions saws only, using either hand or automatic grinding equipment, file setting lever and setting gauge saw sharpener.

**standard rate** means the 'Minimum weekly rate (full-time) employee' for a Level 5 in clause 17 - Minimum rates.

**timber tradesperson millwright—special class** means an employee who installs, repairs and maintains complex machinery and equipment including machinery which utilises hydraulic or pneumatic principles and who in the course of that work is required to read and understand hydraulic and pneumatic circuitry which controls fluid power systems; who has completed appropriate training as described in the classification descriptions of this award.

**training agreement** means a traineeship or apprenticeship agreement that is registered with the Department of Training and Workforce Development under the provisions of the *Vocational Education and Training Act 1996*.

**3. The *Minimum Conditions of Employment Act 1993* and this award**

3.1 The *Minimum Conditions of Employment Act 1993* (MCE Act) and this award contain the minimum conditions of employment for employees covered by this award.

3.2 Where this award refers to a condition of employment provided for in the MCE Act, the MCE Act applies.

3.3 The employer must ensure that copies of this award and the MCE Act are available to all employees to whom they apply, either on a notice board which is conveniently located at or near the workplace or through accessible electronic means.

**4. Area and Scope**

4.1 This award applies throughout Western Australia, excluding that portion of the South West Land Division situated outside a radius of 45 kilometres from the G.P.O. Perth.

4.2 This award covers employers in the Timber Industry, as defined in clause 4.3, and to the work and persons performing that work as listed in the skill grade structures, as described in clause 2 - Definitions. Without limiting the scope of this award, it applies to the types of work listed in clause 4.3 in the forest and building products, manufacturing and merchandising, and pulp and paper sectors and persons performing that work or employed in connection with the following work, to the exclusion of any other award.

4.3 **Timber Industry** means any of the following industry sectors, but does not include any work covered by the awards specified in clause 5(b). In reality each sector may overlap and include any or all activities from other sectors.

(a) **Harvesting and forestry management sector**

(i) Harvesting timber, processing of harvested timber, operating any machinery or vehicle in connection with harvesting, lifting, processing and transporting timber.

(ii) Routine maintenance of equipment or vehicle.

(iii) Preparation of forest for harvesting operations, maintenance of forest during harvesting and activities associated with the rejuvenation of forest during and after harvesting operations, where carried out by employers engaged in harvesting operations.

(iv) General forestry and forest management work where carried out by employers engaged in harvesting operations.

(b) **Milling and processing sector**

(i) Processing of logs and other forms of raw timber into building timber and other value-added products in timber mills, factories, merchant's premises and other locations.

(ii) Processing includes lifting, sorting, stacking, storing, warehousing transporting, debarking, sawing, dressing, drying, machining, laminating, jointing, chipping, treating and carrying out any grading and labelling functions associated with processing.

(iii) Operation of any machinery used in processing or in connection with processing including plant and infrastructure and any maintenance associated with that machinery, plant or infrastructure.

(iv) Assembling and construction of products from processed timber.

(v) Supervision, co-ordination and planning of the processing activities and processing infrastructure.

(c) **Panel products sector**

(i) Manufacturing of boards, panels or veneer from timber and timber products.

(ii) Handling, sorting, stacking, lifting, treating, cutting, pressing, gluing, edging, trimming, painting, laminating and processing in any manner, board, panel or veneer.

(iii) Transporting and storing board, panels or veneer.

(iv) Operating and maintaining any or all machinery associated with board, panel or veneer manufacture including manufacturing plant and infrastructure.

(v) Planning, setting-up and assembling products from board, panel or veneer and associated components.

(d) **Manufacturing sector**

(i) All activities listed in the milling and processing sector in clause 4.3(b).

(ii) Machining timber in any manner to produce components and articles.

(iii) Planning, setting-up and assembling wood components and associated attachments into products.

(iv) Manufacturing frames, trusses and doors.

(v) Measuring, estimating, designing and manufacturing products for building and other purposes.

(vi) Manufacturing wooden sporting goods including for cricket, hockey, lacrosse, polocrosse, and/or badminton.

(vii) Wood machining, wood turning, wood carving, finishing, polishing, upholstering and other work carried out in or in connection with preparing, packing, assembling, manufacturing repairing or fixing, whether new or second hand, musical instruments and toys; where any of them are made of wood or timber, manufactured wood or timber products; and any other product made from wood other than furniture.

(e) **Merchandising and retailing sector**

(i) All activities listed in the manufacturing sector in clause 4.3 (d).

(ii) Displaying, demonstrating, preparing, handling, providing advice and selling timber and timber related products, hardware and building products in wholesale and timber merchant/retail outlets.

(iii) Activities associated with the importing and wholesaling of timber products.

(iv) Calculating and processing customer orders and dealing with customers generally.

(f) **Pulp and paper sector**

The manufacture, process and supply of: pulp and recycled pulp; plastic materials where obtained from the wood and cooking chemicals derived from the manufacture, processing and supply of pulp and recycled pulp; paper, including paper board, strawboard, paper bags or any similar commodity, brown papers, copy paper, envelope grade paper, hardboard paper, kraft paper, linerboard, publication and printing papers, sackcraft, security papers, watermark papers, fruit trays, egg cartons, wine trays, paper towel, facial tissue, toilet tissue, paper napkins, printed tissue products (including printed and laminated) where printing and conversion occurs in conjunction with the processing of pulp for tissue manufacture.

4.4 Reference to timber and/or wood in this award without in any way limiting the ordinary meaning of the words, will also include any artificial, laminated or manufactured material now in existence or hereafter coming into existence from whatever materials made or constructed or manufactured, which is or can be used in the place of wood or timber and worked in a similar manner as wood or timber.

4.5 This award covers any employer which supplies labour on an on-hire basis in the industry sectors described in clause 4.3 in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in those industry sectors. Clause 4.5 operates subject to the exclusions from coverage in this award.

4.6 This award covers employers which provide group training services for apprentices and/or trainees engaged in the industry sectors and/or parts of those industry sectors set out at clause 4.3, and those apprentices and/or trainees engaged by a group training service hosted by a business to perform work at a location where the activities described in clause 4.3 are being performed. Clause 4.6 operates subject to the exclusions from coverage in this award.

4.7 This award replaces the:

(a) *Plywood and Veneer Workers Award No. 28 of 1981*

(b) *Particle Board Industry Award No. 10 of 1978*

**5. Exclusions**

This award does not apply to:

(a) employers and employees who are subject to the national industrial relations system;

(b) employees who are covered by another award of the Commission, including the:

(i) *Building Trades and Labourers (Construction) Award*;

(ii) *Building Trades and Labourers (General) Award*;

(iii) *Commercial Sales Representatives' Award*;

(iv) *Furniture Trades Industry Award*;

(v) *Shop and Warehouse (Wholesale and Retail Establishments) State Award*; and

(vi) *Timber Industry (CFMEU) State Award*.

**6. Requests for flexible working arrangements**

Requests for flexible working arrangements are provided for in Part 4A of the *Minimum Conditions of Employment Act 1993*.

## Part 2 - Types of Employment and Classifications

**7. Types of employment**

7.1 Employees under this award will be employed in one of the following categories:

(a) full-time;

(b) part-time;

(c) piecework (see clause 11 - Piecework - General Timber Stream); or

(d) casual.

**8. Full-time employees**

8.1 A full-time employee is engaged to work an average of 38 hours per week.

8.2 Full-time employees are employed by the week.

**9. Part-time employees**

9.1 A part-time employee:

(a) is engaged to work less than an average of 38 ordinary hours per week; and

(b) has a regular pattern of hours.

9.2 Before commencing part-time employment, the employee and employer must agree upon the hours to be worked by the employee, the days upon which they will be worked and the starting and finishing times for the work.

9.3 The terms of the part-time work and any agreed variation will be recorded in writing and retained by the employer. The employer will provide a copy of the agreement and any variation to it to the employee.

9.4 An employer is required to roster a regular part-time employee for a minimum of 3 consecutive hours on any shift.

9.5 A part-time employee will be paid at the minimum hourly rate for the grade of work performed.

9.6 Subject to this clause, all of the provisions of this award will apply to a part-time employee.

**10. Casual employees**

10.1 A casual employee engaged for a part of any day will be entitled to a minimum of 4 hours' pay per day whether the casual employee is required to work for 4 hours or less than 4 hours.

10.2 **Casual loading**

For each hour worked, a casual employee must be paid:

(a) the ordinary hourly rate; and

(b) a loading of **25%** of the ordinary hourly rate,

for the classification in which they are employed.

10.3 A casual employee who works overtime will be paid at the appropriate overtime rate provided in clause 25 - Overtime based on the casual rate of pay (including the casual loading provided for in clause 10.2).

**11. Piecework - General Timber Stream**

11.1 **Definition**

A **pieceworker** is an employee who is not a weekly employee but who is engaged to work away from the employer's mill, yard or other place of business in or in connection with felling, snigging, hauling or other obtaining of logs, billets, chips or other timber at rates of remuneration depending only on the amount of work performed, irrespective of the hours or times concerned.

11.2 **Remuneration**

The remuneration payable to a pieceworker will be fixed by agreement between the employee and the employer at rates which would enable an employee of average capacity to earn, for an ordinary week's work, not less than **25%** above the appropriate weekly base rate for the class of work performed.

11.3 **Chainsaw and other additional costs**

(a) Pieceworkers who, with the agreement of the employer, supply, operate and maintain their own chainsaws will be reimbursed for the supply of that equipment as per clause 11.3(b).

(b) Pieceworkers will be reimbursed for all costs incidental to and directly connected with piecework in one of the following methods as agreed between the employer and the employee concerned:

(i) incorporating the costs into the piecework rate;

(ii) by calculating the costs and applying an additional flat rate or percentage rate to the piecework rate; or

(iii) by reimbursement of the actual amount involved.

11.4 The following clauses of this award do not apply to pieceworkers:

| Clause title | Clause number |
|---|---|
| Ordinary hours of work | 14 |
| Rostering arrangements | 15 |
| Breaks | 16 |
| Minimum rates | 17 |
| Wage-related allowances | 21 |
| Expense related allowances (except for Protective clothing, footwear and covering) | 22 |
| Accident Pay | 23 |
| Overtime | 25 |
| Penalty rates and shiftwork arrangements | 26 |

11.5 **Shifting haulers**

Pieceworkers will be paid at the award rate plus **25%** for time occupied shifting haulers from one landing to another except in cases where the piecework rates are arranged to include time occupied in shifting haulers.

11.6 **Sleepers—loading and turning**

When sleepers are being inspected whilst they are being loaded into trucks by pieceworkers and, at the request of the employer or of a government inspector or of the buyer, the sleepers are turned for inspection or reinspection, the loaders will receive turning rates whilst turning sleepers and loading rates whilst loading those sleepers.

11.7 **Measurement of logs**

All logs felled or hauled at piecework rates will be measured or weighed at the mill landing or elsewhere by agreement. Particulars of the logs so measured or weighed will be given to the pieceworker at least once a fortnight unless otherwise agreed upon by the employer and employee. These particulars will set out the name of the mill supplied, the name of the employee, the date, the brand, the length, the girth or the weight or the cubic meterage of those logs scaled according to the prevailing practice.

11.8 **Subsistence allowance**

(a) The employer will make every reasonable effort to ensure that the logs are not unduly delayed by stockpiling in the bush. Where logs are stockpiled in excess of 14 days in the bush the pieceworkers affected may be paid, by agreement, a subsistence allowance based on the estimated tonnage of the logs in the pieceworkers' pile agreed to between the pieceworkers and the employer.

(b) If the actual tonnage turns out to be greater than or less than the estimated tonnage after weighing, an adjustment will be made for the differences in the employee's next pay or otherwise as agreed to between the employer and the employee concerned.

11.9 **Royalty payment**

Where the employee obtaining the timber pays royalty on behalf of the employer, the employer will reimburse the royalty to the employee in addition to piecework rates.

11.10 **Payslips**

The employer must provide a payslip to piecework employees in accordance with section 49DA of the *Industrial Relations Act 1979*. In addition to the requirements of section 49DA of the *Industrial Relations Act 1979*, the payslip must include the following information:

(a) tonnes cut—saw log—pulp log;

(b) classification;

(c) adjustments;

(d) conversion factor tonnes/metre.

11.11 **Pieceworker reimbursement**

All pieceworkers will be reimbursed for all costs incidental to and directly connected with piecework in one of the following methods as agreed between the employee and employer concerned:

(a) incorporating the costs into the piecework rate;

(b) by calculating the costs and applying an additional flat rate or percentage rate to the piecework rate; or

(c) by reimbursement of the actual amount involved. The amount will be a minimum of **9.6%** of the standard rate.

**12. Apprentices**

12.1 **Supervision and training**

An employer will ensure that each apprentice has appropriate arrangements made at an enterprise level to meet the apprentices' training requirements and adequate access to and supervision from tradespersons has been arranged.

12.2 **Apprenticeship arrangements**

Apprenticeship arrangements will be as per the requirements of the Department of Training and Workforce Development (or any successor organisation) and/or the *Vocational Education and Training Act 1996*. This includes form and registration of indenture.

12.3 **Period of apprenticeship**

The term of apprenticeship is determined by the rate by which an apprentice gains the required competence and the starting level of competence of the apprentice. An apprenticeship will end once an apprentice displays the competency required under the apprenticeship agreement.

12.4 **Overtime and public holiday rates**

(a) An employer requiring an apprentice to work overtime will pay the apprentice double time for all overtime. No apprentice will be required to work overtime for more than 8 hours in any one week, or more than 16 hours in any 4 weeks, and the overtime must not prevent the apprentice attending any technical school.

(b) An employer may roster an apprentice to work on a public holiday if the apprentice willingly agrees to work that day, in which case the apprentice must be paid double time and one half for the shift. The work on the public holiday will not exceed the ordinary hours of work and will not be included in the calculation of 8 and 16 hours in clause 12.4(a).

12.5 **Travel payment for block release training**

(a) Where an apprentice is required to attend block release training for training identified in or associated with their training contract, and the training requires an overnight stay, the employer must pay for the excess reasonable travel costs incurred by the apprentice in the course of travelling to and from the training. Provided that clause 12.5 will not apply where the apprentice could attend an alternative Registered Training Organisation (RTO) and the use of the more distant RTO is not agreed between the employer and the apprentice.

(b) For the purposes of clause 12.5(a) above, excess reasonable travel costs include the total costs of reasonable transportation (including transportation of tools where required), accommodation costs incurred while travelling (where necessary) and reasonable expenses incurred while travelling, including meals, which exceed those incurred in travelling to and from work. Excess travel costs do not include payment for travelling time or expenses incurred while not travelling to and from block release training.

(c) The amount payable by an employer under clause 12.5(a) may be reduced by an amount the apprentice is eligible to receive for travel costs to attend block release training under a Government apprentice assistance scheme. This will only apply if an apprentice has either received that assistance or their employer has advised them in writing of the availability of the assistance.

12.6 **Payment of fees and textbooks**

(a) All training fees charged by an RTO for prescribed courses and the cost of all prescribed textbooks (excluding those textbooks which are available in the employer's technical library) for the apprenticeship, which are paid by an apprentice, shall be reimbursed by the employer within 6 months of the commencement of the apprenticeship or the relevant stage of the apprenticeship, or within 3 months of the commencement of the training provided by the RTO, whichever is the later, unless there is unsatisfactory progress.

(b) An employer may meet its obligations under clause 12.6(a) by paying any fees and/or cost of textbooks directly to the RTO.

12.7 **Other apprentice conditions of employment**

(a) An apprentice is entitled to be released from work without loss of continuity of employment and to payment of the appropriate wages to attend any training and assessment specified in, or associated with, the training contract.

(b) Time spent by an apprentice in attending any training and/or assessment specified in, or associated with, the training contract is to be regarded as time worked for the employer for the purposes of calculating the apprentice's wages and determining the apprentice's employment conditions. Clause 12 operates subject to the provisions of Schedule C - School-based Apprentices.

(c) No apprentice will, except in an emergency, work or be required to work overtime or shiftwork at times which would prevent their attendance at training consistent with their training contract.

**13. Classifications**

The definitions of the classification levels in clause 17 – Minimum rates, are contained in Schedule A – Classification Definitions – General Timber Stream and Schedule B – Classification Definitions – Pulp and Paper Stream.

## Part 3 - Hours of Work

**14. Ordinary hours of work**

14.1 **Ordinary hours and roster cycles - day workers**

(a) Ordinary hours of work for a full-time employee shall be an average of 38 per week and will be worked between the hours of 6.00 am and 6.00 pm Monday to Friday in one of the following manners:

(i) 38 hours within a work cycle of one week;

(ii) 76 hours within a work cycle of 2 weeks;

(iii) 114 hours within a work cycle of 3 weeks; or

(iv) 152 hours within a work cycle of 4 weeks.

(b) Different methods of implementation of a 38 hour week may apply to various groups or sections of employees in the establishment concerned.

(c) (i) By agreement between the employer and the majority of affected employees, the ordinary hours of work can be worked on any day of the week, Saturday and Sunday inclusive.

(ii) Notwithstanding clause 14.1(c)(i), where the ordinary hours of work in a particular workplace or part thereof were already being performed on Saturdays and/or Sundays before 1 July 2026, those arrangements may continue to operate.

(d) The ordinary hours of work for a part-time employee will be in accordance with clause 9 – Part-time employees. The ordinary hours of work for a casual employee will be in accordance with clause 10 - Casual employees.

14.2 **Ordinary hours and roster cycles – shiftworkers**

(a) The ordinary hours of work for a full-time shiftworker are an average of 38 hours per week.

(b) Different methods of working shifts may apply to various groups or sections of employees in the establishment concerned.

(c) (i) Where agreement exists between the employer and the majority of affected employees, ordinary hours can be worked on any day of the week, including Saturday and/or Sunday.

(ii) Notwithstanding clause 14.2(c)(i), where the ordinary hours of work in a particular workplace or part thereof were already being performed on Saturdays and/or Sundays before 1 July 2026, those arrangements may continue to operate.

(d) Clause 26 - Penalty rates and shiftwork arrangements provides for shiftwork arrangements.

14.3 **Ordinary hours - watchpersons**

(a) A watchperson may be employed on the basis of 152 hours in a 4 week cycle provided that not more than 48 hours may be worked in any one week or 80 hours in a fortnight without payment for overtime.

(b) Clause 14.1 will not apply to a watchperson.

**15. Rostering arrangements**

15.1 **Rostered days, or shifts, off**

(a) Notwithstanding provisions elsewhere in this award and subject to clause 34 – Consultation about major workplace change and rosters, the employer and the majority of affected employees may agree to establish a system of rostered days off to provide that an employee may elect, with the consent of the employer to:

(i) take a rostered day, or shift, off at any time;

(ii) take rostered days, or shifts, off in part day amounts; or

(iii) accrue some or all rostered days off for the purpose of creating a bank to be drawn upon by the employee at times mutually agreed by the employer, or subject to reasonable notice by the employee or the employer.

(b) Clause 15.1(a) is subject to the employer informing each union which has members employed at the particular enterprise of its intention to introduce an enterprise system of rostered day off flexibility and providing a reasonable opportunity for the union to participate in negotiations.

(c) Once a decision has been taken to introduce a system of rostered day off flexibility in accordance with this clause 15.1(a) its terms must be set out in the time and wages records.

(d) An employer must record rostered day off arrangements in the time and wages record each time this provision is used.

15.2 **Notice of rostered days, or shifts, off**

In cases where, by virtue of the arrangement of the ordinary hours of work, an employee is entitled to a rostered day, or shift, off during the work cycle, the employee must be advised by the employer at least 4 weeks in advance of the day, or shift, to be taken off.

15.3 **Flexibility in relation to rostered days, or shifts, off**

By agreement between the employer and an employee, rostered days or shifts, off may be accumulated up to a maximum of 5 days or shifts, and may be taken in a manner agreed upon between the employer and the employee.

15.4 **Rostered days or shifts off – substitute days or shifts**

(a) **Rostered day off not to coincide with public holiday**

(i) Rostered days off must not be scheduled to coincide with a public holiday observed in accordance with clause 32 – Public Holidays.

(ii) An employee working continuous shiftwork who by the arrangement of ordinary hours of work is entitled to a rostered shift off which falls on a public holiday prescribed by clause 32 – Public Holidays will at the discretion of the employer, receive an additional day's pay or have an additional day added to their annual leave entitlement. This provision will not apply when the public holiday on which the employee is rostered off falls on a Saturday or Sunday.

(b) **Substitute days**

(i) An employer and an individual employee, or the employer and a majority of affected employees, may agree to substitute the day the employee or affected employees are to take off during a work cycle for another day.

(ii) An apprentice who is required to attend trade school on a rostered day off will be entitled to a substitute day as soon as practicable following the attendance at trade school.

(c) **Work on a rostered day, or shift, off**

Unless a rostered day off is substituted for another day off in accordance with clause 15.4(b), work performed on the rostered day off will be paid in accordance with clause 25 - Overtime.

15.5 **Rostered days off and averaging of pay**

For enterprises implementing a system of rostered days off based on a 19 day, 4 week cycle or in an enterprise where rostered days off based on a 19 day, 4 week cycle exist the following system of averaging pay will apply:

(a) Averaging of pay over 4 weeks for all ordinary hours worked so that in the week during which an employee takes a rostered day off there is no reduction in pay.

(b) Under this system each person works 8 ordinary hours of work each day for 19 days in any 4 week cycle. An amount of pay equivalent to 0.4 hours of pay is held over for each day an employee is at work or absent from work on paid leave such as personal leave, workers compensation, bereavement leave, jury service or public holidays. This amount will be used to pay for the rostered day off during the week the employee takes a rostered day off.

**16. Breaks**

16.1 **Meal breaks - ordinary hours**

(a) Employees will be allowed an unpaid meal break of one hour or other time as may be agreed.

(b) An employee must not be required to work more than 5 ordinary hours without a meal break.

16.2 **Alteration of meal breaks**

In any establishment where the ordinary hours of work are worked on the basis of 4 days of 8 ordinary hours each and one day of 6 ordinary hours in a weekly work cycle, the employer and the majority of affected employees may agree that the 6 ordinary hour day may be worked without a meal break.

16.3 **Payment for work done during meal breaks**

(a) All work done during an employee's meal break must be paid for at double time.

(b) All work done after the time for the meal break until a meal break is allowed must be paid at:

(i) for employees in the Pulp and Paper Stream—double time; or

(ii) for all other employees – time and one half.

16.4 **Crib breaks during overtime**

(a) **Overtime on weekdays**

(i) An employee working overtime on a weekday will be allowed a paid crib break as follows, provided the employee continues to work after the crib break:

| Stream | Number of continuous hours of overtime worked | Length of crib break |
|---|---|---|
| Pulp and Paper Stream employees | Up to 4 hours | No break |
| | After 4 hours | 20 minutes |
| All other employees | Up to 4.5 hours | No break |
| | After 4.5 hours | 20 minutes |

(ii) Unless the period of overtime is 2 hours or less, an employee must be allowed a meal break after working ordinary hours and before starting overtime, which will be paid for at ordinary rates. The length of the meal break is:

| Stream | Length of meal break |
|---|---|
| Pulp and Paper Stream employees | 30 minutes |
| All other employees | 20 minutes |

(iii) An employer and an employee may agree to any variation of this provision to meet the circumstances of the work in hand; provided that the employer will not be required to make any payment in respect of any time allowed in excess of 20 minutes, or 30 minutes in the case of an employee in the Pulp and Paper Stream.

(b) **Saturdays, Sundays and public holidays**

(i) An employee working overtime on a Saturday, Sunday or public holiday will be allowed a paid crib break as follows, provided the employee continues to work after the crib break:

**Saturdays**

| Stream | Number of continuous hours of overtime worked | Length of crib break |
|---|---|---|
| Pulp and Paper Stream employees | Up to 4 hours | No break |
| | After 4 hours | 20 minutes |
| All other employees | Up to 4.5 hours | No break |
| | After 4.5 hours | 20 minutes |

**Sundays and public holidays**

| Stream | Number of continuous hours of overtime worked | Length of crib break |
|---|---|---|
| Pulp and Paper Stream employees | Up to 4 hours | No break |
| | After 4 hours | 30 minutes |
| All other employees | Up to 4.5 hours | No break |
| | After 4.5 hours | 20 minutes |

16.5 **Paid crib breaks—continuous work**

Where a shift roster provides for continuous work over 24 hours of the day, a 20 minute paid crib break will be allowed to shiftworkers each shift and will be counted as time worked. The crib break will be taken at a time and in a method agreed upon between the employer and the individual employee or majority of affected employees so as to meet the needs of the establishment.

16.6 **Determination of next meal break**

A meal break will not be regarded as time worked for the purpose of determining when the next meal break falls due.

16.7 **Minimum break after overtime**

Breaks after overtime will be provided in accordance with clause 25.9.

**Part 4 - Wages and Allowances**

**17. Minimum rates**

17.1 An employer must pay adult employees the following minimum rates for ordinary hours worked by the employee (not including penalties and allowances):

(a) **General Timber Stream**

| Employee classification | Minimum weekly rate (full-time employee) | Minimum hourly rate |
|---|---|---|
| | $ | $ |
| Level 2 | 998.30 | 26.27 |
| Level 3 | 1029.10 | 27.08 |
| Level 4 | 1062.90 | 27.97 |
| Level 5 | 1119.10 | 29.45 |
| Level 6 | 1154.30 | 30.38 |
| Level 7 | 1221.10 | 32.13 |

(b) **Pulp and Paper Stream**

| Employee classification | Minimum weekly rate (full-time employee) | Minimum hourly rate |
|---|---|---|
| | $ | $ |
| Level 1 | 1013.50 | 26.67 |
| Level 2 | 1046.90 | 27.55 |
| Level 3 | 1067.30 | 28.09 |
| Level 4 | 1087.40 | 28.62 |
| Level 5 | 1119.10 | 29.45 |
| Level 6 | 1154.30 | 30.38 |
| Level 7 | 1189.40 | 31.30 |
| Level 8 | 1221.10 | 32.13 |
| Level 9 | 1256.20 | 33.06 |

17.2 **Apprentices (other than saw doctor apprentices)**

(a) The minimum rates for ordinary hours worked by apprentices (other than saw doctor apprentices) are as follows:

(i) **Apprentices that have completed year 12**

| 4 year term | 3.5 year term | 3 year term | % of award rate for Level 5 |
|---|---|---|---|
| 1st year | 0 – 6 months | | 55 |
| 2nd year | 7 – 18 months | 1st year | 65 |
| 3rd year | 19 – 30 months | 2nd year | 75 |
| 4th year | 31 – 42 months | 3rd year | 90 |

(ii) **Apprentices that have not completed year 12**

| 4 year term | 3.5 year term | 3 year term | % of award rate for Level 5 |
|---|---|---|---|
| 1st year | 0 – 6 months | | 50 |
| 2nd year | 7 – 18 months | 1st year | 60 |
| 3rd year | 19 – 30 months | 2nd year | 75 |
| 4th year | 31 – 42 months | 3rd year | 90 |

(b) Where an apprentice is under the age of 21 years on the expiry of the apprenticeship, the apprentice will be paid at not less than the adult ordinary hourly rate prescribed for the skill level on which the employee is employed.

17.3 **Saw doctor apprentices**

(a) The minimum rates for ordinary hours worked by saw doctor apprentices are as follows:

(i) **Apprentices that have completed year 12**

| 4 year term | 3.5 year term | 3 year term | % of award rate for Level 6 |
|---|---|---|---|
| 1st year | 0 – 6 months | | 55 |
| 2nd year | 7 – 18 months | 1st year | 65 |
| 3rd year | 19 – 30 months | 2nd year | 75 |
| 4th year | 31 – 42 months | 3rd year | 90 |

(ii) **Apprentices that have not completed year 12**

| 4 year term | 3.5 year term | 3 year term | % of award rate for Level 6 |
|---|---|---|---|
| 1st year | 0 – 6 months | | 50 |
| 2nd year | 7 – 18 months | 1st year | 60 |
| 3rd year | 19 – 30 months | 2nd year | 75 |
| 4th year | 31 – 42 months | 3rd year | 90 |

(b) Where an apprentice is under the age of 21 years on the expiry of the apprenticeship, the apprentice will be paid at not less than the adult ordinary hourly rate prescribed for the skill level on which the employee is employed.

17.4 **Adult apprentices**

(a) The minimum rate of an adult apprentice who is in the first year of their apprenticeship must be **80%** of the relevant Level 5 rate, or the relevant rate prescribed by clauses 17.2 or 17.3 for the relevant year of the apprenticeship, whichever is the greater.

(b) The minimum rate of an adult apprentice who is in the second and subsequent years of their apprenticeship must be the rate for the lowest relevant adult classification in clause 17.1, or the relevant rate prescribed by clauses 17.2 or 17.3 for the relevant year of the apprenticeship, whichever is the greater.

(c) A person employed by an employer under this award immediately prior to entering into a training agreement as an adult apprentice with that employer must not suffer a reduction in their minimum rate by virtue of entering into the training agreement, provided that the person has been an employee in that enterprise for at least 6 months as a full-time employee or 12 months as a part-time or regular casual employee immediately prior to commencing the apprenticeship. For the purpose only of fixing a minimum rate, the adult apprentice must continue to receive the minimum rate that applies to the classification specified in clause 17 in which the adult apprentice was engaged immediately prior to entering into the training agreement.

17.5 **Unapprenticed juniors**

The minimum rates for ordinary hours worked by unapprenticed juniors are the following percentages of the ordinary hourly rate for the applicable adult classification of Level 2, for the classification stream in which the junior is employed.

| Age | % of Level 2 award rate |
|---|---|
| | % |
| 16 years and under | 50 |
| 17 years | 60 |
| 18 years | 70 |
| 19 years and over | 100 |

17.6 **School based apprentices**

For school-based apprentices, see Schedule C – School-based Apprentices.

17.7 **Higher duties**

(a) An employee engaged for more than 2 hours during one day or shift on duties carrying a higher rate than the ordinary classification of that employee, will be paid the higher rate for that day or shift. If engaged for 2 hours or less during one day or shift the employee will be paid the higher rate for the time so worked.

(b) For the purpose of clause 17.7(a), the work carrying a higher rate need not be performed during a continuous period but will be based on the aggregate of the time worked during a particular day or shift.

(c) Where an employee is transferred, without having received at least 7 days' written notice, to a grade of work carrying a lower rate than that at which the employee is usually employed, the employee will be paid at the higher rate until the 7 day notice period if provided would have expired.

17.8 **National training wage**

(a) Schedule E to the Miscellaneous Award 2020 sets out minimum wage rates and conditions for employees undertaking traineeships.

(b) This award incorporates the terms of Schedule E to the Miscellaneous Award 2020. Provided that any reference to "this award" in Schedule E to the Miscellaneous Award 2020 is to be read as referring to the Timber Industry (CFMEU) State Award and not the Miscellaneous Award 2020.

Note: Miscellaneous Award 2020 is a modern award that applies to employers and employees in the national industrial relations system. The rates of pay for trainees are usually adjusted from 1 July each year.

**18. Minimum Adult Award Wage**

18.1 No employee aged 21 or more shall be paid less than the minimum adult award wage unless otherwise provided by this clause.

18.2 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 $998.30 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 $998.30 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 2026.

18.3 The minimum adult award wage is deemed to include all State Wage order adjustments from State Wage Case decisions.

18.4 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.

18.5 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*.

18.6 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*.

18.7 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.

18.8 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.

18.9 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 2026 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.

18.10 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 $828.90 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 $828.90 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 2026.

(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.

**19. Supported Wage System**

19.1 In this clause:

**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.

**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.

**disability support pension** means the Commonwealth 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.

**relevant minimum wage** means the minimum wage prescribed in this award for the class of work for which an employee is engaged.

**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.

**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.

19.2 **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 schedule 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 employment.

19.3 **Supported wage rates**

(a) Employees to whom this clause applies will be paid the applicable percentage of the relevant minimum wage 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 be not less than the amount set by the Commission under section 50A(1)(a)(iii) of the *Industrial Relations Act 1979*.

(c) Where an employee's assessed capacity is **10%**, they must receive a high degree of assistance and support.

19.4 **Assessment of capacity**

(a) For the purpose of establishing the percentage of the relevant minimum wage, 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, a union which the employee is eligible to join.

(b) All assessments made under this schedule must be documented in a SWS wage assessment agreement, and retained by the employer as a time and wages record.

19.5 **Lodgement of SWS wage assessment agreement**

(a) All SWS wage assessment agreements under the conditions of this clause, including the appropriate percentage of the relevant minimum 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.

19.6 **Review of assessment**

The assessment of the applicable percentage should be subject to annual or more frequent review on the basis of a reasonable request for such a review. The process of review must be in accordance with the procedures for assessing capacity under the SWS.

19.7 **Other terms and conditions of employment**

Where an assessment has been made, the applicable percentage will apply to the relevant minimum wage only. Employees covered by the provisions of this clause will be entitled to the same terms and conditions of employment as

other employees covered by this award on a pro rata basis.

19.8 **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 re-design of job duties, working time arrangements and work organisation in consultation with other employees in the area.

19.9 **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 that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage 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 Commission under section 50A(1)(a)(iii) of the *Industrial Relations Act 1979*.

(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 clause 19.4.

**20. Payment of wages**

20.1 Section 49DA of the *Industrial Relations Act 1979* sets out the requirements for pay slips and the content of pay slips.

20.2 **Period of payment**

Wages will be paid either weekly or fortnightly, either according to the:

(a) actual ordinary hours worked each week or fortnight; or

(b) average number of ordinary hours worked each week or fortnight.

20.3 **Method of payment**

Wages must be paid by cash, cheque or electronic funds transfer into the employee's bank or other recognised financial institution account.

20.4 **Day off coinciding with pay day**

Where an employee is paid wages by cash or cheque and the employee is, by virtue of the arrangement of their ordinary hours, to take a day off on a day which coincides with pay day, the employee must be paid no later than the working day immediately following pay day. However, if the employer is able to make suitable arrangements, wages may be paid on the working day preceding pay day.

20.5 **Wages to be paid during work hours**

(a) Where an employee is paid wages by cash or cheque, the wages are to be paid during ordinary working hours.

(b) If an employee is paid wages by cash and is kept waiting for their wages on pay day after the usual time for ceasing work, the employee is to be paid at overtime rates for the period they are kept waiting.

20.6 **Absences from duty under an average system**

Where a full-time employee's ordinary hours in a week are greater or less than 38 hours and the employee's pay is averaged to avoid fluctuating wage payments, the following is to apply:

(a) the employee will accrue a credit for each day they work ordinary hours in excess of the daily average;

(b) the employee will not accrue a credit for each day of absence from duty, other than on paid leave; and

(c) an employee absent for part of a day, other than on paid leave, accrues a proportion of the credit for the day, based on the proportion of the working day that the employee was in attendance.

20.7 **Payment on termination of employment**

(a) (i) When an employee is dismissed (other than for misconduct) or lawfully terminates their employment, the employee will be paid all moneys that are owing to them on the day of termination, unless that payment is prevented because of circumstances beyond the control of the employer.

(ii) For termination in circumstances other than in clause 20.7(a)(i), payment of moneys owing must be made no later than 7 days after the day of termination. Where an employee is paid by cash or cheque, moneys due shall be sent by registered post to the employee's last known address.

(b) In the case of an employee who is paid average pay and who has not taken time off due to them during the work cycle in which their employment is terminated, the wages due shall include a total of credits

accrued during the work cycle. Provided that where the employee has taken time off during the work cycle in which their employment is terminated, the wages due shall be reduced by the total of credits which have not accrued during the work cycle.

**21. Wage-related allowances**

21.1 Employers must pay to an employee the wage-related allowances the employee is entitled to under this clause.

21.2 **All-purpose allowances**

Allowances paid for **all purposes** are included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties or loadings or payment while they are on annual leave. The following allowances are paid for all purposes under this award:

(a) forest work allowance; and

(b) low loader allowance.

21.3 **Forest work allowance**

(a) A forest work allowance equal to the amount prescribed in clause 22.3(a) of the Timber Industry Award 2020 is payable to an employee (other than a pieceworker) who is working in forests.
Note: The Timber Industry Award 2020 is a modern award that applies to employers and employees in the national industrial relations system. The forest work allowance contained in clause 22.3(a) of the Timber Industry Award 2020 is usually adjusted from 1 July each year.

(b) This allowance will be paid for all purposes of this award.

(c) This allowance compensates for all disabilities encountered in this type of work (including difficult terrain and dense undergrowth) whilst so engaged.

21.4 **Low loader allowance**

(a) An allowance equal to the amount prescribed in clause 22.4(a) of the Timber Industry Award 2020 per each additional complete tonne over 43 tonnes GCM is payable to an employee when driving a low loader.
Note: The Timber Industry Award 2020 is a modern award that applies to employers and employees in the national industrial relations system. The low loader allowance contained in clause 22.4(a) of the Timber Industry Award 2020 is usually adjusted from 1 July each year.

(b) This allowance will be paid for all purposes of this award.

21.5 **Leading hands**

A leading hands allowance equal to the amount prescribed in clause 22.5 of the Timber Industry Award 2020 is payable to a leading hand.
Note: The Timber Industry Award 2020 is a modern award that applies to employers and employees in the national industrial relations system. The leading hands allowance contained in clause 22.5 of the Timber Industry Award 2020 is usually adjusted from 1 July each year.

21.6 **Other wage related allowances**

The following allowances as set out in clause 22 of the Timber Industry Award 2020 (as varied from time to time) are incorporated into this award and must be provided to employees who qualify for the allowance:

(a) Cleaning of boilers and associated equipment allowance (clause 22.6)

(b) Repairs inside boilers and associated equipment allowance (clause 22.7)

(c) Additional allowances for engine drivers/firemen (clause 22.8)

(d) First aid allowance (clause 22.9)

(e) Charred timber (clause 22.10)

(f) Dirty work allowance (clause 22.11)

(g) Wet places allowance (clause 22.12)

(h) Hot work allowance (clause 22.13)

(i) Cold places allowance (clause 22.14)

(j) Confined spaces allowance (clause 22.15)

(k) Height money allowance (clause 22.16)

Note: The Timber Industry Award 2020 is a modern award that applies to employers and employees in the national industrial relations system. The wage related allowances contained in clause 22 of the Timber Industry Award 2020 are usually adjusted from 1 July each year.

**22. Expense-related allowances**

22.1 The following allowances as set out in clause 23 of the Timber Industry Award 2020 (as varied from time to time) are incorporated into this award and must be provided to employees who qualify for the allowance:

(a) Vehicle allowance (clause 23.2)

(b) Meal allowance - overtime (clause 23.3)

(c) Tool allowances (clause 23.4)

(d) Camping allowance (clause 23.5)

(e) Damage to clothing, tools and other items (clause 23.6)

(f) Protective clothing, footwear and covering allowance (clause 23.7)

(g) Travelling expenses (clause 23.8)

(h) Work away from usual place of employment allowance (clause 23.9)

(i) Travelling allowance - daily travel (clause 23.10)

(j) Travelling allowance - change of residence (clause 23.11)

(k) Travelling allowance - distant work (clause 23.12)

(l) Travelling allowance - bushworkers other than pieceworkers (clause 23.13)

(m) Training and skill development allowances (clause 23.14)

Note: The Timber Industry Award 2020 is a modern award that applies to employers and employees in the national industrial relations system. The expense related allowances contained in clause 23 of the Timber Industry Award 2020 are usually adjusted from 1 July each year.

**23. Accident Pay**

23.1 Should an employee, in either the General Timber Stream or the Pulp and Paper Stream of this Award, experience an accident at the place of employment and weekly payments of compensation are paid to the employee under the *Workers Compensation and Injury Management Act 2023*, the employee shall have the amount of compensation increased by the employer to the employee's usual weekly rate of pay under this Award (not including over award payments, shift loadings or overtime).

23.2 The payment made by the employer shall be limited to a maximum period of 39 weeks in the case of an employee in the General Timber Stream, and 52 weeks in the case of an employee in the Pulp and Paper Stream.

23.3 For the purpose of this clause, **place of employment** shall include travelling directly from or to their place of employment.

23.4 Casual employees' accident pay shall be based on the number of hours worked per week over the last month, with the present employer, or if less than one month the average for the time worked. The amount to be paid is the usual weekly rate of pay including the casual loading prescribed by clause 10.2 of this Award but not including over award payments, shift loadings or overtime.

23.5 If an employee entitled to accident pay under this clause returns to work on reduced hours or modified duties, the amount of accident pay due will be reduced by any amounts paid for the performance of that work.

**24. Superannuation**

24.1 **Superannuation legislation**

The Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth) and the *Superannuation Industry (Supervision) Act 1993* (Cth), deals with the superannuation rights and obligations of employers and employees.

24.2 **Employer contributions**

(a) An 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.

(b) Contributions must be paid into one of the following funds:

(i) any complying fund nominated by the employee; or

(ii) the employee's stapled fund; or

(iii) AustralianSuper, which will become the "nominated fund" if no fund is nominated by the employee and there is no stapled fund.

24.3 **Employee's options**

(a) Within 14 days of commencing employment, the employer must notify the employee of the employee's entitlement to nominate a complying fund.

(b) Any failure by the employee to nominate a fund will not affect the employee's eligibility to receive contributions.

(c) The employee and employer will 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.

(d) The employer must not unreasonably refuse to agree to a change of complying fund requested by an employee.

24.4 **Voluntary employee contributions**

(a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 24.2.

(b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee.

(c) The employer must pay the amount authorised under clauses 24.4(a) or 24.4(b) at the same time the employer makes their compulsory superannuation contributions on behalf of the employee.

24.5 **Absence from work**

Subject to the governing rules of the relevant superannuation fund, the employer must also make the superannuation contributions provided for in clause 24.2 and pay the amount authorised under clauses 24.4(a) or 24.4(b):

(a) **Paid leave**—while the employee is on any paid leave;

(b) **Work-related injury or illness**—for the period of absence from work (subject to a maximum of 52 weeks) of the employee due to work-related injury or work-related illness provided that:

(i) the employee is receiving workers' compensation payments or is receiving regular payments directly from the employer in accordance with the statutory requirements; and

(ii) the employee remains employed by the employer.

## Part 5 - Overtime and Penalty Rates

**25. Overtime**

25.1 **Definition of overtime**

(a) All time worked by employees in excess of, or outside of, the ordinary hours of work as prescribed by this award will be overtime.

(b) A part-time employee who works in excess of the daily hours fixed by agreement between the employer and the employee will be paid at overtime rates.

25.2 **Payment for working overtime – day workers**

(a) All overtime worked by day workers between Monday and Saturday will be paid for at the rate of time and one half for the first 2 hours and double time after 2 hours.

(b) All overtime worked by day workers on Sunday will be paid for at double time.

(c) When computing overtime each day's work will stand alone.

(d) When computing overtime the hourly rate will be determined by dividing the appropriate weekly rate by 38.

25.3 **Shiftwork payments for overtime (excluding the pulp and paper stream)**

All overtime worked by shiftworkers (excluding pulp and paper shiftworkers) will be paid as follows:

(a) Monday to Saturday

(i) If on continuous work - at double time for all hours.

(ii) If on other than continuous work - time and one half for the first 2 hours on any one day and double time after 2 hours.

(b) Sunday

All overtime worked by shiftworkers (whether continuous or otherwise) on a Sunday will be paid for at double time.

(c) Shiftwork payments for overtime do not apply when the time is worked:

(i) by arrangement between the employees themselves; or

(ii) for the purpose of effecting the customary rotation of shifts.

(d) When not less than 8 hours' notice has been given to the employer by a reliever that the employee will be absent from work and the employee who should be relieved is not relieved and is required to continue to work on a rostered day off, the unrelieved employee will be paid at double time.

25.4 **Pulp and Paper Stream—payment for shiftworkers working overtime**

For all work outside the ordinary hours, or in excess of the normal duration of the shift, overtime will be paid to a shiftworker in the pulp and paper stream at the rate double time, except in cases where that time is worked by arrangement between the employees themselves. Provided that:

(a) Where an employee is given notice to work on the employee's rostered day off and the notice is cancelled within 16 hours of the time due for them to commence, the employee will be paid 4 hours' ordinary pay.

(b) Where an employee is given notice to work the succeeding shift and the notice is cancelled, and as a consequence of the notice the employee has remained on the premises until the prescribed starting

time, the employee will be paid 4 hours' ordinary pay.

(c) **Sunday allowance**

In consideration of the Sunday overtime required in the industry, an employee who works not less than 8 hours on a Sunday outside the employee's ordinary hours of work prescribed in this award and has worked not less than 8 hours on either of the immediately preceding 2 Sundays outside ordinary hours will be paid in respect of the first-mentioned Sunday a special allowance of 4 hours' pay at ordinary time.

25.5 **Non-accumulation of penalty rates**

The rates prescribed in this clause will be in substitution for and not cumulative upon the shift rates prescribed elsewhere in this award.

25.6 **Payment for work on rostered day off - all employees**

All work performed on a rostered day off on the instructions of the employer will be paid for at time and one half for the first 2 hours and double time after 2 hours, with a minimum payment for 3 hours at that rate. If the rostered day off is a Sunday, all work must be paid for at double time, with a minimum payment for 3 hours.

25.7 **Watchpersons**

All overtime for a watchperson will be paid for at time and one half.

25.8 **Reasonable overtime**

(a) An employer may require an employee to work reasonable overtime hours at overtime rates.

(b) An employee may refuse to work overtime in circumstances where the working of the overtime would result in the employee working hours which are unreasonable having regard to:

(i) any risk to the employee's health and safety that might reasonably be expected to arise if the employee worked the overtime;

(ii) the employee's personal circumstances (including any family responsibilities);

(iii) the conduct of the operations or business in relation to which the employee is required or requested to work the overtime;

(iv) any notice given by the employer of the requirement or request that the employee work the overtime;

(v) any notice given by the employee of the employee's intention to refuse to work the overtime;

(vi) whether any of the overtime is on a public holiday in the area of the State where the employee is required or requested to work the overtime;

(vii) the employee's hours of work over the 4 weeks ending immediately before the employee is required or requested to work the overtime; and

(viii) any other relevant matter.

25.9 **Rest period after overtime**

(a) When overtime work is necessary, it must, whenever reasonably practicable, be arranged so that employees have at least 10 consecutive hours off duty between the work of successive days.

(b) Where an employee works so much overtime that there are fewer than 10 consecutive hours between finishing overtime on one day and commencing ordinary work on the next day, the employee will be released until they have had at least 10 consecutive hours off duty without loss of pay for ordinary working time occurring during the absence.

(c) If, on the instructions of the employer, an employee resumes or continues work without having had 10 consecutive hours off duty, the employee will be paid at double time until they are released from duty and they are then entitled to be absent until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during that absence.

(d) In the case of a shiftworker the provisions of this subclause will apply as if 8 hours were substituted for 10 hours when overtime is worked:

(i) for the purpose of changing shift rosters;

(ii) where a shiftworker does not report for duty and a day worker or a shiftworker is required to replace the shiftworker; or

(iii) where a shift is worked by arrangement between the employees themselves.

25.10 **Call-back**

(a) An employee recalled to work overtime after leaving the employer's business premises (whether notified before or after leaving the premises) will be paid for a minimum of 4 hours' work at the appropriate rate for the call-back except when the employee is entitled to payment for standing by in accordance with clause 25.11, in which case the employee will be paid for a minimum of 3 hours' work at the appropriate rate.

(b) The employee will not be required to work the full 4 hours' work if the work the employee was recalled to perform is completed in a shorter period, except in unforeseen circumstances.

25.11 **Standing by**

When an employee is required by the employer to be in readiness for a call-back to work the employee will, until released by the employer or notified of the requirement to attend for duty, be paid for standing by time at ordinary rates from the time held in readiness.

25.12 **Recall without notice – pulp and paper stream**

An employee in the pulp and paper stream recalled without notice to work overtime will be paid at the rate of ordinary time from the time of receipt of notice of recall until the employee reports for duty. Provided the employee reports for duty without unreasonable delay.

25.13 **Transport for employees after overtime**

(a) Where an employee working overtime is required to remain on duty to a time which precludes the employee from using any reasonable means of transport to the employee's home, the employer must pay the cost of transport for the employee to get home free of charge and pay the employee's current rate until transport is available.

(b) Clause 25.13(a) will not apply to an employee who lives within reasonable walking distance from the point at which the employee is employed or otherwise has their own transport.

25.14 **Time off instead of payment for overtime**

(a) An employee and employer may agree to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.

(b) The period of time off that an employee is entitled to take is equivalent to the overtime payment that would have been made.

EXAMPLE: An employee who worked 2 overtime hours at time and one half is entitled to 3 hours' time off.

(c) Time off must be taken within 6 months of the overtime being worked at a time or times agreed by the employee and employer.

(d) If the employee requests at any time to be paid for overtime covered by an agreement under this subclause but not taken as time off, the employer must pay the employee for the overtime in the next pay period following the request, at the applicable overtime rate.

(e) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in clause 25.14(c), the employer must pay the employee for the overtime in the next pay period following those 6 months, at the applicable overtime rate.

(f) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.

(g) f, on the termination of the employee's employment, time off for overtime worked by the employee to which this subclause applies has not been taken, the employer must pay the employee for the overtime at the applicable overtime rate.

**26. Penalty rates and shiftwork arrangements**

26.1 **Penalty rates for day workers**

An employer must pay a day worker the following penalty rates for work performed during ordinary hours:

(a) **Payment for work on Saturdays**

All ordinary hours of work performed by a day worker on a Saturday will be paid for at the rate of time and one half for the first 2 hours and double time after 2 hours, with a minimum payment for 3 hours.

(b) **Payment for work on Sundays**

All ordinary hours of work performed by a day worker on a Sunday will be paid for at double time, with a minimum payment for 3 hours.

(c) **Payment for work on public holidays**

Except as prescribed by clause 32 – Public holidays, all work performed by a day worker on a public holiday will be paid for at the rate of double time and one half, with a minimum payment for 3 hours.

Note: For casual employees the 25% casual loading is added to, but not compounded on, the above penalty rates.

26.2 **Shiftwork arrangements**

(a) **Twelve hour shifts**

Employees may be required to work a continuous 12 hour shift subject to:

(i) proper health monitoring procedures being introduced;

(ii) suitable roster arrangements being made;

(iii) proper supervision being provided;

(iv) adequate breaks being provided; and

(v) an adequate trial or review process being implemented through the consultative process at the workplace.

(b) **Changes to shifts**

(i) **Consultation**

Where an employer proposes to change an employee's regular roster or ordinary hours of work, the employer must comply with clause 34 – Consultation about major workplace change and rosters.

(ii) **Day worker changing to shiftwork**

Where a day worker commences shiftwork at the instruction of the employer without 7 days' notice (or a reduced period of 48 hours' notice where the transfer to shiftwork is necessitated by absenteeism), the employer will pay the employee at time and one half for all ordinary hours worked until the required notice period would have expired. This payment will be in place of any shift rates payable under clause 26.3.

Note: All ordinary hours worked on Sunday must still be paid at double time.

(iii) **Change of shift rosters**

Where the employer does not provide a shiftworker with 48 hours' notice of any change to the employee's shift roster, the employer will pay the employee at time and one half for all ordinary hours worked until the 48 hour notice period would have expired. This payment will be in place of any shift rates payable under clause 26.3.

Note: All ordinary hours worked on Sunday must still be paid at double time.

(iv) **Termination of shiftwork**

An employer must give a shiftworker 7 days' notice of the cessation of the shiftwork. If 7 days' notice is not given, the employer will pay the employee the shift rates payable under this clause for all ordinary hours worked until the 7 days' notice would have expired.

26.3 **Penalty rates for shiftworkers**

(a) **Definitions**

(i) **Afternoon shift** means any shift finishing after 6.00 pm and at or before midnight.

(ii) **Day shift** means any shift that is not an afternoon shift or a night shift.

(iii) **Night shift means** any shift finishing after midnight or commencing before 6.00 am.

(iv) **Rostered shift means** a shift of which the employee concerned has had at least 48 hours' notice.

(v) **Continuous work** means work carried on with consecutive shifts of persons throughout the 24 hours of each of at least 6 consecutive days without interruptions except during breakdowns or meal breaks or due to unavoidable causes beyond the control of the employer.

(b) **Afternoon and night shifts to be consecutive**

(i) Where any particular process is carried out on shifts other than day shift, and less than five consecutive afternoon or five consecutive night shifts are worked on that process, the employees employed on such afternoon or night shifts must be paid at overtime rates.

(ii) Provided that where the ordinary hours of work in an establishment are performed on less than five days per week, the provisions of paragraph (i) will be as if four consecutive shifts were substituted for five consecutive shifts.

(iv) The sequence of work will not be deemed to be broken under paragraphs (i) or (ii) above because work on the process is not carried out on a Saturday, Sunday, public holiday, rostered day off or non-working day.

(c) **Payment for ordinary hours - Monday to Friday**

(i) **Day shift**

A shiftworker whilst on day shift will be paid the ordinary hourly rate for all hours of that shift.

(ii) **Afternoon shift**

A shiftworker whilst on afternoon shift will be paid a **15%** loading on the ordinary hourly rate for all hours of that shift.

(iii) **Night shift - rotating**

A shiftworker whilst on a night shift roster which rotates with other shift types will be paid a **15%** loading on the ordinary hourly rate for all hours of a night shift.

(iv) **Night shift - non-rotating**

A shiftworker who works night shifts only will be paid a **30%** loading on the ordinary hourly rate for all hours of a night shift.

(d) **Payment for ordinary hours - Saturday and Sunday**

(i) Ordinary hours of work performed by a shiftworker on a Saturday will be paid for at time and one half.

(ii) Ordinary hours of work performed by a shiftworker on a Sunday will be paid for at double time.

(e) **Payment for ordinary hours - public holidays**

Ordinary hours of work performed by a shiftworker on a public holiday will be paid for at double time.

Note: For casual employees the 25% casual loading is added to, but not compounded on, the above penalty rates.

**Summary of penalty rates – day workers**

| **Time of hours worked** | **Full-time and part-time employees** | **Casual employees** |
|---|---|---|
| | additional % of ordinary hourly rate | additional % of ordinary hourly rate (inclusive of casual loading) |
| Monday to Friday | 0% | 25% |
| Saturday - first 2 hours | 50% | 75% |
| Saturday - after 2 hours | 100% | 125% |
| Sunday - all hours | 100% | 125% |
| Public holiday - all hours | 150% | 175% |

**Summary of penalty rates – shiftworkers**

| **Time of hours worked** | **Full-time and part-time employees** | **Casual employees** |
|---|---|---|
| | additional % of ordinary hourly rate | additional % of ordinary hourly rate (inclusive of casual loading) |
| Monday to Friday - day shift | 0% | 25% |
| Monday to Friday - afternoon shift | 15% | 40% |
| Monday to Friday - night shift (rotating) | 15% | 40% |
| Monday to Friday - night shift (non-rotating) | 30% | 55% |
| Saturday - all hours | 50% | 75% |
| Sunday - all hours | 100% | 125% |
| Public holiday – all hours | 100% | 125% |

## Part 6 - Leave and Public Holidays

**27. Annual leave**

27.1 Annual leave is provided for in the *Minimum Conditions of Employment Act 1993*. Annual leave does not apply to a casual employee.

Note: The provisions of this clause only detail annual leave provisions that are additional to and/or more favourable than what is contained in the *Minimum Conditions of Employment Act 1993*.

27.2 **Additional leave for shiftworkers**

Shiftworkers who are regularly rostered to work on Sundays and public holidays are entitled to an additional one week of annual leave per annum. This annual leave accrues pro rata on a weekly basis.

27.3 **Payment for annual leave**

(a) **Employees other than pieceworkers**

(i) An employee must be paid the rate they would have received in respect of the ordinary hours the employee would have worked had the employee not been on leave during the relevant period.

(ii) Subject to clause 27.3(a)(iii), the rate to be paid must be worked out on the basis of what the employee would have been paid under this award for working ordinary hours during the

period of annual leave, including allowances, loadings and penalties paid for all purposes of the award, first aid allowance and any other wages payable under the employee's contract of employment including any over-award payment.

(iii) The employee is not entitled to payments in respect of overtime, special rates or any other payment which might have been payable to the employee as a reimbursement for expenses incurred.

(b) **Pieceworkers**

In the case of a pieceworker the rate of pay for annual leave is whichever is the higher of:

(i) the rate then currently prescribed by the award for the ordinary weekly hours for the classification in which the employee was classified by the employer immediately prior to commencing leave, plus **25**%;

(ii) the rate payable under the employee's contract of employment; or

(iii) the rate calculated according to the employee's average weekly earnings during the 365 days immediately before the leave is taken (or during the employee's employment if less than 365 days).

Note: Section 18A of the *Minimum Conditions of Employment Act 1993* outlines the process for calculating the rate of pay for paid leave for an employee paid wholly by commission or percentage reward or at piece rates.

27.4 **Loading on annual leave—employees other than pieceworkers**

(a) During a period of annual leave an employee will receive a loading calculated on the minimum wage prescribed by clause 17 – Minimum rates, in the following manner:

(i) **Day workers**

An employee who would have worked on day work only had the employee not been on leave will receive a loading of **17.5%,** or in the case of an employee in the Pulp and Paper Stream, a loading of **20%**.

(ii) **Shiftworkers**

Where an employee would have worked on shiftwork had the employee not been on annual leave, the employee will be paid a loading for each shift equal to the greater of:

- 17.5% (or 20% in the case of an employee in the Pulp and Paper Stream); or
- the shift allowances that would have been payable to the employee for those shifts under clause 26 - Penalty rates and shiftwork arrangements.

(b) Annual leave loading will not apply to any public holiday occurring during a period of annual leave.

(c) Annual leave loading will, upon termination of the employment for any reason, also apply in respect of leave not taken for a full 12 months qualifying period of service by the employee with the employer.

(d) Annual leave loading will not apply to proportionate payment on termination under clause 37 – Termination of employment, except in the case of an employee with not less than 3 months' service with an employer whose services are terminated by the employer through no fault of the employee.

27.5 **Annual leave in advance**

(a) An employer and employee may agree in writing to the employee taking a period of paid annual leave before the employee has accrued an entitlement to the leave.

(b) An agreement must:

(i) state the amount of leave to be taken in advance and the date on which leave is to commence; and

(ii) be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

(c) The employer must keep a copy of any agreement under clause 27.5 as an employee record.

(d) If an employee's employment terminates and the employee has taken a period of annual leave that exceeds what the employee has accrued, the employee is liable to pay the employer an amount representing the annual leave not accrued.

Note: Under the *Minimum Conditions of Employment Act 1993* annual leave accrues pro rata on a weekly basis.

**28. Personal leave**

28.1 Personal leave is provided for in the *Minimum Conditions of Employment Act 1993*.

Note: The provisions of this clause only detail personal leave provisions that are additional to and/or more favourable than what is contained in the *Minimum Conditions of Employment Act 1993*.

28.2 **Adjustment of personal leave**

If, in the first or successive years of service with the employer, an employee is absent on personal leave for a period longer than the employee's accrued entitlement to paid personal leave, payment may be adjusted at the end of that 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.

28.3 **Replacement of paid personal leave during annual leave**

(a) Subject to the provisions of this subclause, an employee who suffers personal ill health or injury during annual leave may apply for and the employer must grant paid personal leave in place of paid annual leave.

(b) An application to replace annual leave with paid personal leave:

(i) must be made within 7 days of resuming work; and

(ii) is only available if the employee produces a certificate from a medical practitioner confirming they were confined to their residence or a hospital as a result of personal ill health or injury for a period of 7 consecutive days or more.

(c) Replacement of paid annual leave by paid personal leave must not exceed the period of paid personal leave the employee was entitled to and will not be made with respect to fractions of a day.

(d) Where paid personal leave has been granted by the employer in accordance with this clause, that portion of the annual leave equivalent to the paid personal leave is replaced by the paid personal leave.

(e) Payment for replaced annual leave is to be at the rate of pay applicable at the time the leave is subsequently taken, provided that if annual leave loading has already been paid to the employee pursuant to clause 27 – Annual Leave, the leave loading is deemed to have been paid with respect to the replaced annual leave.

28.4 If an employee is terminated by their employer and is re-engaged by the same employer within a period of 6 months then the employee's unclaimed balance of paid personal leave continues from the date of re-engagement.

**29. Bereavement leave**

Bereavement leave is provided for in the *Minimum Conditions of Employment Act 1993*.

**30. Parental leave and related entitlements**

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

**31. Family and domestic violence leave**

Family and domestic violence leave is provided for in Division 7 of Part 2-2 of the *Fair Work Act 2009* (Cth) and the *Minimum Conditions of Employment Act 1993*.

**32. Public holidays**

32.1 (a) An employee is entitled to be absent from work without loss of pay on a day or part of a day that is a public holiday mentioned in Schedule 1 of the *Minimum Conditions of Employment Act 1993*.

(b) When any of the days mentioned in clause 32.1(a), other than Easter Sunday, falls on a Saturday or a Sunday the public holiday shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday the public holiday shall be observed on the next succeeding Tuesday. In each case the substituted day shall be a public holiday without deduction of pay and the day for which it is substituted shall not be a public holiday.

32.2 **Substitution of public holidays by agreement**

An employer and employee may agree to substitute another day for a day that would otherwise be a public holiday.

32.3 **Rostered day off falling on public holiday**

Where a full-time employee's ordinary hours of work are structured to include a rostered day off on a weekday and that day off falls on a public holiday, the employee is entitled, at the discretion of the employer, to either:

(a) 7.6 hours of pay at the ordinary time rate;

(b) 7.6 hours of extra annual leave; or

(c) a substitute day off on an alternative weekday.

32.4 **Full-time employees working non-standard hours**

(a) Clause 32.4 applies to full-time workers who do not regularly work a 5 day, Monday to Friday week.

(b) **Public holidays falling upon days employees not working**

When a public holiday falls upon a day when the employee would not be working in any event the employee will receive:

(i) a day's paid leave to be taken on another day or added to annual leave (to be mutually agreed between the employer and the employee); or

(ii) an additional day's wage.

(c) **Christmas Day loading**

If employees are rostered to work on a Saturday or Sunday that is a Christmas Day and are required to work, the employee will receive the normal Saturday or Sunday rate plus a loading of one-half of a normal day's wages for the full day's work and be entitled to the substitute day.

32.5 **Part-time employees**

(a) Where the normal roster of a part-time employee includes a day that is a public holiday, the employee will receive either a paid day off for the hours the employee would otherwise have worked that day or receive the appropriate public holiday rate for working that day.

(b) For part-time employees whose normal roster includes a Saturday or Sunday that would be a prescribed holiday but for the substitution of an alternative day, the following will apply:

(i) the employee will be granted leave with pay on the "actual day" without any substitution; or

(ii) the employee works on the "actual day" at normal Saturday or Sunday rates (if the Saturday or Sunday is Christmas Day the Christmas Day loading will apply) and is allowed to take another day with pay, which may or may not be the prescribed substitute day, as a holiday; or

(iii) the employee works on the "actual day" at normal Saturday or Sunday rates (if the Saturday or Sunday is Christmas Day the Christmas Day loading will apply) and receives, in addition, payment at ordinary time rates for an additional day of equal length (with no substitution of an alternative day).

## Part 7 - Workplace Delegates, Consultation and Dispute Resolution

**33. Workplace delegates' rights**

33.1 In this clause:

(a) **employer** means the employer of the workplace delegate;

(b) **delegate's organisation** means the employee organisation in accordance with the rules of which the workplace delegate was appointed or elected; and

(c) **eligible workers** means members and persons eligible to be members of the workplace delegate's organisation who work in a particular enterprise.

33.2 Before exercising entitlements under this clause, a workplace delegate must give the employer written notice of their appointment or election as a workplace delegate. If requested, the workplace delegate must provide the employer with evidence that would satisfy a reasonable person of their appointment or election.

33.3 An employee who ceases to be a workplace delegate must give written notice to the employer within 14 days.

33.4 **Right of representation**

A workplace delegate may represent the industrial interests of eligible workers who wish to be represented by the workplace delegate in matters including:

(a) consultation about major workplace change;

(b) consultation about changes to rosters or hours of work;

(c) resolution of disputes;

(d) disciplinary processes;

(e) enterprise bargaining where the workplace delegate is assisting the delegate's organisation with enterprise bargaining; and

(f) any process or procedure within an award, enterprise agreement or policy of the employer under which eligible workers are entitled to be represented and which concerns their industrial interests.

33.5 **Entitlement to reasonable communication**

(a) A workplace delegate may communicate with eligible workers in relation to their industrial interests under clause 33.4. This includes discussing membership of the delegate's organisation and representation with eligible workers.

(b) A workplace delegate may communicate with eligible workers during working hours or work breaks, or before or after work.

33.6 **Entitlement to reasonable access to the workplace and workplace facilities**

(a) The employer must provide a workplace delegate with access to or use of the following workplace facilities:

(i) a room or area to hold discussions that is fit for purpose, private and accessible by the workplace delegate and eligible workers;

(ii) a physical or electronic noticeboard;

(iii) electronic means of communication ordinarily used in the workplace by the employer to communicate with eligible workers and by eligible workers to communicate with each other, including access to Wi-Fi;

(iv) a lockable filing cabinet or other secure document storage area; and

(v) office facilities and equipment including printers, scanners and photocopiers.

(b) The employer is not required to provide access to or use of a workplace facility under clause 33.6(a) if:

(i) the workplace does not have the facility;

(ii) due to operational requirements, it is impractical to provide access to or use of the facility at the time or in the manner it is sought; or

(iii) the employer does not have access to the facility at the enterprise and is unable to obtain access after taking reasonable steps.

33.7 **Entitlement to reasonable access to training**

Employers who employ 15 or more employees must provide a workplace delegate with access to up to 5 days of paid time during normal working hours for initial training and at least one day each subsequent year, to attend training related to representation of the industrial interests of eligible workers, subject to the following conditions:

(a) In each year commencing 1 July, the employer is not required to provide access to paid time for training to more than one workplace delegate per 50 eligible workers.

(b) The number of eligible workers will be determined on the day a delegate requests paid time to attend training, as the number of eligible workers who are:

(i) full time or part time employees; or

(ii) casual employees.

(c) Payment for a day of paid time during normal working hours is payment of the amount the workplace delegate would have been paid for the hours the workplace delegate would have been rostered or required to work on that day if the workplace delegate had not been absent from work to attend the training.

(d) The workplace delegate must give the employer not less than 5 weeks' notice (unless the employer and delegate agree to a shorter period of notice) of the dates, subject matter, the daily start and finish times of the training, and the name of the training provider.

(e) If requested by the employer, the workplace delegate must provide the employer with an outline of the training content.

(f) The employer must advise the workplace delegate not less than 2 weeks from the day on which the training is scheduled to commence, whether the workplace delegate's access to paid time during normal working hours to attend the training has been approved. Such approval must not be unreasonably withheld.

(g) The workplace delegate must, within 7 days after the day on which the training ends, provide the employer with evidence that would satisfy a reasonable person of their attendance at the training.

33.8 **Exercise of entitlements**

(a) A workplace delegate's entitlements under this clause are subject to the conditions that the workplace delegate must, when exercising those entitlements:

(i) comply with the reasonable policies and procedures of the employer, including reasonable codes of conduct and requirements in relation to occupational health and safety and acceptable use of ICT resources;

(ii) not hinder, obstruct or prevent eligible workers exercising their rights to freedom of association.

(b) When exercising any entitlements under this clause, a workplace delegate must, other than in the reasonable exercise of those entitlements:

(i) comply with their duties and obligations as an employee; and

(ii) not hinder, obstruct or prevent the normal performance of work.

(c) This clause does not require the employer to provide a workplace delegate with access to electronic means of communication in a way that provides individual contact details for eligible workers.

(d) This clause does not require an eligible worker to be represented by a workplace delegate without the worker's agreement.

**34. Consultation about major workplace change and rosters**

**Consultation about major workplace change**

34.1 If an employer makes a definite decision to make major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must:

(a) give notice of the changes to all employees who may be affected by them, and if an employee nominates a union to represent them, the union; and

(b) discuss with affected employees and their union (if nominated):

(i) the introduction of the changes; and

(ii) their likely effect on employees; and

(iii) measures to avoid or minimise the adverse effects of the changes on employees; and

(c) commence discussions as soon as practicable after a definite decision has been made.

34.2 For the purposes of the discussion under clause 34.1(b), the employer must give in writing to the affected employees and the union (if nominated) all relevant information about the changes including:

(a) their nature; and

(b) their expected effect on employees; and

(c) any other matters likely to affect employees.

34.3 Clause 34.2 does not require an employer to disclose any confidential information if its disclosure would be adverse to the employer's interests.

34.4 The employer must promptly consider any matters raised by the employees or their union (if nominated) about the changes in the course of the discussion under clause 34.1(b).

34.5 In this clause **significant effects**, on employees, includes any of the following:

(a) termination of employment; or

(b) major changes in the composition, operation or size of the employer's workforce or in the skills required; or

(c) loss of, or reduction in, job or promotion opportunities; or

(d) loss of, or reduction in, job tenure; or

(e) alteration of hours of work; or

(f) the need for employees to be retrained or transferred to other work or locations; or

(g) job restructuring.

34.6 Where this award makes provision for alteration of any of the matters defined at 34.5, the alteration is taken not to have significant effect.

**Consultation about changes to rosters or hours of work**

34.7 (a) This subclause applies if an employer proposes to change the regular roster or ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic or unpredictable.

(b) The employer must consult with any employees affected by the proposed change and if an employee nominates a union to represent them, the union.

(c) For the purpose of the consultation, the employer must:

(i) provide to the employees and the union (if nominated) information about the proposed change (for example, information about the nature of the change and when it is to begin); and

(ii) invite the employees to give their views about the impact of the proposed change on them (including any impact on their family or caring responsibilities) and also invite the union (if nominated) to give their views about that impact.

(d) The employer must consider any views given under clause 34.7(c)(ii).

(e) Clause 34.7 is to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.

**35. Dispute resolution**

35.1 The following procedure applies to any question, dispute or difficulty arising under this award.

35.2 The parties to the question, difficulty or dispute must first try to resolve the dispute at the workplace through discussion between the employee or employees concerned and the relevant supervisor.

35.3 If the dispute is not resolved through discussion as mentioned in clause 35.2, the parties to the dispute must then try to resolve it in a timely manner at the workplace through discussion between the employee or employees concerned and more senior levels of management, as appropriate.

35.4 If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses 35.2 and 35.3, the dispute may be referred to the Commission, provided that the persons involved in the question, dispute or difficulty must confer among themselves and make reasonable attempts to resolve questions, disputes or difficulties before taking those matters to the Commission.

35.5 A party to the question, dispute or difficulty may appoint a person, organisation or association to support and/or represent them in any discussion or process under this clause.

35.6 While procedures are being followed under this clause in relation to a dispute:

(a) work must continue in accordance with this award; and

(b) an employee must not unreasonably fail to comply with any direction given by the employer about performing work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

35.7 This clause is subject to any applicable work health and safety legislation.

**36. Dispute resolution procedure training**

36.1 An eligible employee representative who will be involved in dispute resolution will be allowed to be trained in order to assist the employee to settle disputes as per this clause. The employee must arrange for suitable training and apply in writing with a minimum of 6 weeks' notice (or less amount by agreement) for up to 5 days leave with pay each calendar year, non-cumulative.

36.2 The notice to the employer must include details of the type, content and duration of the course to be attended. The employer must have a reasonable opportunity to:

(a) consult with the eligible employee representative and/or the training provider regarding dispute resolution training; and

(b) participate in the development of the dispute resolution training course.

36.3 Leave of absence granted pursuant to this clause will count as service for all purposes.

36.4 The time of taking leave will be arranged so as to minimise any adverse effect on the employer's operations.

36.5 For the purpose of determining the entitlement of employee representatives to dispute resolution procedure training leave, an **eligible employee representative** is an employee who is a shop steward, a delegate, or an employee representative duly elected or appointed by the employees in an enterprise or workplace generally or collectively for all or part of an enterprise or workplace for the purpose of representing those employees in the dispute resolution procedure.

## Part 8 - Termination of Employment and Redundancy

**37. Termination of employment**

37.1 **Notice of termination by an employer – full-time and part-time employees**

(a) An employer must give the employee notice of termination in accordance with the following table.

**Period of notice**

| Employee's period of continuous service with the employer at the end of the day the notice is given | Period of notice |
|---|---|
| Not more than 1 year | 1 week |
| More than 1 year but not more than 3 years | 2 weeks |
| More than 3 years but not more than 5 years | 3 weeks |
| More than 5 years | 4 weeks |

(b) An employee who at the time of being given notice is over 45 years of age and who at the date of termination has completed 2 years' continuous service with the employer, is entitled to one week's notice in addition to the notice prescribed in clause 37.1(a).

(c) Payment in lieu of the notice prescribed in clauses 37.1(a) and 37.1(b) must be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu.

(d) 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:

(i) the employee's ordinary hours of work (even if they are not standard hours);

(ii) the amounts ordinarily payable to the employee in respect of those hours, including for example, allowances, loadings and penalties; and

(iii) any other amounts payable under the employee's contract of employment.

(e) The period of notice in this subclause does not apply to those employees who are exempt from receiving notice under Subdivision A of Division 11 of Part 2-2 of the *Fair Work Act 2009* (Cth), as amended from time to time.

(f) For the purpose of this subclause an employee's continuity of service has the same meaning as prescribed in section 22 of the *Fair Work Act 2009* (Cth).

37.2 **Notice of Termination by Employee – full-time and part-time employees**

The notice of termination required to be given by an employee is the same as that required of an employer, except that there is no additional notice based on the age of the employee concerned

37.3 **Job search entitlement**

(a) Where an employer has given notice of termination to an employee, the employee must be allowed

time off without loss of pay of up to one day each week for the purpose of seeking other employment. The time off is to be taken at times that are convenient to the employee after consultation with the employer.

(b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or they shall not receive payment for the time absent. For this purpose, a statutory declaration will be sufficient.

37.4 **Transport of employees on termination of employment**

Where means of transport to the bush or bush sawmills is provided by the employer, on the termination of service of an employee, the employee, the employee's family and goods and chattels will be transported within 48 hours of receipt by the employer of notice that the transport is required, and the employee will be reimbursed the cost of the transport if not provided by the employer. An employee will not be entitled to free transport on a route along which the public is regularly transported for payment, however the employee will not be charged a rate on the route in excess of that regularly charged to the public.

37.5 **Casual employees**

An employer or employee may terminate a casual employment arrangement with one hour's notice.

37.6 **Statement of employment**

An employer must, in the event of termination of employment, provide upon request to the employee who has been terminated, a written statement specifying the period of employment and the classification or type of work performed by the employee.

**38. Redundancy**

38.1 **Consultation before terminations**

(a) Where an employer has made a decision that the employer no longer wishes the job the employee has been doing to be done by anyone and that decision may lead to termination of employment, the employer must consult with the employees directly affected and, if an employee nominates a union to represent them, the union.

(b) The consultation must take place as soon as is practicable and cover, amongst other matters, the reasons the proposed terminations are required, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any terminations on the employees.

(c) For the purposes of the consultation the employer must, as soon as practicable, provide in writing to the employees concerned and, if an employee nominates a union to represent them, the union, all relevant information about the proposed terminations, including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of employees normally employed and the period over which the terminations are likely to be carried out.

(d) The employer is not required to disclose confidential information the disclosure of which would be adverse to the employer's interests.

38.2 **Transfer to lower paid duties**

(a) Where an employee is transferred to lower paid duties for reasons of redundancy, the employee is entitled to the same period of notice of transfer they would have been entitled to if they had been terminated.

(b) The employer may, at the employer's option, make payment in lieu of notice for an amount equal to the difference between the former amounts the employer would have been liable to pay and the new lower amount the employer is liable to pay the employee for the number of weeks of notice still owing.

(c) The amounts must be worked out on the basis of:

(i) the ordinary working hours to be worked by the employee; and

(ii) the amounts payable to the employee for the hours including for example, allowances, loading and penalties; and

(iii) any other amounts payable under the employee's contract of employment.

38.3 **Severance pay**

(a) **Employers with 15 or more employees**

In addition to the period of notice provided in clause 37 – Termination of employment, and subject to any further order of the Commission, employers who employ 15 or more employees must pay the following amount of severance to any full-time or part-time employee whose employment is terminated by reason of redundancy.

| **Period of continuous service** | **Severance pay** |
|---|---|
| Less than 1 year | nil |
| 1 year and less than 2 years | 4 weeks' pay |
| 2 years and less than 3 years | 6 weeks' pay |

| | |
|---|---|
| 3 years and less than 4 years | 7 weeks' pay |
| 4 years and less than 5 years | 8 weeks' pay |
| 5 years and less than 6 years | 10 weeks' pay |
| 6 years and less than 7 years | 11 weeks' pay |
| 7 years and less than 8 years | 13 weeks' pay |
| 8 years and less than 9 years | 14 weeks' pay |
| 9 years and less than 10 years | 16 weeks' pay |
| 10 years and over | 12 weeks' pay |

(b) **Employees with fewer than 15 employees**

In addition to the period of notice provided in clause 37 – Termination of employment, and subject to any further order of the Commission, employers who employ fewer than 15 employees must pay the following amount of severance to any full-time or part-time employee whose employment is terminated by reason of redundancy.

| **Period of continuous service** | **Severance pay** |
|---|---|
| Less than 1 year | nil |
| 1 year and less than 2 years | 4 weeks' pay |
| 2 years and less than 3 years | 6 weeks' pay |
| 3 years and less than 4 years | 7 weeks' pay |
| 4 years and over | 8 weeks' pay |

(c) "Weeks' pay" means the ordinary time rate of pay for the employee concerned. Provided that this rate excludes:

(i) overtime;

(ii) penalty rates;

(iii) disability allowances;

(iv) shift allowances;

(v) special rates;

(vi) fares and travelling time allowances;

(vii) bonuses; and

(viii) any other ancillary payments of a like nature.

(d) Severance payments will not exceed the amount which the employee would have earned if employment with the employer had proceeded to the employee's normal retirement date.

(e) For the purpose of this clause continuity of service will not be broken on account of:

(i) any interruption or termination of the employment by the employer if the interruption or termination has been made with the intention of avoiding the obligations of this clause in respect of leave;

(ii) any absence from work where leave has been granted by the employer; or

(iii) any absence with reasonable cause, if the employee can supply sufficient proof.

Provided that in the calculation of continuous service any time an employee is absent from work, except time for which the employee is entitled to claim paid leave, will not count as time worked.

(f) Service by an employee with a business which has been transferred from one employer to another will also constitute continuous service for the purpose of this clause, provided the employee's service has been deemed continuous in accordance with Part II, Division 3 of the *Long Service Leave Act 1958*.

38.4 **Employee leaving during notice**

Where an employee is terminated because of redundancy, the employee may resign from their employment during the period of notice and, if so, will be entitled to the same benefits and payments under this clause as they would be if they had remained with the employer until the expiry of the notice. However, in this situation, the employee will not be entitled to payment in lieu of notice in accordance with clause 37 - Termination of employment.

38.5 **Alternative employment**

An employer, in a particular redundancy case, may apply to the Commission to have the severance payment varied if the employer obtains acceptable alternative employment for an employee.

38.6 **Transmission of business**

(a) The provisions of this clause are not applicable where a business is transferred from one employer to another employer in any of the following circumstances:

(i) Where the employee accepts employment with the new employer which recognises the period of continuous service which the employee had with the old employer (and any other prior employers for that business) to be continuous service of the employee with the new employer; or

(ii) Where the employee rejects an offer of employment with the new employer:

(aa) in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the old employer; and

(bb) which recognises the period of continuous service which the employee had with the old employer (and any other prior employers for that business) to be continuous service with the new employer.

(b) The Commission may vary the provisions of clause 38.6(a) if it is satisfied that it would operate unfairly in a particular case.

38.7 **Notice to Centrelink**

Where a decision has been made to terminate employees due to redundancy, the employer must notify Centrelink as soon as possible giving all relevant information about the proposed terminations, including a written statement of the reasons for the terminations, the number and categories of the employees likely to be affected, the number of employees normally employed and the period over which the terminations are intended to be carried out.

38.8 **Employees exempted**

(a) This clause does not apply where employment is terminated as a consequence of conduct that justifies instant dismissal or to casual employees.

(b) Apart from the requirement to consult with affected employees in accordance with clause 38.1, this clause does not apply to apprentices, trainees, probationary employees or employees engaged for a specific period of time or for a specified task or tasks.

38.9 **Incapacity to pay**

An employer in a particular redundancy case may apply to the Commission to have the severance pay varied on the basis of the employer's incapacity to pay.

## Part 9 – Named Parties

**39. Named parties to the award**

Union Party

The Australian Workers' Union, West Australian Branch, Industrial Union of Workers.

## Schedule A - Classification Definitions - General Timber Stream

**A.1 Level 2 (Adult Minimum Wage)**

**Level 2 – employee new to industry**

The following provisions apply to a Level 2 employee who is new to the industry.

A.1.1 **General**

(a) A new employee at this level:

(i) will complete a program of induction training;

(ii) will complete a program of skills training to meet the requirement of being able to competently perform work within the scope of Level 2; and

(iii) where required by statute or regulation will obtain the necessary licenses, permits or other authorisations.

(b) **General description of skills required**

A new Level 2 employee will exercise the following skills:

(i) the ability to follow instructions;

(ii) manual handling skills; and

(iii) the ability to follow standards and procedures.

(c) **General description of knowledge required**

A new Level 2 employee will develop the following:

(i) broad knowledge of the industry sector and operations at the enterprise level;

(ii) broad understanding of all functions carried out in the enterprise;

(iii) understanding of health and safety regulations and procedures relevant to the level;

(iv) an understanding of the employment conditions set out in the award, and enterprise policies and procedures relating to conditions;

(v) knowledge of the resources used in the sector; and

(vi) knowledge of the range and uses of basic hand tools.

(d) **Induction training**

Induction training will cover the following:

(i) basic work health and safety;

(ii) first aid;

(iii) conditions of employment; and

(iv) organisation policies and objectives.

(e) **Level of responsibility**

New Level 2 employees will work under direct supervision at all times and will be expected to exercise minimal judgement.

**Level 2 - Competent**

A.1.2 **General**

The following provisions apply to a competent Level 2 employee.

(a) At this level an employee:

(i) will have a broad general knowledge of the industry and the functions carried out in the workplace;

(ii) works under direct supervision either individually or in a team environment;

(iii) understands and undertakes basic quality control/assurance procedures including the ability to recognise basic quality deviations/faults;

(iv) in the harvesting forest management sector, understands and utilises basic environmental procedures in accordance with relevant forest codes of practice;

(v) understands and utilises basic process control procedures;

(vi) may assist skilled trainers in the provision of on-the-job training; and

(vii) should be given the opportunity to participate in ongoing skills training to enable progress to Level 3.

(b) **Indicative tasks**

An employee at this level will perform any or all of the tasks listed below and after suitable training, will be expected to operate flexibly between work stations at this level.

(i) **Harvesting sector**

- landing builder or repairer;
- operates a chainsaw at a basic level ancillary to normal duties;
- crosscut and trim logs on the landing/dump;
- segregation of logs and sleepers;
- loader trimming and cutting logs in pine plantations;
- loader or turner sleepers over 1.5 metres long;
- pulpwood cutter and/or splitter;
- spar or plank road builder;
- woodcutter for charcoal or firewood; and
- log measurer.

(ii) **Milling and processing sector**

- sorts, stacks and binds materials;
- uses selected hand tools;
- racks timber (manually or mechanically);
- assembles boxes and crates;
- grades round poles and peels posts for preservation;
- operates manual transfer equipment;
- produces beams using nail plates;
- operates a range of basic pre-set wood machines as prescribed within the current definitions of the award appropriate to this level;
- assists in preparing timber orders by selecting pre-cut timber from stocks;
- operates chainsaw at a basic level ancillary to normal duties;
- watchperson who does not attend boilers; and
- greases or oils any engine, machinery or shafting.

(iii) **Panel products sector**

- uses selected hand tools;
- centre feeder and/or core feeder and/or coverlayer and/or assistant in glue spreading;
- veneer joiner and/or repairer where the work is done by hand with less than one year's experience;
- tapeless veneer joining machine with less than one year's experience;
- operator on power-operated veneer edge truing or trimming machine (saw, cutter block or guillotine) where the machinist is never required to set up the machine nor to grind the knives and cutters but is merely an operator or feeder of the machine;

- assembling veneers with film glue;
- plywood and veneer grader grading into 3 or more classes;
- flat press operators and assistants not elsewhere specified;
- operates manual transfer equipment;
- assistant to lathe or slicer operator;
- plywood scarfing machine where the machinist is never required to set up the machine nor to grind the knives and cutters but is merely an operator;
- assistant to veneer kiln drier or re-drier operator who operates a drying kiln;
- other operators of immunising plant;
- assistant on veneer clipper machine;
- taping and glue thread machinist with less than one year's experience;
- operator of plywood trimming machine using parallel saws;
- belt sander in sanding of plywood faced with rotary peel veneer;
- edge gluing veneer by hand or roller for tapeless joining machine;
- guillotine operator not elsewhere included;
- feeder and/or assistant on automatic core assembling machine;
- operator of folding machine; and
- glue spreading spray gun operator.

(iv) **Manufacturing sector**

- assists in assembling wall frames and roof trusses;
- sorts, stacks and binds materials;
- uses and maintains selected hand tools;
- racks timber (manually or mechanically);
- assembles boxes and crates or trellis;
- primes and paints;
- operates door and/or panel trimming machines where the operator is not required to set up the machine nor to grind the knives and cutters and operates punching and notching machines;
- operates manual and motorised transfer equipment while holding appropriate permits/licences/certification;
- produces beams using nail plates;
- points posts;
- operates a range of basic pre-set wood machines as prescribed within the current definitions of the award appropriate to this level;
- operates chainsaw at a basic level ancillary to normal duties;
- operates cross cut and bench saws in box and case factories;
- measures and records sawn timber; and
- assists sawyer to change bandsaw.

(v) **Merchandising sector**

- sorts, stacks and binds materials;
- uses and maintains selected hand tools;
- operates a chainsaw at a basic level ancillary to normal duties;
- assists sawyer to change bandsaw;
- operates manual and motorised transfer equipment;
- assists in assembling wall frames and roof trusses;
- primes and paints; and
- operates a range of basic pre-set wood machines as prescribed within the current definitions of the award appropriate to this level.

(c) **General description of skills required**

(i) manual handling skills;

(ii) the ability to make judgements visually of size and shape;

(iii) in the panel products sector, the ability to make judgements by measurement coupled to quality control procedures;

(iv) ability to operate basic, pre-set cutting equipment;

(v) ability to use hand power tools safely; and

(vi) problem solving skills.

(d) **General description of knowledge required:**

(i) basic knowledge of timber use and value;

(ii) in the harvesting forest management sector, awareness and understanding of relevant Forest Codes of Practice;

(iii) in the panel products sector, basic knowledge of timber, veneer and plywood use and value;

(iv) awareness of work health and safety procedures for pre-set cutting equipment, and other health and safety procedures; and

(v) knowledge of the functions and use of hand tools and base technology saws/machine/equipment for this level.

(e) **Level of responsibility**

An employee at this level will be:

(i) responsible for identifying and solving minor problems which occur in the work process the Level 2 worker is directly responsible for;

(ii) required to work to predetermined standards and outcomes; and

(iii) responsible for keeping own work area safe and clean.

(f) **Promotional criteria**

An employee remains at this level until capable of effectively performing through assessment or appropriate certification the tasks required of the next level so as to enable progress as a position becomes available.

**A.2 Level 3 (relativity 87.4%)**

A.2.1 **General**

(a) An employee at this level performs work above and beyond the skills of an employee at Level 2 and is competent to perform work within the scope of this level.

At this level an employee:

(i) is responsible for the quality of own work subject to general supervision;

(ii) works under general supervision either individually or in a team environment;

(iii) exercises discretion within own level of skills and training;

(iv) operates flexibly between work stations and machines;

(v) may assist skilled trainers in the provision of on-the-job training;

(vi) in the harvesting forest management sector, understands and utilises environmental control procedures in accordance with relevant Forest Codes of Practice; and

(vii) should be given the opportunity to participate in ongoing skills training to enable progression to Level 4.

(b) **Indicative tasks**

An employee at this level will perform any or all of the tasks listed below and will be expected after suitable training to operate flexibly between work stations at this level.

(i) **Harvesting and forest management sector**

- operate mechanical debarking equipment;
- operate chipping machines;
- operate log splitting machine;
- offsider to logging tractor or bulldozer driver;
- faller - pine plantation;
- pole handler; and
- operate and maintain chainsaws.

NOTE: Employees must hold appropriate licence/certification.

(ii) **Milling and processing sector**

- preliminary processing of logs;
- operates and maintains mechanical debarking equipment;
- demonstrates basic keyboard skills;
- assembles pallets, boxes and crates;
- controls the flow of materials through mill;
- operates, resets and maintains planing machines;
- operates recovery bench, breaking down rig (no sizing mode), bench controls;
- operates and maintains drilling machines, static press, snatcher, tilt hoist;
- operates and maintains chipping machines;
- assists breaking down sawyer;
- sets up single multi-rip saws, band resaw and circular saws;
- prepares preservation solution and appropriate paperwork at the appropriate level;
- operates and maintains chainsaws to a higher level than Level 2;
- prepares timber orders and tallies timber;
- where the employee has completed a recognised grading course, grades timber visually according to quality;
- operates pulpwood processing equipment;

- laminates, fabricates or assembles timber, plywood and veneers;
- assists a tradesperson to carry out their duties;
- sets up and operates a range of wood machines as prescribed within the current definitions of the award appropriate to this level;
- operates waste chipper/hogger;
- sorts on boardline or similar process;
- operates traverser machine;
- tails out moulder, planer or equivalent machinery and pulls out behind sawbenches;
- operates docking and/or trim saws to eliminate defects;
- attends a boiler;
- a greaser or oiler who under the supervision of an engine driver stops or starts an engine or engines, but does not include any greaser or oiler who does so only in cases of necessity or emergency;
- operates pneumatic tyred tractor not using power operated attachments 35 kW brake power and under; and
- operates steam engine or suction gas and other internal combustion engine under 35 kW brake power.

(iii) **Panel products sector**

- centre layer and/or corelayer and/or coremaker building up solid timber and/or veneer centres;
- veneer joiners and/or repairers where the work is done by hand with one year's experience;
- operator on power-operated veneer edge truing or trimming machine (cutter block or guillotine) where the machinist has not been required to grind the knives and cutters but is at any time required to set up the machine and then only from the time the employee is required to act;
- operator of hot press who sets the pressure and temperature but is not required to calculate areas and pressures and control temperatures;
- operator of rotary veneer peeling lathe or slicing veneer machine;
- plywood scarfing machinist where the machinist has not been required to grind the knives and cutters, but is at any time required to set up the machine and then only from the time the employee is required to do so;
- veneer kiln drier heat plant operator or re-drier operator who operates a drying kiln drier or re-drier or who may be required to make temperature readings and records;
- veneer clipper operator in conjunction with rotary peeling lathe or slicing machine;
- operates and maintains mechanical debarking equipment including grinding and sharpening blades;
- taping glue thread, edge glued machinist with more than one year's experience;
- band sawyer using band saw up to 90 cm capacity, rough cutting and trimming;
- operator of the belt sander in sanding of plywood faced with fancy sliced veneer;
- operator employed on gluing jigs and/or cramps for the laminating fabrication or assembling of veneers, timber and plywood;
- operator of power-operated veneer edge truing or trimming machine saw (saw type) where the operator is required to set up and sharpen the saw;
- veneer splicing machine; and
- adhesive solution mixer where test control procedures are not required.

(iv) **Manufacturing sector**

- assembles cable drums;
- demonstrates basic keyboard skills;
- assembles pallets, boxes and crates appropriate to this level;
- assembles wall and roof trusses appropriate to this level;
- assists in setting up jig for standard 'A' roof trusses;
- sets up and operates a range of saws including docking saws appropriate to this level;
- tails out, checks timber and docks out faults;
- sets up and operates a range of wood machines as prescribed in the current definitions of the award appropriate to this level;
- surfaces floors;
- bends timber by hand and machine;
- assists in preparation of logs in log cabin manufacture;
- operates spray painting machine;
- operates and maintains chainsaws to a higher level than Level 2;
- prepares timber orders and tallies timber;
- where the employee has completed a recognised grading course, grades timber visually according to quality;
- operates door and/or panel machines appropriate to this level;

- assembler;
- assistant or other operator to a laminated beam maker;
- laminates, fabricates or assembles timber, plywood and veneers;
- assists a tradesperson to carry out duties;
- removes and replaces saw blades on dresser;
- operates traverser machine;
- tails out moulder, planer or equivalent machinery and pulls out behind sawbenches;
- operates docking and/or trim saws to eliminate defects;
- operates but does not set up: a computerised automatic 2 dimensional dividing and squaring saw, double ended tenoner, a multi-headed boring machine with 3 or more bits, v-grooving machine, vinyl or melamine laying machine, v-line folding machine, longitudinal grooving machine, edgebander and/or double edgebander and any programmed and/or computerised high output wood machine not mentioned herein;
- spray hand engaged on finishing coats;

(v) **Merchandising sector**

- demonstrates basic keyboard skills;
- size and straighten timber to feed dresser;
- tails out, moulder, planer or equivalent machinery and pulls out behind sawbenches;
- checks timber and operates docking and/or trim saw to eliminate defects;
- sets up and operates a range of wood machines as prescribed within the current definitions of the award appropriate to this level;
- sets up and operates a range of saws including docking saws appropriate to this level;
- where the employee has completed a recognised grading course, grades timber visually according to quality;
- prepares timber orders and tallies timber;
- assists a tradesperson to carry out duties;
- assembles wall and roof trusses appropriate to this level;
- assists in setting up jig for standard 'A' roof trusses;
- responds to customer routine enquiries and lays out stock for delivery driver; and
- removes and replaces saw blades on dresser.

(c) **General description of skills required**

In addition to those outlined in Level 2:

(i) ability to interpret and follow plans and procedures;

(ii) problem solving skills;

(iii) ability to operate machinery/saws/equipment according to prescribed procedures and standards appropriate to this level;

(iv) ability to grade timber according to obvious defects and to exercise quality control;

(v) in the panel products sector, the ability to grade timber veneer and plywood according to obvious defects and to exercise quality control; and

(vi) ability to record in writing simple information relating to lengths and species of timber.

(d) **General description of knowledge required**

In addition to that outlined in Level 2:

(i) knowledge of commonly used timbers, their value, and what products they can be used for;

(ii) in the panel products sector, knowledge of commonly used timbers, veneers;

(iii) in the harvesting forest management sector, awareness and understanding of relevant Forest Codes of Practice;

(iv) knowledge of storage, stacking and drying technique;

(v) knowledge of the functions and use of saws, machines and equipment for this level;

(vi) knowledge of health and safety procedures/regulations appropriate to this level;

(vii) knowledge of the industry standards for tasks performed at this level; and

(viii) knowledge of quality control standards appropriate to this level.

(e) **Level of responsibility**

(i) An employee at this level will operate under general direction for the whole job. Individual tasks will be completed according to clear, set procedures and standards. An employee will be responsible for the quality of work within these limits.

(ii) The employee will also be responsible for identifying and solving problems which occur in the work process the Level 3 worker is directly responsible for, and for identifying and reporting problems outside own work process.

(f) **Promotional criteria**

An employee remains at this level until capable of effectively performing through assessment or appropriate certification the tasks required of the next level so as to enable progress as a position becomes available.

**A.3 Level 4 (relativity 92.4%)**

A.3.1 **General**

(a) An employee at this level performs work above and beyond the skills of an employee at Level 3 and is competent to perform work within the scope of this level.

At this level an employee:

(i) works from complex instructions and procedures;

(ii) may assist skilled trainers in provision of on-the-job training;

(iii) in the harvesting forest management sector, ensures application of sound forest environmental practices in accordance with relevant Forest Codes of Practice;

(iv) works in a team environment or works individually under general supervision;

(v) is responsible for assuring the quality of their own work; and

(vi) should be given the opportunity to participate in ongoing skills training to enable progress to Level 5.

(b) **Indicative tasks**

An employee at this level will perform any or all of the tasks listed below or as described for machinist B grade. They will be expected after suitable training to operate flexibly between work stations at this level.

(i) **Harvesting and forest management sector**

- operation of mobile equipment appropriate to this level up to and including 13 500 kg;
- operator of tree harvester;
- operator of bucker-limber-buncher machine (logma);
- faller who works alone, selects trees and sharpens own saws;
- faller other;
- operates and maintains chipping machines;
- pole dresser;
- performs non-trade carpentry functions; and
- spotter at spot mills.

NOTE: Employees must hold appropriate licences/certification to operate machinery.

(ii) **Milling and processing sector**

- maintains and fault finds on plant and equipment (including lubrication);
- maintains mill buildings;
- performs non-trade carpentry functions;
- operates and maintains mobile equipment (multi-skilled operator-loader, forklift, crane, mobile crane with lifting capacity not exceeding 20 tonnes) while holding appropriate licenses/certifications;
- demonstrates intermediate keyboard skills including CNC operations in saws and/or machines where the operator controls one process only;
- sets up, monitors and operates twin edgers, single and double bandsaws, bench saw not cutting to size;
- operates optimising docker (computerised) and finger jointer;
- where the employee has completed a recognised stress grading course, grades timber (includes mechanical stress grader);
- undertakes primary conversion of logs (no sizing);
- analyses log moisture content and selects preservation method;
- prepare preservation solution and appropriate paperwork at the appropriate level;
- loads/unloads cylinder and monitors faulty operation at the appropriate level;
- laminated beam maker—responsible for setting up machine, setting out product and operating machine other than on a continuous basis;
- selects, grades and marks materials for re-manufacture and from stock for filling orders, including tallying, measuring and checking of complete orders and compiling for dispatch;
- storeperson including: inventory and stores control, VDU operation and use of other electronic equipment, e.g., scanner or using intermediate keyboard skills to carry out stores work, storing and packing of goods and materials in accordance with appropriate procedures and/or regulations; preparation and receipt of appropriate documentation including liaison with suppliers; allocating and retrieving goods from specific warehouse areas; periodic stock-checks;
- gatekeeper in control of movement of persons, vehicles, stock and material at gatehouses and similar locations including vehicles carrying goods of any description, to ensure that the quantity and description of those goods is in accordance with the requirements of the

relevant document/gate pass; utilising monitoring and operating computer based systems requiring data input, or other advanced monitoring system;

- operates and maintains hydraulic debarking equipment;
- attends boiler/kilns as required and responsible for temperature readings and records, including a watchperson who attends boilers;
- sharpens saws (with or without tensioning), chainsaws, hand tools, knives, grinds and sharpens debarker/chipper blades and operates punching press for saws (without tipping);
- operates and maintains mechanical stacking and sorting equipment;
- attends to 2 or more boilers or 2 or more suction gas generators, or one boiler the evaporation capacity of which attributed thereto by the maker exceeds 5 000 kg but less than 45 000 kg of steam per hour, or one gas generator supplying a total engine load capacity attributed thereto by the maker of not less than 740 kW;
- operates suction gas and other internal combustion engine 35 kW brake power or over; and
- operates any of the following items of mechanical plant: crawler tractor using power operated attachments up to 8000 pounds shipping weight, excavator up to and including 0.5 cubic metre capacity, grader, power operated below 35 kW brake power, loaders, front end and overhead, over 2.25 cubic metres up to and including 4.5 cubic metres, pneumatic tyred tractor using power operated attachments in excess of 110 kW brake power.

(iii) **Panel products sector**

- maintains and fault-finds on plant and equipment (including lubrication);
- adhesive solution mixer where the employee is required to mix, test, control and check in operation and is responsible for its proper use;
- veneer matcher responsible for selecting and setting out fancy sliced veneers to design or specification;
- operator of power-driven veneer edge truing or trimming machine (cutter block or guillotine) where the operator is required to grind the knives and cutters and set up the machine;
- employee in charge of hot process who sets pressures and temperatures and who is responsible for calculating areas and pressures and controlling temperatures and operators of specialty presses;
- rotary veneer peeling lathe or slicing machine operator who sharpens knives and/or sets up the machine;
- sharpens lathe knives, pressure bars, clipper blades and chipper;
- plywood scarfing machinist where the machinist is ever required to set up the machine and grind the knives and cutters and then only from the time as the employee is required to do so;
- employee in charge of veneer kiln heat plant operator or re-drier (plate roller or conveyor type) who is required to adjust temperatures, humidity, conditions, calculate moisture contents, test and control;
- immunising plant operator who is required to control temperatures, preservative contents in solution and analyse treated timbers and/or veneer samples;
- operator of torwegge or similar automatic core assembling machine who is required to set up and adjust the machine and is fully responsible for the operation of the machine;
- employee in charge of paper honeycomb making machine;
- operator in graining machine where the operator is required to set up the machine and sharpen the blades;
- operates and maintains mobile equipment appropriate to this level;
- demonstrates intermediate keyboard skills including CNC operations in saws and/or machines where the operator controls one process only; and
- operates and maintains hydraulic debarking equipment.

(iv) **Manufacturing sector**

- maintains and fault-finds on plant and equipment (including lubrication);
- operates high frequency machine and edge band as a gluer;
- operates and maintains mobile equipment appropriate to this level while holding appropriate licenses/certifications;
- demonstrates intermediate keyboard skills including CNC operations in saws/and or machines where the operator controls one process only;
- sets up, monitors and operates twin edgers, single and double bandsaws, circular saws;
- operates optimising docker (computerised);
- where the employee has completed a recognised grading course, grades timber (both quality and stress);
- assembles wall frames and roof trusses appropriate to this level including operation and responsibility for wall frame fabricating machines manually controlled;
- sharpens saws (with or without tensioning), chainsaws, hand tools, knives and dresser blades and operates punching press for saws (without tipping);

- bends timber using own forms and equipment and operates machine;
- assembles prepared pieces of timber (as defined);
- glazes;
- operates log preparing machine and fabricates modules—log cabin manufacture;
- makes knives from beginning to end as a sawmaker;
- operates gluing jigs for laminating veneers or timber;
- laminated beam maker—responsible for setting up machine, setting out product and operating machine other than on continuous process;
- selects, grades and marks materials for re-manufacture and from stock for filling orders, including tallying, measuring and checking of complete orders and compiling for dispatch;
- operates and maintains mechanical stacking and sorting equipment; and
- cricket bat operations—spindle machinist and or wood turner with handles fitted by hand.

(v) **Merchandising sector**

- maintains and fault finds on plant and equipment (including lubrication);
- operates mobile equipment appropriate to this level while holding appropriate licences/certifications;
- demonstrates intermediate keyboard skills including CNC operations in saw/and or machines where the operator controls one process only;
- where the employee has completed a recognised grading course, grades timber (both quality and stress);
- selects grades and marks materials for re-manufacturing and from stock for filling orders including tallying, measuring and checking of complete orders and compiling for dispatch;
- collects payment for goods from customer;
- maintains delivery schedules;
- sets up, monitors and operates band or circular saw;
- assembles wall frames and roof trusses appropriate to this level including operation and responsibility for wall frame fabricating machines manually controlled; and
- sharpens saws (with or without tensioning) chainsaws, hand tools, knives, grinds and sharpens debarker/chipper blades and operate punching press for saws (without tipping).

(c) **General description of skills required**

In addition to that outlined in Level 3:

(i) ability to set up and adjust machines to produce a specific product;

(ii) ability to drive and operate mobile machinery;

(iii) ability to complete simple clerical tasks;

(iv) in the harvesting forest management sector, awareness and understanding of relevant Forest Codes of Practice;

(v) problem solving skills;

(vi) ability to select suitable methods for completing tasks and plan the order in which to complete them; and

(vii) ability to assess timber, or timber veneer and plywood, for cutting giving regard to quality and the purpose it will be used for.

(d) **General description of knowledge required**

In addition to that outlined in Level 3:

(i) knowledge of saws, machinery and equipment used at this level;

(ii) knowledge of health and safety legislation and procedures appropriate to this level; and

(iii) knowledge of the industry standards for tasks performed at this level.

(e) **Level of responsibility**

(i) An employee at this level will operate under general direction for the whole job. In completing individual tasks an employee will work to set standards. An employee will be responsible for the quality of work in own area.

(ii) The employee will also be responsible for identifying and solving problems which occur in the work process the Level 4 worker is directly responsible for, and in conjunction with others for identifying and solving problems in the work area.

(f) **Promotional criteria**

An employee remains at this level until capable of effectively performing through assessment or appropriate certification the tasks required of the next level so as to enable progress as a position becomes available.

**A.4 Level 5 (relativity 100%)**

A.4.1 **General**

(a) An employee at this level may be employed under one of the following categories:

(i) Timber tradesperson; or

(ii) Harvesting and forest management sector, Milling and processing sector, Manufacturing sector or Merchandising sector employee.

(b) An employee at this level works above and beyond an employee at Level 4 and is competent to perform work within the scope of this level.

(c) At this level an employee:

(i) understands and applies quality control techniques;

(ii) exercises good interpersonal and communication skills;

(iii) exercises keyboard skills at a level higher than Level 4;

(iv) exercises discretion within the scope of this level;

(v) performs work under limited supervision either individually or in a team environment;

(vi) in the harvesting sector applies skills acquired through successful completion of requisite certification relating to plant and equipment used in forest harvesting;

(vii) in the harvesting sector ensures application of sound forest environmental practices in accordance with forest codes of practice;

(viii) is able to inspect products and/or materials for conformity with established operational standards; and

(ix) conducts training in conjunction with a skilled trainer as required.

A.4.2 **Timber tradesperson Level 5**

(a) A Timber tradesperson Level 5 or machinist A grade is an employee who holds a Trade Certificate or Tradespersons Rights Certificate as a tradesperson in one of the classes identified appropriate to the sector in which they work and is able to exercise the skills and knowledge of that trade and may be required to supervise other employees.

(i) **Milling and processing sector trades**

- Timber tradesperson—sawdoctor;
- Timber tradesperson—wood machinist; and
- Timber tradesperson—millwright.

(ii) **Merchant sector trades**

- Timber tradesperson—grinder;
- Timber tradesperson—wood machinist;
- Timber tradesperson—wood turner; and
- Timber tradesperson—sawdoctor.

(iii) **Manufacturing sector trades**

- Timber tradesperson—grinder;
- Timber tradesperson—sawdoctor;
- Timber tradesperson—wood machinist; and
- Timber tradesperson—wood turner.

(b) **Indicative tasks**

A Timber tradesperson Level 5 at this level will perform any or all of the tasks listed below and will be expected, after suitable training, to operate flexibly between work stations at this level:

(i) **Milling and processing sector, Manufacturing sector and Merchandising sector: Timber tradesperson Level 5**

- understands and applies quality control techniques for self and others;
- exercises good interpersonal and communication skills;
- exercises keyboard skills at a level higher than Level 4;
- exercises discretion within the scope of this level;
- performs work under limited supervision either individually or in a team environment;
- operates all lifting equipment incidental to own work;
- performs non-trade tasks incidental to own work;
- performs work which, while primarily involving the skills of the employee's trade, is incidental or peripheral to the primary task and facilitates the completion of the whole task; the incidental or peripheral work would not require additional formal technical training;
- performs work within the definition of machinist A grade;
- performs work of a motor mechanic;
- inspects products and/or materials for conformity with established operational standards as required; and
- sets up, monitors and operates a range of pre-set wood machines appropriate to this level including multi headed square dresser.

(c) **Level of responsibility**

(i) An employee at this level has greater responsibility than those at Level 4 in that the employee may be responsible for the work of others through the monitoring role. The employee will be responsible for work outcomes regarding quantity and quality in own area, including own work and the work of others. The employee may be required to supervise others in groups in the training situation. An employee at this level will be required to exercise discretion in the planning and carrying out of work.

(ii) The employee will also be responsible, with others, for identifying and solving problems in their work areas; if supervising others for initiating, co-ordinating and monitoring problem solving in own work area; for identifying and reporting problems in other work areas where they affect activity in own work area.

(d) **Promotional criteria**

An employee remains at this level until capable of effectively performing through assessment or appropriate certification the tasks required of the next level so as to enable progress as a position becomes available.

A.4.3 **Harvesting, milling and processing, Manufacturing or Merchandising employee Level 5**

(a) **General**

An employee at this level performs work above and beyond the skills of a Level 4 employee and is competent to perform work within the scope of this level.

At this level an employee:

(i) understands and applies quality control techniques;

(ii) exercises good interpersonal and communication skills;

(iii) exercises keyboard skills at a level higher than Level 4;

(iv) exercises discretion within the scope of this level;

(v) performs work under limited supervision either individually or in a team environment;

(vi) able to inspect products and/or materials for conformity with established operational standards; and

(vii) conducts training in conjunction with a skilled trainer as required.

(b) **Indicative tasks**

An employee at this level will perform any or all of the tasks listed below and will be expected after suitable training to operate flexibly between work stations at this level:

(i) **Harvesting and forest management sector**

- able to inspect logs for conformity with established operational standards (grade and segregate);
- operates harvesting and extraction equipment in a mechanical harvesting environment appropriate to this level;
- operation of mobile equipment to a level higher than Level 4 over 13 500 kg;
- fall and process trees of any species which are possible to work safely;
- broad axeperson;
- axeperson;
- axeperson employed using chopping axe taking off bark and lumps from logs for use in veneer mills;
- rigger or tree climber;
- head faller;
- forwarder log handling machine; and
- operator of grapple saw.
- Driving an articulated vehicle with 3 axles and GCM of 22.4 tonnes or less.
- Driving a rigid truck and heavy trailer combination with more than 3 axles and a GCM greater than 22.4 tonnes - over 15 tonnes up to 21 tonnes capacity.
- Driving an articulated vehicle with more than 3 axles and a GCM greater than 22.4 tonnes - capacity up to or over 22 tonnes.
- Driving a low loader with GCM up to or over 43 tonnes.
- Driver of a double articulated vehicle up to and including 53.4 tonne GCM, including B doubles.

(ii) **Milling and processing sector**

- operates a breaking down rig (primary conversion with sizing);
- operating no. 1 bench;
- supervision of kiln operations;
- hardens/tempers/beats out saws;
- weighs and records loads of timber and maintains security of the premises;
- operates ship loading equipment;
- laminated beam maker—responsible for setting up machine, setting out product and

operating machine on a continuous process;

- sets up and operates a range of wood machines within the current definitions of the award appropriate to this level; and
- operates mechanical plant and mobile equipment including, crawler tractor with a shipping weight exceeding 80 000 pounds, excavator over 2.25 cubic metres, power operated grader over 70 kW brake power, loaders over 4.5 cubic metres capacity, mobile cranes with a lifting capacity over 20 tonnes and not exceeding 100 tonnes.

(iii) **Manufacturing sector**

- operates and maintains mobile equipment appropriate to this level while holding appropriate licences/certifications;
- estimator;
- laminated beam maker - responsible for setting up machine, setting out product and operating machine on a continuous process;
- hardens/tempers/beats out saws;
- weighs and records loads of timber and maintains security of the premises;
- sets up and operates door and/or panel trimming machine and grinds knives and cutters;
- operates CNC wall frame fabricating machine;
- sets up truss jigs;
- breaks down and finishes on anvils;
- prepares cutting list of timber for use in the manufacture of building components from builders, architects, or other plans; and
- sets up, monitors and operates a range of wood machines as prescribed within the current definitions of machinist A grade of the award appropriate to this level including multi-headed square dresser.

(iv) **Merchandising sector**

- prepares cutting lists of timber for use in the manufacture of building components from builders, architects, or other plans; and
- sets up, monitors and operates a range of wood machines within the current definitions of the award appropriate to this level including multi-headed square dresser.

(c) **General description of skills required**

In addition to those outlined in Level 4:

(i) ability to make decisions regarding work processes and implement them in own work area;

(ii) ability to use judgement based on experience to optimise productivity in own work area;

(iii) ability to supervise workers in the training situation;

(iv) ability to set up, operate and monitor mechanical and CNC equipment used in work area;

(v) ability to work to standards requiring precision and attention to detail; and

(vi) problem solving skills.

(d) **General description of knowledge required**

In addition to that outlined in Level 4:

(i) detailed knowledge of the sector and work undertaken at the enterprise;

(ii) in the Harvesting forest management sector, awareness and understanding of relevant Forest Codes of Practice;

(iii) understanding of quality control techniques;

(iv) knowledge of industry standards for product and/or materials;

(v) thorough knowledge of equipment/machinery used in the work area;

(vi) knowledge of work health and safety, safety techniques and legislation for work undertaken at this level;

(vii) detailed knowledge of product used; and

(viii) knowledge of training principles and practices.

(e) **Level of responsibility**

(i) An employee at this level has greater responsibility than at Level 4 in that the employee may be responsible for the work of others through the monitoring role. The employee will be responsible for work outcomes regarding quantity and quality in own area, including own work and the work of others. The employee may be required to supervise others in groups in the training situation. An employee at this level will be required to exercise discretion in the planning and carrying out of work.

(ii) The employee will also be responsible, with others, for identifying and solving problems in their work areas; if supervising others for initiating, co-ordinating and monitoring problem solving in own work area; for identifying and reporting problems in other work areas where they affect activity in own work area.

(f) **Promotional criteria**

An employee remains at this level until capable of effectively performing through assessment or appropriate certification the tasks required of the next level so as to enable progress as a position becomes available.

**A.5 Level 6 (relativity 105%)**

A.5.1 **General**

(a) An employee at this level may be employed under one of the following categories:

(i) Timber tradesperson; or

(ii) production or merchant employee.

(b) A Timber tradesperson at this level works above and beyond an employee at Level 5 and is competent to perform work within the scope of this level.

(c) At this level an employee:

(i) understands and applies quality control techniques;

(ii) exercises good interpersonal and communication skills;

(iii) exercises keyboard skills at a level higher than Level 5;

(iv) exercises discretion within the scope of this level;

(v) performs work under limited supervision either individually or in a team environment;

(vi) will be responsible for planning own work and the work of others and for the quantity and quality of the results of that work; and

(vii) conducts training as required.

A.5.2 **Timber tradesperson**

(a) A Timber tradesperson Level 6 is a saw doctor tradesperson who has completed an appropriate post trade course in maintaining high tension saws and stellite tipping, or a wood machinist tradesperson who has completed an appropriate post trade course (or equivalent) in CNC and PLC machinery operations and CAD design systems and is able to exercise the skills and knowledge of that trade and may be required to supervise other employees, or a millwright—special class who has completed 3 appropriate modules of post-trade training in addition to the Level 5 qualification requirements.

(b) **Indicative tasks**

An employee at this level will perform any or all of the tasks listed below and will be expected, after suitable training, to operate flexibly between work stations at this level:

(i) **Milling and processing sector, Manufacturing sector and Merchandising sector: Timber tradesperson Level 6**

- exercises the skills attained through satisfactory completion of the training prescribed for this classification subject to the standards of this award;
- exercises discretion within the scope of this level;
- works under limited supervision either individually or in a team environment;
- understands and implements quality control techniques;
- provides trade guidance and assistance as part of a work team;
- exercises trade skills relevant to the specific requirements of the enterprise at a level higher than Timber tradesperson Level 5;
- supervision and training of employees as required; and
- ability to plan, conduct and evaluate training both on and off-the-job, one-to-one and in groups.

(c) **Level of responsibility**

An employee at this level will be responsible in conjunction with others for identifying and solving problems in own work area. If supervising others the employee will be responsible for initiating, co-ordinating and monitoring problem solving in own work area. The employee will be responsible for identifying and reporting problems in other work areas where they affect activity in own work area.

A.5.3 **Harvesting and forest management, Milling and processing, Manufacturing or Merchandising employee**

(a) An employee at this level performs work above and beyond the skills of a Level 5 Production employee and is competent to perform work within the scope of this level and has acquired skills recognised by the employer.

(b) At this level an employee:

(i) understands and applies quality control techniques;

(ii) exercises good interpersonal and communication skills;

(iii) exercises keyboard skills at a level higher than Level 5;

(iv) exercises discretion within the scope of this level;

(v) performs work under limited supervision either individually or in a team environment;

(vi) will be responsible for planning own work and the work of others and for the quantity and the quality of the results of that work; and

(vii) conducts training as required.

(c) **Indicative tasks**

An employee at this level will perform any or all of the tasks listed below and will be expected after suitable training to operate flexibly between work stations at this level:

(i) **Harvesting and forest management, Milling and processing sector, Manufacturing sector, Merchandising sector**

- operates a wide range of complex machines, saws and/or equipment in the work place;
- exercises the skills attained through satisfactory completion of the training prescribed for this classification subject to the standards of this award;
- exercises discretion within the scope of this level;
- works under limited supervision either individually or in a team environment;
- understands and implements quality control techniques;
- supervision and training of employees as required;
- ability to plan, conduct and evaluate training both on and off-the-job, one-to-one and in groups; and
- operate a mobile crane with a lifting capacity over 100 tonnes and not exceeding 180 tonnes.
- Driver of a rigid vehicle with trailer combinations or articulated vehicle with trailer combinations exceeding 94 tonne GCM.

**A.6 Timber tradesperson millwright - special class Level 7 (relativity 115%)**

A.6.1 **General**

(a) A Timber tradesperson millwright—special class Level 7, is a millwright who has completed 9 appropriate modules in addition to the requirements of Level 5; or 9 appropriate modules towards an Advanced Certificate; or 9 appropriate modules towards an Associate Diploma; or an AQF Level 4 National Certificate.

(b) **Duties**

An employee at this level performs trade and non-trade functions. In addition to the tasks required to be performed at Timber tradesperson Level 6, a Timber tradesperson Level 7 employee may perform the following indicative tasks:

(i) provides trade guidance and training;

(ii) provides training to other employees in the enterprise;

(iii) assists in the management/operation of a quality control/assurance program;

(iv) assists in the management/operation of best practice program;

(v) exercises complex, new high precision, trade skills;

(vi) applies advanced computer numerical control techniques in machining;

(vii) exercises intermediate CAD/CAM skills;

(viii) commissions and fault finds on new equipment and approves first off samples; or

(ix) performs or assists in design work involving drafting or planning (e.g. preparation of cutting lists).

(c) **Responsibility**

An employee at this level will work competently either individually or in a team environment and will be responsible for the quality and accuracy of their own work and (subject to the relevant leading hand provisions) may be required to monitor the work of others.

(d) **Training**

An employee at this level will be provided with skill development consistent with national competency standards relevant to this level to enable the employee to perform duties within the range specified for this level.

## Schedule B - Classification Definitions - Pulp and Paper Stream

B.1 **Indicative tasks/skills**

B.1.1 Employees engaged in the classifications contained in this Schedule will work to the level of their skills, competence and training and will perform work within the scope of their level as follows:

B.1.2 **Level 1 (relativity 85%)**

Employee undertakes induction training sufficient to allow the employee to participate in work training. Can undertake tasks under direct supervision and to the level provided in the induction training.

Induction may include information on:

- the workplace and the industry
- conditions of employment

- training and career path opportunities
- plant layout
- work and documentation procedures
- work health and safety
- environmental issues
- housekeeping
- basic paper manufacturing
- waste control
- cost and quality assurance
- equal employment opportunity and harassment.

After induction the employee:

- has been trained and can apply safe working practices required to adhere to standard operating procedures;
- performs duties essentially of a manual nature; and
- exercises minimal judgement in line with training provided.

B.1.3 **Level 2 (relativity 90%)**

Employee has completed structured training as defined for Level 1 to enable work to be performed at this level.

- Has been trained and can apply safe working practices required to adhere to standard operating procedures
- Works under direct supervision and instruction
- Communicates basic information effectively and can interact with other employees
- Understands the need to report workplace hazards and the process to perform personal risk assessments
- Able to record established production and quality indicators which may require keyboard operation
- Understands basic process control procedures
- Understands and applies the minor mechanical procedures that can be performed at this level.

B.1.4 **Level 3 (relativity 93%)**

Performs work above and beyond the skills of a Level 2 and to the level of competency exhibited and assessed.

- Works under general supervision and as directed and operates within strict guidelines
- Able to communicate process information verbally and in written form
- Can interact with other employees and has developed interpersonal skills
- Performs routine duties
- Applies safe working practices
- Can report workplace hazards and performs personal risk assessments
- Understands and applies basic quality requirements of function
- Keyboard skills sufficient to access and use documents
- Can use mechanical plant and lifting equipment to level of competency
- Carries out minor mechanical maintenance requirements where it is efficient to do so.

B.1.5 **Level 4 (relativity 96%)**

Performs work above and beyond the skills required of a Level 3 and to the level of competency exhibited and assessed.

- Works under general supervision and exercises limited discretion within the scope of skills and training
- Understands the need for accurate, timely and technically correct communication. Communicates verbally and in written form and understands group decision making processes
- Uses electronic facilities and technology competently for production activities
- Understands the need to maintain a safe working environment
- Accurately assesses raw materials used
- Understands the impact of quality standards on product
- Operates mechanical plant and lifting equipment to level of competence
- Carries out minor mechanical maintenance.

B.1.6 **Level 5 (relativity 100%)**

Performs work above and beyond the skills of a Level 4 and to the level of competency exhibited and assessed.

- Works under limited supervision and operates with limited discretion.
- Communicates technical information correctly to supervisor and fellow operators and including the use of electronic facilities. Can participate in group decision making processes
- Actively pursues a safe, hazard free workplace
- Uses and understands detailed information on production and quality indicators and recommends improvements
- Understands and applies quality control techniques and quality standards
- Provides technical/production instruction as directed
- Able to operate mechanical plant including lifting equipment to level of competence
- Organises repairs and maintenance in accordance with the principles of minor mechanical maintenance.

B.1.7 **Level 6 (relativity 105%)**

Performs work above and beyond the skills of a Level 5 and to the level of competency exhibited and assessed.

- Works under limited supervision and/or general direction, exercises initiative and judgement with discretion
- Able to communicate at production senior level to an acceptable standard and undertakes group decision making processes and dynamics
- Observes work health and safety and environmental policies, supervises other employees in safe working practices
- Trained in statistical process control techniques to use detailed information on production and quality indicators, and make improvements
- Detects errors, investigates causes, recommends preventative action
- Understands and applies quality control techniques
- Operates lifting equipment to level of competence
- Provides technical/production instruction as required
- Plans, directs and organises others in the repair or maintenance of equipment within the scope of minor mechanical maintenance principles where it is efficient to do so.

B.1.8 **Level 7 (relativity 110%)**

Performs work above and beyond the skills of a Level 6 and to the level of competency exhibited and assessed.

- Can supervise the work of others, and also works under broad principles and limited supervision
- Works from complex instruction
- Communication skills at a level appropriate to facilitate supervision, training and technical knowledge both at a production and senior level
- Can lead group decision making processes and understands the need for and processes of consultation
- Carries out risk assessments, rectifies identified hazards, applies work health and safety and environmental policies, and ensures safe working practices are followed
- Undertakes quality control and work organisation and implements improvements and preventative action to improve product quality
- Provides technical/production training
- Operates lifting equipment that requires certification
- Applies statistical process control techniques
- Determines the need for equipment to be repaired or maintained. Can organise resources necessary to effect maintenance and repair.

B.1.9 **Level 8 (relativity 115%)**

Performs work above and beyond the skills of a Level 7 and to the level of competency exhibited and assessed.

- Can supervise the work of others and works under broad policies and general supervision
- Assesses, evaluates and implements changes to processes within process control parameters or complex instructions
- High level of communication skill to ensure clear and concise instruction, delivery of training to employees and imparting of technical knowledge to supervisors and employees
- Can undertake consultation within established consultation procedures
- Leads group decision making processes
- Applies work health and safety and environmental policies and/or legislation and ensures safe working practices are followed

- Ensures hazards are identified and rectification has been carried out
- Ensures risk assessments are carried out when alteration to equipment or new equipment is provided
- Provides training to employees
- Operates lifting equipment that requires certification
- Applies statistical process control techniques and other actions required to improve processes and products
- Supervises repairs and maintenance to ensure appropriate resources are used at all times to ensure efficiency and best use of labour in accordance with minor mechanical principles.

B.1.10 **Level 9 (relativity 120%)**

Performs work above and beyond the skills of a Level 8 and to the level of competency exhibited and assessed.

- Supervises the work of others
- Works under broad policies and organisational principles
- Communicates throughout organisation using established communication methods
- Consults other employees using established consultation policies and procedures
- Can establish safe working procedures and systems and participates in the establishment of work health and safety and environmental policies
- Establishes and maintains quality assurance processes and activities
- Plans and organises training to ensure efficient use of labour
- Plans and supervises repairs and maintenance to ensure appropriate resources are used at all times to ensure efficiency and best use of labour.

## Schedule C - School-based Apprentices

C.1 This schedule applies to school-based apprentices. A school-based apprentice is a person who is undertaking an apprenticeship in accordance with this schedule while also undertaking a course of secondary education.

C.2 A school-based apprenticeship may be undertaken in the trades covered by this award under a training agreement or contract of training for an apprentice declared or recognised by the Department of Training and Workforce Development.

C.3 The relevant minimum wages for full-time junior and adult apprentices provided for in this award, calculated hourly, will apply to school-based apprentices for total hours worked including time deemed to be spent in off-the-job training.

C.4 For the purposes of clause C.3, where an apprentice is a full-time school student, the time spent in off-the-job training for which the apprentice must be paid is **25%** of the actual hours worked each week on-the-job. The wages paid for training time may be averaged over the semester or year.

C.5 A school-based apprentice must be allowed, over the duration of the apprenticeship, the same amount of time to attend off-the-job training as an equivalent full-time apprentice.

C.6 For the purposes of this schedule, off-the-job training is structured training delivered by a Registered Training Organisation separate from normal work duties or general supervised practice undertaken on the job.

C.7 The duration of the apprenticeship must be as specified in the training agreement or contract for each apprentice but must not exceed 6 years.

C.8 School-based apprentices progress through the relevant wage scale at the rate of 12 months progression for each 2 years of employment as an apprentice or at the rate of competency-based progression, if provided for in this award.

C.9 The apprentice wage scales are based on a standard full-time apprenticeship of 4 years (unless the apprenticeship is of 3 years duration) or stages of competency-based progression, if provided for in this award. The rate of progression reflects the average rate of skill acquisition expected from the typical combination of work and training for a school-based apprentice undertaking the applicable apprenticeship.

C.10 If an apprentice converts from school-based to full-time, the successful completion of competencies (if provided for in this award) and all time spent as a full-time apprentice will count for the purposes of progression through the relevant wage scale in addition to the progression achieved as a school-based apprentice.

C.11 School-based apprentices are entitled pro rata to all of the other conditions in this award.

## Schedule D - No Reduction

D.1 An employee (including a casual employee) who was employed under this award or any of the superseded awards listed in D.2 as at 1 July 2026 and who continues to be employed under this award with the same employer after that date, must not be paid less than they would have been paid for the same work under the provisions of this award or any of the superseded awards as they stood prior to 1 July 2026.

D.2 For the purpose of clause D.1, the awards are:

(a) *Plywood and Veneer Workers Award No. 28 of 1981*; and

(b) *Particle Board Industry Award No. 10 of 1978.*

# AWARDS/AGREEMENTS AND ORDERS—Application for variation of—No variation resulting—

**2026 WAIRC 00473**

**TIMBER WORKERS AWARD NO. 36 OF 1950**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | V & D RIDOLFO PTY LTD |
| | **APPLICANT** |
| | **-v-** |
| | THE AUSTRALIAN WORKERS UNION, WEST AUSTRALIAN BRANCH, INDUSTRIAL UNION OF WORKERS (AWU) AND OTHERS |
| | **RESPONDENTS** |
| **CORAM** | SENIOR COMMISSIONER R COSENTINO |
| **DATE** | MONDAY, 6 JULY 2026 |
| **FILE NO/S** | APPL 62 OF 2025 |
| **CITATION NO.** | 2026 WAIRC 00473 |

| | |
|---|---|
| **Result** | Application dismissed |
| **Representation** | (on the papers) |

*Order*

THE COMMISSION, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), hereby orders –

THAT the application be and is hereby dismissed

(Sgd.) R COSENTINO,
[L.S.] Senior Commissioner.

**2026 WAIRC 00475**

**TIMBER WORKERS AWARD NO. 36 OF 1950**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | WHITTAKERS LIMITED |
| | **APPLICANT** |
| | **-v-** |
| | THE AUSTRALIAN WORKERS UNION, WEST AUSTRALIAN BRANCH, INDUSTRIAL UNION OF WORKERS (AWU) AND OTHERS |
| | **RESPONDENTS** |
| **CORAM** | SENIOR COMMISSIONER R COSENTINO |
| **DATE** | MONDAY, 6 JULY 2026 |
| **FILE NO/S** | APPL 63 OF 2025 |
| **CITATION NO.** | 2026 WAIRC 00475 |

| | |
|---|---|
| **Result** | Application dismissed |
| **Representation** | (on the papers) |

*Order*

THE COMMISSION, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), hereby orders –

THAT the application be and is hereby dismissed

(Sgd.) R COSENTINO,
[L.S.] Senior Commissioner.

**2026 WAIRC 00459**

**REVIEW OF THE TIMBER WORKERS AWARD NO. 36 OF 1950 PURSUANT TO S 40B OF THE INDUSTRIAL RELATIONS ACT 1979 (WA)**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | COMMISSION'S OWN MOTION |
| | **APPLICANT** |
| | **-v-** |
| | (NOT APPLICABLE) |
| | **RESPONDENT** |
| **CORAM** | SENIOR COMMISSIONER R COSENTINO |
| **DATE** | THURSDAY, 2 JULY 2026 |
| **FILE NO/S** | APPL 49 OF 2023 |
| **CITATION NO.** | 2026 WAIRC 00459 |

**Result** Application discontinued

**Representation**

Mr C Dunne on behalf of The Australian Workers Union, West Australian Branch, Industrial Union of Workers (AWU)

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

*Order*

THE Commission pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA) (**IR Act**), hereby orders –

THAT the application be and is hereby discontinued.

(Sgd.) R COSENTINO,
[L.S.] Senior Commissioner.

**2026 WAIRC 00460**

**REVIEW OF THE TIMBER YARD WORKERS AWARD NO. 11 OF 1951 PURSUANT TO S 40B OF THE INDUSTRIAL RELATIONS ACT 1979 (WA)**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

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|---|---|
| **PARTIES** | COMMISSION'S OWN MOTION |
| | **APPLICANT** |
| | **-v-** |
| | (NOT APPLICABLE) |
| | **RESPONDENT** |
| **CORAM** | SENIOR COMMISSIONER R COSENTINO |
| **DATE** | THURSDAY, 2 JULY 2026 |
| **FILE NO/S** | APPL 50 OF 2023 |
| **CITATION NO.** | 2026 WAIRC 00460 |

**Result** Application discontinued

**Representation**

Mr R Cardinal on behalf of the Construction, Forestry, Mining and Energy Union of Workers

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

*Order*

THE Commission pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA) (**IR Act**), hereby orders –

THAT the application be and is hereby discontinued.

(Sgd.) R COSENTINO,
[L.S.] Senior Commissioner.

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

**2026 WAIRC 00483**

**AIR CONDITIONING AND REFRIGERATION INDUSTRY (CONSTRUCTION AND SERVICING) AWARD NO. 10 OF 1979**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | COMMISSION'S OWN MOTION |
| | **APPLICANT** |
| | **-v-** |
| | (NOT APPLICABLE) |
| | **RESPONDENT** |
| **CORAM** | SENIOR COMMISSIONER R COSENTINO |
| **DATE** | WEDNESDAY, 8 JULY 2026 |
| **FILE NO/S** | APPL 32 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00483 |

| | |
|---|---|
| **Result** | Award cancelled |
| **Representation** | |

*Order*

WHEREAS, the Commission initiated this matter of its own motion, considering there may be no employee to whom the *Air Conditioning and Refrigeration Industry (Construction and Servicing)* ***Award*** *No. 10 of 1979* 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 8 June 2026; and
2. serve copies of such notice on:
   (a) UnionsWA;
   (b) the Minister for Industrial Relations;
   (c) the Chamber of Commerce and Industry WA; and
   (d) The Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union of Workers - Western Australian Branch;

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 *Air Conditioning and Refrigeration Industry (Construction and Servicing) Award No. 10 of 1979* is cancelled.

(Sgd.) R COSENTINO,
[L.S.] Senior Commissioner.

**2026 WAIRC 00488**

**BAKERS' (COUNTRY) AWARD NO. 18 OF 1977**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | COMMISSION'S OWN MOTION |
| | **APPLICANT** |
| | **-v-** |
| | (NOT APPLICABLE) |
| | **RESPONDENT** |
| **CORAM** | SENIOR COMMISSIONER R COSENTINO |
| **DATE** | WEDNESDAY, 8 JULY 2026 |
| **FILE NO/S** | APPL 39 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00488 |

| | |
|---|---|
| **Result** | Award cancelled |
| **Representation** | |

*Order*

WHEREAS, the Commission initiated this matter of its own motion, considering there may be no employee to whom the *Bakers' (Country)* ***Award*** *No. 18 of 1977* 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 8 June 2026; 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) United Workers Union (WA); and
   (e) Compass Group (Australia) Pty Ltd previously known as S.H.R.M. (Australia) Pty Ltd A.C.N. 000 683 125.

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 *Bakers' (Country) Award No. 18 of 1977* is cancelled.

(Sgd.) R COSENTINO,
[L.S.] Senior Commissioner.

**2026 WAIRC 00484**

**GATE, FENCE AND FRAMES MANUFACTURING AWARD**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | COMMISSION'S OWN MOTION |
| | **APPLICANT** |
| | **-v-** |
| | (NOT APPLICABLE) |
| | **RESPONDENT** |
| **CORAM** | SENIOR COMMISSIONER R COSENTINO |
| **DATE** | WEDNESDAY, 8 JULY 2026 |
| **FILE NO/S** | APPL 33 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00484 |

**Result** Award cancelled

**Representation**

*Order*

WHEREAS, the Commission initiated this matter of its own motion, considering there may be no employee to whom the *Gate, Fence and Frames Manufacturing* ***Award*** 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 8 June 2026; 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) The Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union of Workers - Western Australian Branch; and
   (e) the Electrical Trades' Union WA.

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 *Gate, Fence and Frames Manufacturing Award* is cancelled.

(Sgd.) R COSENTINO,
[L.S.] Senior Commissioner.

**2026 WAIRC 00485**

**SHEET METAL WORKERS' AWARD NO. 10 OF 1973**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES** COMMISSION'S OWN MOTION

**APPLICANT**

**-v-**

(NOT APPLICABLE)

**RESPONDENT**

**CORAM** SENIOR COMMISSIONER R COSENTINO

**DATE** WEDNESDAY, 8 JULY 2026

**FILE NO/S** APPL 34 OF 2026

**CITATION NO.** 2026 WAIRC 00485

**Result** Award cancelled

**Representation**

*Order*

WHEREAS, the Commission initiated this matter of its own motion, considering there may be no employee to whom the *Sheet Metal Workers'* ***Award*** *No. 10 of 1973* 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 8 June 2026; and

2. serve copies of such notice on:

(a) UnionsWA;

(b) the Minister for Industrial Relations;

(c) the Chamber of Commerce and Industry WA; and

(d) The Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union of Workers - Western Australian Branch.

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 *Sheet Metal Workers' Award No. 10 of 1973* is cancelled.

(Sgd.) R COSENTINO,
[L.S.] Senior Commissioner.

**2026 WAIRC 00486**

**THERMAL INSULATION CONTRACTING INDUSTRY AWARD**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | COMMISSION'S OWN MOTION |
| | **APPLICANT** |
| | **-v-** |
| | (NOT APPLICABLE) |
| | **RESPONDENT** |
| **CORAM** | SENIOR COMMISSIONER R COSENTINO |
| **DATE** | WEDNESDAY, 8 JULY 2026 |
| **FILE NO/S** | APPL 35 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00486 |

| | |
|---|---|
| **Result** | Award cancelled |
| **Representation** | |

*Order*

WHEREAS, the Commission initiated this matter of its own motion, considering there may be no employee to whom the *Thermal Insulation Contracting Industry **Award*** 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 8 June 2026; and

2. serve copies of such notice on:

(a) UnionsWA;

(b) the Minister for Industrial Relations;

(c) the Chamber of Commerce and Industry WA; and

(d) The Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union of Workers - Western Australian Branch.

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 *Thermal Insulation Contracting Industry Award* is cancelled.

(Sgd.) R COSENTINO,
[L.S.] Senior Commissioner.

**2026 WAIRC 00487**

**VEHICLE BUILDERS' AWARD 1971**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | COMMISSION'S OWN MOTION |
| | **APPLICANT** |
| | **-v-** |
| | (NOT APPLICABLE) |
| | **RESPONDENT** |
| **CORAM** | SENIOR COMMISSIONER R COSENTINO |
| **DATE** | WEDNESDAY, 8 JULY 2026 |
| **FILE NO/S** | APPL 36 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00487 |

| | |
|---|---|
| **Result** | Award cancelled |
| **Representation** | |

*Order*

WHEREAS, the Commission initiated this matter of its own motion, considering there may be no employee to whom the *Vehicle Builders' **Award** 1971* 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 8 June 2026; and
2. serve copies of such notice on:
   (a) UnionsWA;
   (b) the Minister for Industrial Relations;
   (c) the Chamber of Commerce and Industry WA; and
   (d) The Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union of Workers - Western Australian Branch.

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 *Vehicle Builders' Award 1971* is cancelled.

(Sgd.) R COSENTINO,
[L.S.] Senior Commissioner.

# INDUSTRIAL MAGISTRATE—Claims before—

**2026 WAIRC 00454**

**INDUSTRIAL MAGISTRATES COURT OF WESTERN AUSTRALIA**

| | | |
|---|---|---|
| **CITATION** | **:** | 2026 WAIRC 00454 |
| **CORAM** | **:** | INDUSTRIAL MAGISTRATE D. SCADDAN |
| **HEARD** | **:** | THURSDAY, 23 APRIL 2026 |
| **DELIVERED** | **:** | FRIDAY, 3 JULY 2026 |
| **FILE NO.** | **:** | M 114 OF 2025 |
| **BETWEEN** | **:** | CFMEU |
| | | **CLAIMANT** |
| | | AND |
| | | TSM OFFSHORE PTY LTD |
| | | **RESPONDENT** |

| | | |
|---|---|---|
| **CatchWords** | : | INDUSTRIAL LAW – FAIR WORK – Alleged contravention of *Fair Work Act 2009* (Cth) – Alleged breach of an enterprise agreement – Minimum crewing levels on vessels – Consideration of terms of enterprise agreement |
| **Legislation** | : | *Fair Work Act 2009* (Cth) |
| | | *Fair Work (Registered Organisations) Act 2009* (Cth) |
| **Instrument** | : | *Tidewater Ship Management (Australia) Pty Ltd and MUA Offshore Oil and Gas Enterprise Agreement 2023* |
| **Cases referred to in reasons:** | : | ***Director General, Department of Education v United Voice WA*** [2013] WASCA 287; (2014) 94 WAIG 1 |
| | | ***WA Prison Officers' Union of Workers v Minister for Corrective Services*** [2025] WASCA 177; (2025) 105 WAIG 2703 |
| | | ***Mildren v Gabbusch*** [2014] SAIRC 15 |
| | | ***Miller v Minister of Pensions*** [1947] 2 All ER 372 |
| | | ***Gayle Balding, Workplace Ombudsman v Liquid Engineering 2003 Pty Ltd*** [2008] WAIRC00350; (2008) 88 WAIG 626 |
| | | ***Cuzzin Pty Ltd v Grnja*** [2014] SAIRC 36 |
| | | ***Qube Ports Pty Ltd v Maritime Union of Australia*** [2018] FCAFC 72 |
| | | ***Stagnitta v Bechtel Construction (Australia) Pty Ltd*** [2018] WAIRC 00886; (2018) 98 WAIG 1410 |
| | | ***Fedec v The Minister for Corrective Services*** [2017] WAIRC 00828; (2017) 97 WAIG 1595 |
| **Result** | : | Other than in respect of the admitted contravention, the claim is dismissed |
| **Representation:** | | |
| Claimant | : | Ms S. Sayed (of counsel) |
| Respondent | : | Mr J. Parkinson (of counsel) |

**REASONS FOR DECISION**

**Background**

1 On 10 September 2025, the Construction, Forestry and Maritime Employees Union lodged an originating claim alleging that Tidewater Ship Management (Australia) Pty Ltd (**Tidewater**) contravened cl 24.4(a), cl 24.5(a) and cl 24.5(c) of the *Tidewater Ship Management (Australia) Pty Ltd and MUA Offshore Oil and Gas Enterprise Agreement 2023* (the **Agreement**) by failing to crew three vessels either in accordance with the relevant vessel's minimum safe manning certificate and/or in agreement with the claimant and failing to engage a Chief Integrated Rating (**IR**) (the **Claim**).

2 During the hearing on 23 April 2026, the claimant applied to amend the respondent's name from Tidewater to OSM Thome WA Pty Ltd (**OSM**). Counsel for the respondent confirmed that the company's name was updated with the Australian Securities and Investments Commission. The Court granted this amendment.[1]

3 On 12 June 2026, by consent, the Court ordered the following:

(a) the claimant's name is changed to 'CFMEU' (the **claimant**); and

(b) the respondent's name is changed to 'TSM Offshore Pty Ltd' (the **respondent**).[2]

4 In failing to comply with the Agreement's requirements related to crewing the three vessels, the claimant alleges that the respondent has contravened s 50 of the *Fair Work Act 2009* (Cth) (**FWA**) and seeks the imposition of a civil pecuniary penalty.

5 On 16 October 2025, the respondent partially admitted the Claim by admitting it failed to comply with the crewing requirements in the Agreement between 8 and 19 May 2024 in relation to one of the vessels, the Tortuga Tide, when one IR was demobilised on medical grounds.

6 The respondent denies the balance of the Claim.

7 These reasons determine the issue of the respondent's liability, if any, in respect of the balance of the Claim.

8 Schedule I of these reasons outlines the Court's jurisdiction, practice and procedure under the FWA.

**Agreed Facts**

9 The parties lodged a statement of agreed facts,[3] where they agreed that:

(a) the claimant is a registered organisation under the *Fair Work (Registered Organisations) Act 2009* (Cth), an employee organisation as defined in s 12 of the FWA, and an employee organisation to which the Agreement applied within the meaning of s 52 of the FWA;

(b) the respondent is a 'constitutional corporation' within the meaning of that term in s 12 of the FWA, a 'national system employer' within the meaning of that term in s 14 of the FWA, and an employer to which the Agreement

applied within the meaning of s 52 of the FWA;

(c) the Agreement commenced operation on 25 January 2024 and has a nominal expiry date of 1 August 2027; and

(d) the Agreement covers the claimant and applies to the respondent and applies to the respondent's employees engaged in the classifications in the Agreement, including IRs.

10 The vessels in the Claim are the Tortuga Tide; Pacific Guillemot; and Pacific Dove (collectively referred to as the **Vessels**).

11 In relation to the Minimum Safe Manning Certificates (**MSMC**) for the Vessels, the following is agreed:

**Tortuga Tide**

(a) on or around 15 September 2023, the Port Authority of Singapore issued an MSMC for the Tortuga Tide effective 25 September 2023 (**First Tortuga Tide Certificate**);[4]

(b) on 10 January 2025, the Port Authority of Singapore issued an MSMC for the Tortuga Tide effective 25 September 2023 (**Second Tortuga Tide Certificate**);[5]

(c) the respondent did not comply with the crewing requirements set out in the Agreement between 8 and 19 May 2024;

**Pacific Dove**

(a) the Port Authority of Singapore issued an MSMC for the Pacific Dove effective 13 September 2022 (**First Pacific Dove Certificate**);[6]

(b) the Port Authority of Singapore issued an MSMC for the Pacific Dove effective 19 June 2024 (**Second Pacific Dove Certificate**);[7] and

**Pacific Guillemot**

(a) the Port Authority of Singapore issued an MSMC for the Pacific Guillemot effective 12 September 2022 (**Pacific Guillemot Certificate**).[8]

12 The First and Second Tortuga Tide Certificates are annexed to Schedule III of these reasons.

**The Claim in More Detail**

13 The claimant alleges that:

**Tortuga Tide**

(a) from on or around 31 January 2024 until on or around 8 February 2024, the Tortuga Tide was sailing outside of Australian waters and was crewed with less than five IRs;

(b) pursuant to cl 24.5(a) of the Agreement, the crewing levels was to be agreed between the claimant and the respondent;

(c) pursuant to cl 24.5(c) of the Agreement, the crewing levels was to be no less than the numbers provided for in the First Tortuga Tide Certificate;

(d) pursuant to cl 24.4(a) of the Agreement and the First Tortuga Tide Certificate, the crewing on the Tortuga Tide was to be no less than five IRs;

(e) pursuant to cl 24.4(a) of the Agreement, one of the IRs was to be engaged as a Chief IR;

**Pacific Dove**

(a) from on or around 28 May 2024 until on or around 18 June 2024, the Pacific Dove was sailing outside of Australian waters and was crewed with less than six IRs;

(b) from on or around 19 June 2024 until on or around 30 January 2025, the Pacific Dove was sailing outside of Australian waters and was crewed with less than six IRs;

(c) pursuant to cl 24.5(a) of the Agreement, the crewing levels was to be agreed with the claimant and the respondent;

(d) pursuant to cl 24.5(c) of the Agreement, the crewing levels was to be no less than the numbers provided for in the First Pacific Dove Certificate;

(e) pursuant to cl 24.4(a) of the Agreement and the First Pacific Dove Certificate and the Second Pacific Dove Certificate, the crewing on the Pacific Dove was to be no less than six IRs;

(f) pursuant to cl 24.4(a) of the Agreement, one of the IRs was to be engaged as a Chief IR;

**Pacific Guillemot**

(a) from on or around 30 January 2024 until on or around 30 January 2025, the Pacific Guillemot was sailing outside of Australian waters and was crewed with less than six IRs;

(b) pursuant to cl 24.4(a) of the Agreement and the Pacific Guillemot Certificate, the crewing on the Pacific Guillemot was to be no less than six IRs; and

(c) pursuant to cl 24.4(a) of the Agreement, one of the IRs was to be engaged as a Chief IR.

14 The contraventions alleged by the claimant are that the respondent failed to:

**Tortuga Tide**

(a) crew the Tortuga Tide in agreement with the claimant contrary to cl 24.5(a) of the Agreement;

(b) crew the Tortuga Tide in accordance with the First Tortuga Tide Certificate contrary to cl 24.5(c) of the Agreement;

**Pacific Dove**

(a) crew the Pacific Dove in agreement with the claimant contrary to cl 24.5(a) of the Agreement;

(b) crew the Pacific Dove in accordance with the First Pacific Dove Certificate contrary to cl 24.5(a) of the Agreement;

(c) crew the Pacific Dove in accordance with the Second Pacific Dove Certificate contrary to cl 24.4(a) of the Agreement;

(d) engage a Chief IR on the Pacific Dove contrary to cl 24.4(a) of the Agreement;

**Pacific Guillemot**

(a) crew the Pacific Guillemot in accordance with the Pacific Guillemot Certificate contrary to cl 24.4(a) of the Agreement; and

(b) engage a Chief IR on the Pacific Guillemot contrary to cl 24.4(a) of the Agreement.

15 These are the contraventions the claimant is required to prove to the requisite standard.

**The Response in More Detail**

16 The respondent refers to cl 24.4 and cl 24.5 of the Agreement, and asserts that the Agreement's crewing framework is:

(a) for vessels not in transit, cl 24.4 of the Agreement applies to set a minimum crewing standard;

(b) for vessels in transit (or laid up), cl 24.5 of the Agreement applies and provides that:

(i) crewing will be agreed with the CFMEU; however

(ii) crewing will be based around previous custom and practice; provided that,

(iii) crewing complies with the MSMC requirements.

17 The respondent says that the proper construction of the word 'however' in cl 24.5(a) of the Agreement is its ordinary and natural meaning being '[u]sed to introduce a statement that contrasts with or seems to contradict something that has been said previously'.[9] Thus, the use of the word 'however' facilitates a departure from the requirement to agree with the claimant.

18 Each of the Vessels is categorised for the purposes of cl 24.4 of the Agreement, where the Tortuga Tide and Pacific Guillemot are Platform Supply Vessels (**PSV**) and the Pacific Dove is a Support Vessel.

**Tortuga Tide**

19 For the period 31 January 2024 to 7 February 2024 the Tortuga Tide was not required to be crewed with five IRs and was crewed in compliance with the applicable Second Tortuga Tide Certificate, and was crewed in compliance with the Agreement.

**Pacific Dove**

20 For the period 28 May 2024 to 18 June 2024 the Pacific Dove was not required to be crewed with six IRs and was crewed in compliance with the First Pacific Dove Certificate, and was crewed in compliance with the Agreement.

21 For the period 19 June 2024 to 30 January 2025 the Pacific Dove was not required to be crewed with six IRs and was crewed in compliance with the Second Pacific Dove Certificate, and was crewed in compliance with the Agreement.

**Pacific Guillemot**

22 For the period 30 January 2024 to 30 January 2025 the Pacific Guillemot was not required to be crewed with six IRs and was crewed in compliance with the Pacific Guillemot Certificate, and was crewed in compliance with the Agreement

23 The respondent denies that it engaged in any contravening conduct (save for that admitted) alleged by the claimant.

**Other Evidence**

**Claimant**

24 The claimant relied upon a witness statement of George Gakis (**Mr Gakis**), signed on 25 February 2026.[10] A summary of his admissible evidence is as follows.

25 Mr Gakis is the Deputy Secretary for the Western Australian Branch of the Maritime Union of Australia Division of the CFMEU.

26 Mr Gakis was involved in the bargaining negotiations for the Agreement.[11]

27 Mr Gakis referred to the respondent's operations as a crewing agency providing crewing onboard vessels performing work in the offshore industry.[12]

28 Mr Gakis explained that an IR holds a Certificate of Proficiency in Integrated Rating (**COP**) which is issued by the Australian Maritime Safety Authority and verifies that the certificate holder is qualified to perform both deck and engine-room duties on vessels.[13] He attached a guidance notice issued by the Australian Maritime Safety Authority summarising the requirements for a COP to his witness statement.[14]

29 Mr Gakis explained the MSMC, which is issued by a vessel's flag state and sets out the minimum number of personnel on the deck and engine areas.[15] It is a mandatory requirement for all vessels to carry an MSMC and the minimum requirements of the qualifications and certifications of personnel is regulated by the *International Convention on Standards of Training, Certification and Watchkeeping for Seafarers* (signed on 7 July 1978) (**STCW**).[16]

30 Where a MSMC prescribes a rating, the position 'should be filled by an IR'.[17] Where a MSMC requires six IRs onboard a vessel it consists of:

(a) three ratings forming part of Navigational Watch/Able Seafarer (Deck) – STCW reg II/4 or reg II/5;

(b) two other deck ratings/personnel – STCW reg VI/1; and

(c) one other engine room rations/personnel – STCW reg VI/1

31 On or around 10 January 2025, Mr Gakis became aware that the flag state of the vessel, the Maritime Port Authority of Singapore, issued a revised MSMC for the Tortuga Tide (being the Second Tortuga Tide Certificate).[18]

32 Mr Gakis was not cross-examined on his evidence.

**Respondent**

33 The respondent relied upon a witness statement of Renae Hesford (**Ms Hesford**) signed on 25 March 2026.[19] A summary of her admissible evidence is as follows.

34 Ms Hesford is employed by OSM, the parent company of Tidewater, as the Managing Director. Tidewater was purchased by OSM in February 2023. Ms Hesford outlines her employment history with OSM.[20]

35 According to Ms Hesford there are different vessel designations, and the type of vessel dictates the number and classification of crewing levels. The Tortuga Tide and Pacific Guillemot are PSVs. The Pacific Dove is an Anchor Handling Tug Supply Vessel, also referred to as a Support Vessel.[21]

36 From on or around 31 January 2024 to 7 February 2024, the Tortuga Tide was crewed with four IRs and one cook, who held a reg VI/1 rating.[22]

37 Ms Hesford was cross-examined on her evidence. Ms Hesford was mainly called upon by the claimant to give an opinion as to the contents of the various MSMCs. Ms Hesford was unable to say with any precision where the Tortuga Tide was located at any point in time, save that she could say that the Tortuga Tide was operational and on charter with a customer.[23]

38 She made no other enquiries with respect to the Pacific Dove and Pacific Guillemot other than that they were operational, and was largely driven by responding to the contents of Mr Gakis's witness statement.

**Submissions**

**Construction of an Enterprise Agreement**

39 In part, the determination of the Claim involves consideration of the proper construction of the terms of the Agreement.

40 The general principles concerning the construction of industrial agreements are well-settled. There are many authorities, both State and Federal, reciting the general principles. I refer to the summary by Buss J in ***Director General, Department of Education v United Voice WA*** [2013] WASCA 287 at [81] to [83] (and to the summary of principles in Schedule II to these reasons[24]):

> The construction of an industrial agreement involves ascertaining what a reasonable person would have understood the parties to the agreement to mean. The language of the agreement should be understood in the light of its industrial context and purpose. See ***Amcor Ltd v Construction, Forestry, Mining and Energy Union*** [2005] HCA 10; (2005) 222 CLR 241 [2] (Gleeson CJ & McHugh J).
>
> In ***Kucks v CSR Ltd*** (1996) 66 IR 182, Madgwick J observed:
>
> > It is trite that narrow or pedantic approaches to the interpretation of an award are misplaced. The search is for the meaning intended by the framer(s) of the document, bearing in mind that such framer(s) were likely of a practical bent of mind: they may well have been more concerned with expressing an intention in ways likely to have been understood in the context of the relevant industry and industrial relations environment than with legal niceties or jargon. Thus, for example, it is justifiable to read the award to give effect to its evident purposes, having regard to such context, despite mere inconsistencies or infelicities of expression which might tend to some other reading. And meanings which avoid inconvenience or injustice may reasonably be strained for. For reasons such as these, expressions which have been held in the case of other instruments to have been used to mean particular things may sensibly and properly be held to mean something else in the document at hand (184). (emphasis added)
>
> See also ***City of Wanneroo v Holmes*** [1989] FCA 369; (1989) 30 IR 362, 378 - 379 (French J) (***City of Wanneroo***); ***Amcor*** [96] (Kirby J), [129] - [130] (Callinan J).
>
> The words of a clause in a written agreement are to be given the most appropriate meaning which they can legitimately bear. A court must have regard to all of the provisions of the agreement with a view to achieving harmony among them. See ***Australian Broadcasting Commission v Australasian Performing Right Association Ltd*** [1973] HCA 36; (1973) 129 CLR 99, 109 - 110 (Gibbs J). These propositions are applicable to instruments generally, subject to any particular rules of construction which have been developed in relation to a particular kind of provision or instrument.

41 Schedule II of these reasons sets out a summary of those principles applicable to the construction of industrial instruments.

**Claimant's Submissions**

42 In respect of the Tortuga Tide for the period 31 January 2024 to 8 February 2024, the claimant submits the First Tortuga Tide Certificate is the appliable MSMC, which required a minimum crewing level of six IRs, consistent with the Agreement.

43 In respect of the Pacific Dove and Pacific Guillemot, the claimant submits the applicable MSMC required a minimum crewing level of six IRs.

44 The claimant otherwise relies upon the terms of cl 24.4 and cl 24.5 of the Agreement.

**Respondent's Submissions**

45 In respect of the Tortuga Tide for the period 31 January 2024 to 8 February 2024, the respondent submits that the Second

Tortuga Tide Certificate is the applicable MSMC, where it superseded and replaced the First Tortuga Tide Certificate, relying upon the contents of the special requirements in the Second Tortuga Tide Certificate.

46 That is, the relevant 'GP ratings' which formed part of the navigational/engine watch that held an IR II/4 and IR III/4 qualification was four.[25] Based on Ms Hesford's evidence, the respondent complied with its minimum crew levels.

47 In respect of the Pacific Dove and Pacific Guillemot, the respondent submits that no evidence was led by the claimant in support of the alleged breaches and contraventions, and on that basis alone the Claim as it relates to these two vessels should be dismissed.

**Pacific Dove and Pacific Guillemot**

48 As already mentioned, the claimant alleges that in respect of the Pacific Dove and Pacific Guillemot, the respondent breached cl 24.4(a), cl 24.5(a) and cl 24.5(c) of the Agreement, thereby contravening s 50 of the FWA.

49 Accordingly, the claimant is required to prove to the requisite standard the contravention it alleges.

50 The claimant led no evidence of:

(a) crewing levels on the Pacific Dove during the dates it alleged the Agreement was breached;

(b) crewing levels on the Pacific Guillemot during the dates it alleged the Agreement was breached;

(c) the composition of the crew on the Pacific Dove during the dates it alleged the Agreement was breached;

(d) the composition of the crew on the Pacific Guillemot during the dates it alleged the Agreement was breached;

(e) how or what, if any, agreement with the claimant relevant to the Pacific Dove the respondent failed to agree to as it related to crewing levels; and

(f) where the Pacific Dove and Pacific Guillemot were located during the alleged breach times.

51 The agreed facts, the First and Second Pacific Dove Certificates and the Pacific Guillemot Certificate do no more than inform what the minimum crewing levels and the composition of those crew levels might be.

52 Looking then at the whole of the evidence, which includes Ms Hesford's evidence, the number and composition of the crew on the Pacific Dove and Pacific Guillemot at the times the claimant alleges the Agreement was breached is taken no further.[26]

53 The commencement of the Claim, an allegation, and some vague suggestion in the submissions does not constitute proof of any contravention to the required standard. No finding of fact can be made by the Court on how many crew members were on the Pacific Dove and the Pacific Guillemot or their rating.

54 Therefore, the claimant cannot prove, and has not proven, that the respondent breached the Agreement at the times alleged as it relates to the crewing levels and the composition of the crew on the Pacific Dove and Pacific Guillemot. If the claimant cannot establish, and indeed it has not established, a breach of the Agreement, then there is no contravention of s 50 of the FWA.

55 The Claim alleging contraventions of s 50 of the FWA as it relates to the Pacific Dove and the Pacific Guillemot are dismissed. Therefore, it is unnecessary to consider the terms of the Agreement; the First and Second Pacific Dove Certificates; or the Pacific Guillemot Certificates in making this determination.

**Tortuga Tide**

56 The first alleged contravention relates to the crewing level and composition of the crew on the Tortuga Tide on or around 31 January 2024 to 8 February 2024.

57 According to Ms Hesford, the crewing levels and composition of the crew on the Tortuga Tide from on or around 31 January 2024 to 7 February 2024, was four IRs and one cook, who held a reg VI/1 rating. Along with the annexures to Ms Hesford's witness statement, this was the only evidence on this issue.

58 The qualifications of the four IRs and cook holding the VI/1 rating are contained in an annexure to Ms Hesford's witness statement, and shows:[27]

| | | | |
|---|---|---|---|
| *29 January 2024 - 07 February 2024* | IR II5 & III5<br>IR II5 & III5<br>IR II4 & III4<br>IR II4 & III4<br>CK. VI/1 | 4x IR<br>1x CK | 2* II/4 & III/4<br>2* II/5 & III/5<br>1* VI/1 |

59 That is, there were two crew members who held IR II/5 and IR III/5 qualifications and two crew members who held IR II/4 and IR III/4 qualifications, and one crew member who held a VI/1 qualification.

60 There was also no evidence of where the Tortuga Tide was located during the alleged breach period. The Claim alleges that the Tortuga Tide was sailing outside of Australian waters, but beyond this allegation, the claimant led no evidence of, in fact, where the vessel was sailing.

61 Again, considering the whole of the evidence, including Ms Hesford's evidence, she could not confirm the location of the Tortuga Tide in or out of Australia. The best Ms Hesford could say was that the Tortuga Tide was operational and on contract, but she did not track its whereabouts at any point, including how many nautical miles off the coast it was.[28]

62 There are two MSMCs that purported to cover the period from around 31 January 2024 to 8 February 2024; the First and

Second Tortuga Tide Certificates.

63 The claimant asserts the First Tortuga Tide Certificate was the relevant MSMC for that period.

64 The respondent says the Second Tortuga Tide Certificate was the relevant MSMC for that period.

**Which MSMC Applies and What were the Minimum Crew Levels?**

65 I note the Claim alleges that the First Tortuga Tide Certificate applied for the period 31 January 2024 to 8 February 2024, yet the Second Tortuga Tide Certificate applied for the period 8 May 2024 to 19 May 2024 (presumably because the claimant says that the Tortuga Tide was sailing within Australian waters), notwithstanding it says that the Second Tortuga Tide Certificate could not have applied to the first time period because it was dated 10 January 2025.

66 The content of both MSMCs is relevant.

**The First Tortuga Tide Certificate**

67 The First Tortuga Tide Certificate provides for the relevant minimum crewing levels, as follows, (also referred to by Mr Gakis):

(a) three ratings forming part of Navigational Watch/Able Seafarer (Deck) – STCW reg II/4 or II/5;

(b) two other deck ratings/personnel – STCW reg VI/1; and

(c) one other engine room rations/personnel – STCW reg VI/1.

68 *But*, the First Tortuga Tide Certificate also states the following special requirement or condition:

> IF SHIP MANNED WITH GP RATINGS, ONLY 4 GP RATINGS WITH BOTH II/4 (OR II/5) AND III4 (OR III5) AND 1 OTHER GP RATING IS REQUIRED.[29]

69 The special requirement for the Tortuga Tide was a reduced crew number provided four of the crew qualifications met the rating IR II/4 and IR III/4 or IR II/5 and IR III/5, and there was one further crew member with one other rating.

70 The supplementary explanatory note to the First Tortuga Tide Certificate, at paragraphs three and four, assists with the reason that may underpin this special requirement, which is similarly recognised in the guidance notice to Marine Order 73 – Certificate of Proficiency Integrated Rating attached to Mr Gakis's witness statement.[30] That is, a crew member holding the IR II/5 and IR III/5 qualifications are considered a higher grade in terms of qualifications and experience to a crew member with IR II/4 and IR III/4 qualifications. It must follow that both IRs (IR II/4 and IR II/5) are considered higher grade in terms of qualifications and experience to a crew member with a VI/1 qualification. In that case, the higher qualification can be considered as part of the total number of personnel onboard to meet the manning requirements.

71 Therefore, if there are four appropriately qualified crew members, plus one more with a qualification, the special requirement in the First Tortuga Tide Certificate will have been met.

72 By reference to the uncontroverted evidence of Ms Hesford, there were four crew members on the Tortuga Tide in the relevant period who held a rating of IR II/4 and IR III/4 (two crew members) or IR II/5 and IR III/5 (two crew members). There was also one additional crew member who held a rating of VI/1.

73 Because of the special requirement contained in the First Tortuga Tide Certificate, and provided the respondent complied with that requirement, the number of crew members was reduced to five, rather than six as would have applied had there been less crew members with the required qualifications.

74 Accordingly, had the First Tortuga Tide Certificate applied from 31 January 2024 to 8 February 2024, the respondent's crewing level would have complied with the terms of the MSMC.

**Second Tortuga Tide Certificate**

75 The Second Tortuga Tide Certificate provides for the relevant minimum crewing levels, being four GP Ratings forming part of a navigational/engine watch.[31]

76 Similar to the First Tortuga Tide Certificate, the supplementary explanatory note to the Second Tortuga Tide Certificate, at paragraphs three and four, provides that shipboard personnel holding a COP under STCW reg III/5 for AS (Engine) can be considered as part of the total number of personnel deployed onboard to meet the manning requirements for the capacity. That is, a crew member holding the IR II/5 and IR III/5 qualifications is considered a higher grade in terms of qualifications and experience to a crew member with IR II/4 and IR III/4 qualifications.

77 The Second Tortuga Tide Certificate also contains special requirements, which, relevant to the Claim, include special requirements 1, 3 and 4:

> 1. Ship is manned with the number and grade of personnel specified in the Table above restricted within Australia waters.
>
> …
>
> 3. This [MSMC] is effective from 25 September 2023 and reprinted on 10 January 2025, superseding and replacing any previously issued [MSMC](s) which were identified to inadvertently contain incorrect details and requirements.
>
> 4. The effective date mentioned below [10 January 2025] only serves as the printed date of this document.

78 Had the Second Tortuga Tide Certificate applied from 31 January 2024 to 8 February 2024, the respondent's crewing level would have also complied with the terms of the MSMC, that is, if the vessel was inside Australian waters (which remains unknown on the evidence). If the Tortuga Tide was outside of Australian waters (which also remains unknown on the evidence), then either cl 24.4 or cl 24.5 of the Agreement applies.

79 Therefore, where the evidence satisfies me that the minimum crewing levels satisfies both the First and Second Tortuga Tide Certificates, it is not strictly necessary to resolve which MSMC applied to the Tortuga Tide for the period 31 January 2024 to 8 February 2024. There are some oddities about the Second Tortuga Tide Certificate, including it purporting to apply in an unlimited trading area but then specifying the minimum number and grade of personnel being restricted to Australian waters. Further, the Second Tortuga Tide Certificate purported to retrospectively supersede the First Tortuga Tide Certificate.

80 However, in the absence of any evidence to contrary, the Second Tortuga Tide Certificate is clear on its face and it appears, and I accept, that this MSMC applies for the period 31 January 2024 to 8 February 2024. I also note that the Second Tortuga Tide Certificate is consistent with the crewing levels in cl 24.4 of the Agreement as it relates to a PSV (see below).

81 Therefore, the claimant has not proven that the respondent breached the Agreement as it relates to the minimum crewing level referred to in the First Tortuga Tide Certificate on the Tortuga Tide for the period 31 January 2024 to 8 February 2024. If the claimant cannot establish, and indeed it has not established, a breach of cl 24.4 of the Agreement, then there is no contravention of s 50 of the FWA.

**Crewing in Agreement with the Claimant**

82 The second alleged contravention relates to the respondent failing to agree with the claimant crewing levels for the Tortuga Tide from 31 January 2024 to 8 February 2024.

83 Notably, there is no evidence of what, if any, agreement there was with the claimant in respect of the crew of the Tortuga Tide during this period or how the respondent is alleged to have failed to agree the crewing levels with the claimant for the Tortuga Tide.

84 Reference to the Agreement demonstrates the following.

**The Agreement**

85 Clause 24.4 of the Agreement provides:

**Minimum Crewing of Vessels**

| **Type of Vessel** | Supply - PSV | Supply - ROV/IMR | Support | Support Vessels (that can generate 18000 BHP or above) | Seismic | Self Propelled Drill Vessel | Specialist |
|---|---|---|---|---|---|---|---|
| **Classification** | | | | | | | |
| Chief IR | 0 | 1 | 0 | 1 | 0 | 1 | 1 |
| IR/Crane Op | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| IR | 4 | 4 | 4 | 4 | 3 | 5 | 5 |
| PIR | | | | | 1 | 1 | |
| Chief Cook | Benchmark | Benchmark | Benchmark | Benchmark | Benchmark | 1 | Benchmark |
| Cook | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| Chief Steward | Benchmark | Benchmark | Benchmark | Benchmark | Benchmark | 1 | Benchmark |
| Steward | Benchmark | Benchmark | Benchmark | 1 | Benchmark | 1 | Benchmark |

**(a) Notes:**

- Support vessels performing anchor handling operations will have one of the 4 IR's appointed as a CIR.
- In addition to the above, 1 x IR/Crane Operator per twelve (12) hrs of crane operations.
- PIRs listed above can be replaced with an IR.
- A PIR may be used in lieu of an IR where a Vessel Safe Manning Certificate (SMC) permits and in agreement with the Union. Where agreed the PIR will be paid as an Integrated Rating.
- Crewing of Vessels will be no less than the Vessel's Minimum Safe Manning Certificate irrespective of any dispensations or reductions that may otherwise be permitted by law.
- A Rating may not be substituted for an Integrated Rating even where permitted by the vessel's Minimum Safe Manning Certificate.
- The Minimum Catering Benchmark as per clause 29.5 applies to all Vessels.
- A TIR when supernumerary will be paid in accordance with the clause 22.4.
- Where there is an issue raised on the Vessel with the operational manning, the issue will be dealt with in accordance with the Dispute Resolution Procedure.
- The minimum classification will be an IR. A Rating may not be substituted for an IR even where permitted by the Vessel's safe manning document.
- All Vessels that have more than 4 IRs on board, will have an IR engaged as a CIR.

**(b) Non-Propelled MODUs crewing is as follows:**

- Tows of less than 24 hours expected duration: 2 x IRs.
- Tows over 24 hours expected duration: 3 x IRs.
- Tows over 48 hours expected duration: 6 x IRs.

86 According to cl 24.4 of the Agreement, where the Tortuga Tide is a Supply - PSV, the minimum number of IRs is four. There is no reference to the requirement for a Chief IR.

87 Distilled from above, the notes to cl 24.4 of the Agreement at cl 24.4(a) relevantly provide:

- Crewing of Vessels will be no less than the Vessel's Minimum Safe Manning Certificate irrespective of any dispensations or reductions that may otherwise be permitted by law.
- A Rating may not be substituted for an Integrated Rating even where permitted by the vessel's Minimum Safe Manning Certificate.
- Where there is an issue raised on the Vessel with the operational manning, the issue will be dealt with in accordance with the Dispute Resolution Procedure.
- All Vessels that have more than 4 IRs on board, will have an IR engaged as a CIR.

88 There is no evidence that the Tortuga Tide had more than four IRs onboard, such *that* the respondent was required to engage one as a Chief IR.

89 Clause 24.5 of the Agreement provides:

**Crewing of Vessels in Transit**

(a) Notwithstanding anything else in this Agreement, prescribed crewing levels in this Agreement do not apply to Vessels during Transit Voyages and periods Laid Up. The crewing for Vessel during Transit Voyages, and periods Laid Up will be as agreed between the Union and the Employer, however, will be generally based around previous custom and practice.

(b) The catering benchmark will be used to determine catering numbers during Transit Voyages and periods Laid Up.

(c) The Employer shall ensure that all Vessels are crewed with no less than the numbers provided for in the Vessel's minimum safe manning certificate irrespective of any dispensations or reductions that may otherwise be permitted by law.

90 Clause 3 of the Agreement contains the following definitions:

**Laid Up** or **Lay Up** means a vessel that is not on contract, At Sea, underway, or in operation and is held in readiness with a view to obtaining a contract for task.

…

**Transit Voyage** means a voyage:

- into Australian waters from an overseas port; or
- out of Australian waters to an overseas port; or
- within Australian waters when a Vessel is travelling between work scopes, in different field locations or ports; or
- within Australian waters when a Vessel is travelling to Lay Up in a different location or port.

91 The respondent submitted that cl 24.4 of the Agreement applies to vessels not in transit or laid up, presumably because cl 24.5 of the Agreement provides for the crewing of vessels in transit.

92 The claimant submitted that the Tortuga Tide was sailing outside of Australian waters from 31 January 2024 to 8 February 2024, although as already stated, there was no evidence of where the vessel was during this time. Notably, the claimant's case is based on the Tortuga Tide sailing *outside* of Australian waters. The best Ms Hesford could say was that the Tortuga Tide was on contract and operational and she believes that it may have been in Australian waters, but she did not have any details of, in fact, where the vessel was.[32]

93 The second alleged contravention is that the respondent failed to crew the Tortuga Tide in agreement with the claimant contrary to cl 24.5(a) of the Agreement.

94 In the absence of any other evidence to the contrary, based on the defined terms contained in cl 24.5 of Agreement, the crewing levels in the Agreement do not apply to vessels:

(a) during a voyage *into* Australian waters *from* an overseas port;

(b) during a voyage *out of* Australian waters *to* an overseas port;

(c) *within* Australian waters *when* travelling between work scopes, different field locations or ports;

(d) *within* Australian waters *when* travelling not on contract, at sea, underway or in operation and is held in readiness with a view to obtaining a contract; or

(e) not on contract, at sea, underway, or in operation and is held in readiness with a view to obtaining a contract for task.

95 In those circumstances, the crewing levels is to be agreed between the claimant and the respondent, although this agreement is

not absolute and is conditional on the crewing levels being generally based on custom and practice.

96 On the evidence, the best that can be said is that the Tortuga Tide was on contract and operational, and it may have been in or out of Australian waters.

97 What the evidence cannot and does not establish is that the Tortuga Tide was on: a voyage *into* Australian waters *from* an overseas port; on a voyage *out* of Australian waters *to* an overseas port; *within* Australian waters and travelling between work scopes, etc. It has also never been suggested the Tortuga Tide was laid up.

98 But even if the Tortuga Tide was outside of Australian waters (as suggested in the claimant's case), then unless it was on a voyage to an overseas port or laid up, cl 24.5(a) of the Agreement does not apply, and there is no obligation on the respondent to agree crewing levels with the claimant.

99 Further and additional to the reasons provided in respect of the first alleged contravention, based on the claimant's case, the obligation in respect of minimum crewing levels under cl 24.5(c) of the Agreement applies to the Tortuga Tide if it is *outside* of Australian waters on a voyage *to* an overseas port or laid up. The evidence does not establish this to have been the case.

100 Therefore, the claimant has not proven that the respondent breached cl 24.5(a) of the Agreement as it relates to a failure by the respondent to agree crewing levels with the claimant on the Tortuga Tide for the period between 31 January 2024 to 8 February 2024. If the claimant cannot establish, and indeed it has not established, a breach of cl 24.5(a) of the Agreement, then there is no contravention of s 50 of the FWA.

101 Further, the claimant has not proven that the respondent breached cl 24.5(c) of the Agreement at as it relates to the minimum crewing level referred to in the First Tortuga Tide Certificate on the Tortuga Tide for the period 31 January 2024 to 8 February 2024. If the claimant cannot establish, and indeed it has not established, a breach of cl 24.5(c) of the Agreement, then there is no contravention of s 50 of the FWA.

**Outcome**

102 Save for the respondent's admitted contravention of s 50 of the FWA, the remainder of the Claim is dismissed.

103 I will hear from the parties in respect of programming the respondent's admitted contravention for the application of the imposition of a civil pecuniary penalty.

**D. SCADDAN**

**INDUSTRIAL MAGISTRATE**

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[1] Orders made by the Court 23 April 2026; ts 5.

[2] Orders made by the Court 12 June 2026.

[3] Exhibit 1 – Statement of Agreed Facts lodged on 10 February 2026.

[4] Exhibit 1, agreed document 2.

[5] Exhibit 1, agreed document 3.

[6] Exhibit 1, agreed document 4.

[7] Exhibit 1, agreed document 5.

[8] Exhibit 1, agreed document 6.

[9] Response lodged 16 October 2025 [5].

[10] Exhibit 2 – Witness Statement of George Gakis signed on 25 February 2026, noting that the respondent objected to some of the contents of the witness statement, which the claimant either conceded, or the Court ruled as inadmissible.

[11] Exhibit 2 [6].

[12] Exhibit 2 [10].

[13] Exhibit 2 [11].

[14] Exhibit 2, GG-01.

[15] Exhibit 2 [13].

[16] Exhibit 2 [14] - [15], referring to the *International Convention on Standards of Training, Certification and Watchkeeping for Seafarers*, signed on 7 July 1978, [1984] ATS 7 (entered into force 28 April 1984).

[17] Exhibit 2 [18].

[18] Exhibit 2 [23].

[19] Exhibit 3 – witness statement of Renae Hesford signed on 25 March 2026, noting there was a minor amendment to the witness statement at [5] and two paragraphs were removed ([10] and [17]).

[20] Exhibit 3 [5] - [9].

[21] Exhibit 3 [11] - [14].

[22] Exhibit 3 [15], RH04 - RH06.

[23] ts 37.

[24] Schedule II to these reasons provides more detail on the general principles. These principles were also cited and applied in ***WA Prison Officers' Union of Workers v Minister for Corrective Services*** [2025] WASCA 177; (2025) 105 WAIG 2703 [45] (Smith AUJ).

[25] Outline of respondent's submissions lodged 9 April 2026; see also Exhibit 1, agreed document 3.

[26] ts 39.

[27] Exhibit 3, RH-4.

[28] ts 37 - 38.

[29] Exhibit 1,

[30] Exhibit 2, GG-01.

[31] STCW reg II/4, reg III/4.

[32] ts 37 - 38.

**SCHEDULE I: Jurisdiction, Practice and Procedure of the Industrial Magistrates Court of Western Australia Under the Fair Work Act 2009 (Cth)**

**Jurisdiction**

[1] An employee, an employee organization or an inspector may apply to an eligible State or Territory court for orders regarding a contravention of the civil penalty provisions identified in s 539(2) of the FWA.

[2] The IMC, being a court constituted by an industrial magistrate, is an '*eligible State or Territory court*': FWA s 12 (see definitions of '*eligible State or Territory court*' and '*magistrates court*'); *Industrial Relations Act 1979* (WA) s 81, s 81B.

[3] The application to the IMC must be made within six years after the day on which the contravention of the civil penalty provision occurred: FWA s 544.

[4] The jurisdiction of the IMC under the FWA is primarily defined by three provisions:

(1) Section 539 of the FWA identifies the civil remedy provisions of the FWA which may be the subject of an application to an eligible state or territory court;

(2) Section 545(3) of the FWA describe the criteria for an eligible state or territory court to make an order for an employer to pay an amount to an employee upon the contravention of a civil remedy provision; and

(3) Section 546(1) of the FWA provides for the making of a pecuniary penalty order upon the court being satisfied of a contravention of a civil remedy provision.

[5] Section 539 of the FWA identifies, from among the several civil remedy provisions of the FWA, the particular civil remedy provisions for which application may be made to an eligible state or territory court 'for orders in relation to a contravention or proposed contravention of the provision'. The provision also identifies, for each civil remedy provision, the person with standing to make application to the relevant court and, expressed in penalty units, the maximum penalty for a contravention.

[6] The civil penalty provisions identified in s 539 of the FWA include:

- Section 50 – contravening a term of an enterprise agreement.

[7] Section 12 of the FWA defines '*fair work instrument*' to, relevantly, mean at (b) an enterprise agreement.

[8] An obligation upon an '*employer*' is an obligation upon a '*national system employer*' and that term, relevantly, is defined to include '*a corporation to which paragraph 51(xx) of the Constitution applies*': FWA s 12, s 14, s 42, s 47. A NES entitlement of an employee is an entitlement of an '*employee*' who is a '*national system employee*' and that term, relevantly, is defined to include '*an individual so far as he or she is employed … by a national system employer*': FWA s 13, s 42, s 47.

**Contravention**

[9] Where the IMC is satisfied that there has been a contravention of a civil penalty provision, the court may make orders for 'an *employer* to pay [to an employee] an amount … that the employer was required to pay' under the FWA or a fair work instrument (emphasis added): FWA s 545(3)(a).

[10] The civil penalty provisions identified in s 539 of the FWA includes the provisions set out in pt 2 - 9 of the FWA: FWA s 323(1), s 539.

[11] Where the IMC is satisfied that there has been a contravention of a civil penalty provision, the court may make orders for:

- An employer to pay to an employee an amount that the employer was required to pay under the FWA: FWA s 545(3).
- The imposition of a pecuniary penalty that the court considers is appropriate: FWA s 546(1).

[12] In contrast to the powers of the Federal Court and the Federal Circuit and Family Court of Australia, an eligible State or Territory court has no power to order payment by an entity other than the employer of amounts that the employer was required to pay under the FWA. For example, the IMC has no power to order that the director of an employer company make payments of amounts payable under the FWA: ***Mildren v Gabbusch*** [2014] SAIRC 15

**Burden and Standard of Proof**

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

the standard in the following terms:

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

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

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

[15] Where in this decision it is stated that a finding has been made, the finding is made on the balance of probabilities. Where it is stated that a finding has not been made or cannot be made, then no finding can be made on the balance of probabilities.

**Practice and Procedure of the Industrial Magistrates Court of Western Australia**

[16] Subject to the provisions of the FWA, the procedure of the IMC relevant to claims under the FWA is contained in the IMC Regulations.

[17] Section 551 of the FWA provides that 'a court must apply the rules of evidence and procedure for civil matters when hearing proceedings relating to a contravention'. It has been held that the effect of the provision is that an 'eligible State or Territory court' is required to apply the rules of evidence found in the common law and relevant state legislation when a claim concerns the contravention of a civil remedy provision of the FWA: ***Gayle Balding, Workplace Ombudsman v Liquid Engineering 2003 Pty Ltd*** [2008] WAIRC 350; (2008) 88 WAIG 626; ***Cuzzin Pty Ltd v Grnja*** [2014] SAIRC 36, [14]. In ***Qube Ports Pty Ltd v Maritime Union of Australia*** [2018] FCAFC 72, [94] - [108] White J (with whom Mortimer and Bromwich JJ agreed) undertook a comprehensive analysis of the issue in the context of contravention proceedings before a state court of South Australia, the former Industrial Relations Court of South Australia.

[18] In a schedule to the judgment in ***Stagnitta v Bechtel Construction (Australia) Pty Ltd*** [2018] WAIRC 886; (2018) 98 WAIG 1410, the IMC gave reasons for concluding that the law of evidence applied by a state court of general jurisdiction when exercising jurisdiction in non-criminal matters, including the *Evidence Act 1906* (WA), was to be applied by the IMC when determining a claim alleging the contravention of a civil remedy provision of the FWA and seeking the imposition of a penalty.

**SCHEDULE II: Construction of Industrial Instruments**

[19] This case involves, in part, construing industrial agreements. The relevant principles to be applied when interpreting an industrial instrument are set out by the Full Bench of the Western Australian Industrial Relations Commission in ***Fedec v The Minister for Corrective Services*** [2017] WAIRC 00828; 97 WAIG 1595 [21] - [23].

[20] In summary (omitting citations), the Full Bench stated:

> The general principles that apply to the construction of contracts and other instruments also apply to the construction of an industrial agreement;
>
> (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';
>
> (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; and
>
> (7) Industrial agreements are usually not drafted with careful attention to form by persons who are experienced in drafting documents that have legal effect.

[21] The following is also relevant:

- Ascertaining the intention of the parties begins with a consideration of the ordinary meaning of the words of the instrument. Ascertaining the ordinary meaning of the words requires attention to the context and purpose of the clause being construed. ***City of Wanneroo*** at [53] - [57] (French J).
- Context may appear from the text of the instrument taken as a whole, its arrangement and the place of the provision under construction. The context includes the history of the instrument and the legal background against which the instrument was made and in which it was to operate. ***City of Wanneroo*** [53] - [57] (French J); ***Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Excelior Pty Ltd*** [2013] FCA 638 [28] - [30] (Katzmann J)

**SCHEDULE III: Agreed Documents 2 and 3 – Tortuga Tide Minimum Manning Certificates**

MPA
SINGAPORE

# MINIMUM SAFE MANNING DOCUMENT
## REPUBLIC OF SINGAPORE

Issued by the Maritime and Port Authority of Singapore in pursuance of Merchant Shipping (Safety Convention) Regulations and under the provision of Regulation V/14 of the INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1974, as amended

MSMD-02283-23

| Name of Ship | Port of Registry | IMO Number |
|---|---|---|
| TORTUGA TIDE | SINGAPORE | 9624744 |
| **Call Sign** | **Official Number** | **Gross Tonnage** |
| 9V9014 | 403300 | 3455.00 |
| **Type of Ship** | **Main Propulsion Power(kW)** | **Periodically Unattended Machinery Space** |
| STEEL OFFSHORE SUPPLY VESSEL | 5164.00 | YES |
| ***Trading Area** | UNLIMITED VOYAGE | |
| ****Operating Company** | TIDEWATER OFFSHORE OPERATIONS PTE. LTD. | |

The ship named in this document is considered to be safely manned if, when it proceeds to sea, it carries not less than the number and grades/capacities of personnel specified[1] in the table(s) below:

| Grade/Capacity | Certificate (STCW[2] Regulation) | Number of Persons |
|---|---|---|
| Master | II/2 | 1 |
| Chief Mate | II/2 | 1 |
| Officer in charge of a Navigational Watch | II/1 | 1 |
| Chief Engineer Officer | III/2 | 1 |
| Second Engineer Officer | III/2 | 1 |
| Officer in charge of an Engineering Watch | III/1 | 1 |
| GMDSS Radio Operator | As specified in Safety Radio Certificate | |
| Ratings forming part of a navigational watch/Able Seafarer (Deck) | II/4 or II/5 | 3 |
| Ratings forming part of an engine room watch/Able Seafarer (Engine) | - | - |
| Other Deck Ratings/Personnel | VI/1 | 2 |
| Other Engine Room Ratings/Personnel | VI/1 | 1 |

Special requirements or conditions, if any:
IF SHIP IS MANNED WITH GP RATINGS, ONLY 4 GP RATINGS WITH BOTH II/4 (OR II/5) AND III/4 (OR III/5) AND 1 OTHER GP RATING IS REQUIRED.

Certificate effective date: 25 September 2023

Certificate reproduction date: Nil

Date of Expiry: Nil

DIRECTOR OF MARINE MPA SINGAPORE SINGAPORE

CHEAH AUN AUN
Director of Marine,
Singapore.

[1] This document is applicable only to officers and ratings in the deck and engine departments and other certificated personnel.
[2] STCW: International Convention on Standards of Training, Certification and Watchkeeping for seafarers (STCW as amended).
*Where a trading area other than unlimited is shown, a clear description or map of the trading area should be included in the document.
**The operating company is the company as defined in the International Safety Management Code.
Any person finding this document must send it to the Director of Marine, Maritime and Port Authority of Singapore, 460 Alexandra Road #21-00 mTower, Singapore 119963

MPA SINGAPORE

# MINIMUM SAFE MANNING DOCUMENT
## REPUBLIC OF SINGAPORE

Issued by the Maritime and Port Authority of Singapore in pursuance of Merchant Shipping (Safety Convention) Regulations and under the provision of Regulation V/14 of the INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1974, as amended

**MSMD-00018-25**

| **Name of Ship** | **Port of Registry** | **IMO Number** |
|---|---|---|
| TORTUGA TIDE | SINGAPORE | 9624744 |
| **Call Sign** | **Official Number** | **Gross Tonnage** |
| 9V9014 | 403300 | 3455.00 |
| **Type of Ship** | **Main Propulsion Power(kW)** | **Periodically Unattended Machinery Space** |
| STEEL OFFSHORE SUPPLY VESSEL | 5164.00 | YES |
| ***Trading Area** | UNLIMITED VOYAGE | |
| ****Operating Company** | TIDEWATER OFFSHORE OPERATIONS PTE. LTD. | |

The ship named in this document is considered to be safely manned if, when it proceeds to sea, it carries not less than the number and grades/capacities of personnel specified[1] in the table(s) below:

| Grade/Capacity | Certificate (STCW[2] Regulation) | Number of Persons |
|---|---|---|
| Master | II/2 | 1 |
| Chief Mate | II/2 | 1 |
| Officer in charge of a Navigational Watch | II/1 | 1 |
| Chief Engineer Officer | III/2 | 1 |
| Second Engineer Officer | III/2 | 1 |
| Officer in charge of an Engineering Watch | III/1 | 1 |
| GMDSS Radio Operator | As specified in Safety Radio Certificate | |
| GP Ratings forming part of a navigational/engine watch | II/4 & III/4 | 4 |
| Other GP Ratings/Personnel | - | - |

Special requirements or conditions, if any:
1. Ship is manned with the number and grade of personnel specified in the Table above restricted within Australia waters.
2. Master and Shipowner are to ensure:
i) Hours of rest of the crew complies with MLC requirements taking into consideration the operational requirements of the ship
ii) Crew are provided with occupational health and safety protection, live, work and train on board ship in a safe and hygienic environment
3. This Safe Manning Document is effective from 25 September 2023 and reprinted on 10 January 2025, superseding and replacing any previously issued Safe Manning Document(s) which were identified to inadvertently contain incorrect details and requirements.
4. The effective date mentioned below only serves as the printed date of this document.

Certificate effective date: 10 January 2025

Certificate reproduction date: Nil

Date of Expiry: Nil

DIRECTOR OF MARINE MPA SINGAPORE

CHEAH AUN AUN
Director of Marine,
Singapore.

[1] This document is applicable only to officers and ratings in the deck and engine departments and other certificated personnel.
[2] STCW: International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW as amended).
*Where a trading area other than unlimited is shown, a clear description or map of the trading area should be included in the document.
**The operating company is the company as defined in the International Safety Management Code.

**2026 WAIRC 00401**

**INDUSTRIAL MAGISTRATES COURT OF WESTERN AUSTRALIA**

| | | |
|---|---|---|
| **CITATION** | : | 2026 WAIRC 00401 |
| **CORAM** | : | INDUSTRIAL MAGISTRATE D. SCADDAN |
| **HEARD** | : | WEDNESDAY, 22 APRIL 2026 |
| **DELIVERED** | : | THURSDAY, 18 JUNE 2026 |
| **FILE NO.** | : | M 146 OF 2025 |
| **BETWEEN** | : | CFMEU |
| | | **CLAIMANT** |
| | | AND |
| | | TSM OFFSHORE PTY LTD |
| | | **RESPONDENT** |
| **CatchWords** | : | INDUSTRIAL LAW – FAIR WORK – Assessment of pecuniary penalties for contraventions of *Fair Work Act 2009* (Cth) – Contravention of an enterprise agreement – Omission of marine leave on pay slips on two occasions – Turns on the circumstances of the case |
| **Legislation** | : | *Fair Work Act 2009* (Cth)<br>*Fair Work (Registered Organisations) Act 2009 (Cth)*<br>*Crimes Act 1914* (Cth) |
| **Instrument** | : | *Tidewater Ship Management (Australia) Pty Ltd and MUA Offshore Oil and Gas Enterprise Agreement 2023* |
| **Cases referred to in reasons:** | : | ***Patrick Stevedores Holdings Pty Limited v Construction, Forestry, Maritime, Mining and Energy Union [No 4]*** [2021] FCA 1481<br>***Fair Work Ombudsman v Construction, Forestry, Maritime, Mining and Energy Union*** [2019] FCAFC 69<br>***Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union*** [2019] FCAFC 59; (2019) 269 FCR 262<br>***Construction, Forestry, Mining and Energy Union v Hail Creek Coal Pty Ltd [No 2]*** [2018] FCA 480<br>***Construction, Forestry and Maritime Employees Union v OSM Australia Pty Ltd [No 2]*** [2025] WAIRC 00924; (2025) 105 WAIG 2728<br>***Construction, Forestry, Maritime, Mining and Energy Union v OSM Australia Pty Ltd*** [2022] WAIRC 00713; (2022) 102 WAIG 1298<br>***The Australian Workers' Union v OSM Australia Pty Ltd*** [2024] WAIRC 00853; (2024) 104 WAIG 2172<br>***Construction, Forestry and Maritime Employees Union v OSM Australia Pty Ltd*** [2025] WAIRC 00349; (2025) 105 WAIG 1216<br>***Australian Building and Construction Commissioner v Pattinson*** [2022] HCA 13; (2022) 274 CLR 450<br>***Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union [No 2]*** [2018] FCA 1211; (2018) 70 AILR 102-975<br>***Construction, Forestry and Maritime Employees Union v Qube Ports Pty Ltd*** [2025] FCA 208<br>***Australian Building and Construction Commissioner v Powell [No 2]*** [2019] FCA 972<br>***Auimatagi v Australian Building and Construction Commissioner*** [2018] FCAFC 191; (2018) 267 FCR 268<br>***Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Telstra Corporation Ltd*** [2007] FCA 1607; (2007) 168 IR 368<br>***Australian Rail, Tram and Bus Industry Union v Qube Logistics (Rail) Pty Ltd*** [2020] FCA 1520; (2020) 300 IR 198 |
| **Result** | : | No penalty imposed |

**Representation:**

Claimant : Ms S. Sayed (of counsel)

Respondent : Mr J. Parkinson (of counsel)

**REASONS FOR DECISION**

**Background**

1 On 23 October 2025, the Construction, Forestry and Maritime Employees Union lodged an originating claim alleging that Tidewater Ship Management (Australia) Pty Ltd (**Tidewater**) contravened cl 16.4 of the *Tidewater Ship Management (Australia) Pty Ltd and MUA Offshore Oil and Gas Enterprise Agreement 2023* (the **Agreement**) by failing to provide pay slips showing leave accrued and taken on 1 and 15 October 2025 (the **Claim**).

2 During the hearing on 22 April 2026, the claimant applied to amend the respondent's name from Tidewater to OSM Thome WA Pty Ltd (**OSM**). The Court granted this amendment.[1]

3 After the hearing, on 12 June 2026, by consent, the Court ordered the following:

(a) the claimant's name is changed to 'CFMEU' (the **claimant**); and

(b) the respondent's name is changed to 'TSM Offshore Pty Ltd' (the **respondent**).[2]

4 In failing to provide the leave accrued on the pay slips on 1 and 15 October 2025, the claimant alleges that the respondent has contravened s 50 of the *Fair Work Act 2009* (Cth) (**FWA**) and seeks the imposition of a civil pecuniary penalty.

5 On 10 November 2025, the respondent partially admitted the Claim and conceded that pay slips issued on 1 and 15 October 2025 did not include leave balances due to a technical issue with a third-party provider.

6 The respondent denied (for reasons given below) that the imposition of a penalty as sought by the claimant was necessary.

7 Schedule I of these reasons outlines the provisions of the FWA and principles relevant in determining an appropriate pecuniary penalty (if any) for the respondent's contraventions.

**Agreed Facts**

8 The parties lodged an agreed statement of facts,[3] where they agreed:

(a) the claimant is a registered organisation under the *Fair Work (Registered Organisations) Act 2009* (Cth), an employee organisation as defined in s 12 of the FWA, and an employee organisation to which the Agreement applied within the meaning of s 52 of the FWA;

(b) the respondent is a 'constitutional corporation' within the meaning of that term in s 12 of the FWA, a 'national system employer' within the meaning of that term in s 14 of the FWA, and an employer to which the Agreement applied within the meaning of s 52 of the FWA; and

(c) the Agreement covers the claimant and applies to the respondent and applies to the respondent's employees engaged in the classifications in the Agreement.

9 Relevant to the contraventions, the parties also agreed that:

(a) pursuant to cl 16.4 the Agreement, the respondent was required to provide to employees 'a pay notice (pay slip) showing the full details of gross pay, deductions, net pay, superannuation, allowances and leave accrued and taken will be provided with each payment of wages';[4]

(b) the 'leave accrued and taken' referred to in cl 16.4 of the Agreement includes leave provisions under cl 25.2 of the Agreement and cl 37 of the Agreement;[5]

(c) on 1 October 2015, the respondent made payment of wages to employees for the fortnight ending 28 September 2025;

(d) on 15 October 2025, the respondent made payment of wages to employees for the fortnight ending 12 October 2025;

(e) the respondent provided pay slips to those employees at the time wages were paid;

(f) the pay slips provided to employees on 1 October 2025 did not show 'leave accrued and taken';[6] and

(g) the pay slips provided to employees on 15 October 2025 did not show 'leave accrued and taken'.[7]

**Other Evidence**

**Claimant**

10 The claimant relied upon a witness statement of George Gakis (**Mr Gakis**), signed on 26 January 2026.[8] A summary of his evidence is as follows.

11 Mr Gakis is the Deputy Secretary for the Western Australian Branch of the Maritime Union of Australia Division of the CFMEU.[9]

12 Mr Gakis was involved in the bargaining negotiations for the Agreement.[10]

13 Mr Gakis states that on 1 October 2025, he was copied into an email from Andrew Stagg (**Mr Stagg**), one of the respondent's employees, with the subject 'pay slip issue' and attached to the email a copy of Mr Stagg's pay slip.[11]

14 The email was addressed to Ms Ilana Louise Jewson (**Ms Jewson**) and Ms Leona Witzig (**Ms Witzig**) in which Mr Stagg raises the issue of his pay slip not showing his leave balance.[12]

15 On 1 October 2025, Ms Jewson replied to the email and Mr Gakis was copied into the email. Mr Gakis states he did not receive a response from Ms Jewson 'the next day'.[13]

16 On 16 October 2025, Mr Gakis stated he was copied into an email from Joshua Weller (**Mr Weller**), one of the respondent's employees, with the subject 'Leave Entitlements Not Reflected on Payslip' and attached to the email was a copy of Mr Weller's pay slip.[14]

17 On 29 October 2025, the respondent made payment of wages to its employees for the fortnight ending 26 October 2025.[15]

18 The pay slips provided to employees on 29 October 2025 did not show 'leave accrued and taken'.[16]

**Respondent**

19 The respondent relied upon a witness statement of Ms Witzig, signed 23 February 2026[17] and a witness statement of Ms Jewson, signed on 20 February 2026.[18]

20 A summary of their evidence is as follows.

21 Ms Witzig is employed by the respondent, the parent entity of Tidewater, as the Payroll Manager responsible for overseeing general payroll processes and accounts receivable.[19]

22 Prior to 2022, Ms Witzig was solely responsible for all payroll and accounts functions apart from those performed by the Finance Manager. From 2022, the payroll team includes five members, and she shares responsibility for checking the payroll with another payroll supervisor each fortnight.[20]

23 The respondent uses a payroll system provider, ADP, for processing its payroll. ADP is an American company with Australian operations based in Melbourne, with a payroll system that can be customised to add a 'marine module that keeps track of marine leave entitlements.' Ms Witzig understands that ADP is the only payroll system capable of customisation to keep track of marine leave balances.[21]

24 Under the Agreement, marine leave for seafarer employees is different to standard leave entitlements based on its calculation under the Agreement and what it is designed to compensate. ADP, and its customised marine module, tracks employees' entitlements through various rates of pay that change when employees change position, move between vessels, or change rank.[22]

25 In 2023, the respondent acquired Tidewater and inherited their ADP payroll system account and many customisations such as the parent company's logo appearing on pay slips (the **Logo**).

26 In May 2025, Ms Witzig became aware that the respondent's pay slips continued to display Tidewater's (incorrect) Logo and sent a service request to ADP through its web portal to fix it. According to ADP, the issue had been fixed, but this was not entirely the case.[23]

27 According to Ms Witzig, because the respondent's pay slips could be viewed differently by payroll staff and employees, it then became apparent in September 2025 that the Logo had been changed on one medium but not on the other. That is, the version viewed by employees continued to show the old logo. Ms Witzig could not 're-customise' the Logo without ADP, nor could she change the marine leave module or pay slips generally.[24]

28 On 26 September 2025, Ms Witzig submitted another request to ADP to change the Logo in both mediums. On 30 September 2025, she followed up her request with ADP as she was aware the respondent was finalising the payroll the following day. On 1 October 2025, the first contravention date, ADP informed Ms Witzig that it had been fixed. However, when Ms Witzig checked to see if the issue had been resolved by generating a preview of web pay slips prior to submitting them to the web portal, the issue had not been resolved, and she advised ADP of this.[25]

29 The respondent holds 'master files' for each employee, of which there are 150 to 200, which enables the respondent to make some changes to every single 'master file' for an employee. On 1 October 2025, Ms Witzig's team amended the 'master file' to the template pay slip format where ADP added the new Logo. Upon reviewing the pay slips prior to submitting them to the web portal, it was observed that while the new Logo was displaying correctly, the marine leave balance was not displaying on the pay slips.[26]

30 Ms Witzig contacted ADP, but their office (located in Melbourne) had closed for the day. Upon contacting ADP the following day, she was informed that the reason the marine leave balance did not appear on the pay slips was that ADP did not link the marine leave module to the new pay slip format. The person at ADP who configured the new pay slip format had inadvertently failed to combine the marine leave module with the new pay slip format. The marine leave balances were never affected by this error in configuration, and no entitlements were lost. The issue was a formatting or display error on the pay slips caused by ADP's configuration of the new Logo.[27]

31 Ms Witzig and her team discovered that pay slips displayed the old Logo at approximately 6.00 pm on 1 October 2025 and sent a request to ADP. At approximately 6.30 pm, Ms Witzig informed ADP that the respondent was in the process of changing the employees' 'master files' to deal with the Logo from an updated template.[28] At 7.54 pm, Ms Witzig informed ADP that the respondent had amended all active 'master files' to a generic pay slip 'so that crew at least got a payslip.' She also informed ADP that 'most importantly it does not show a Marine leave balance.' She also asked '[c]ould we please get this fixed? and [sic] if you are able to fix this, can we re-transmit the payslips so that our crew can see a version WITH the Marine Leave balance on it?'[29]

32 Ms Witzig explains that making further changes from 7.54 pm would have taken 'two or three more hours' and it was necessary to submit pay slips in a reasonable time before submitting the payroll for the pay slips to be issued, and at the time the payroll had already been submitted to the bank.[30]

33 On that basis, Ms Witzig states that they made the decision to issue the pay slips without the marine leave balance displayed so that employees still received pay slips and were notified of their pay.[31]

34 On the same night, Ms Witzig notified the crewing department of the problem so a memorandum could be sent to employees as soon as possible.[32]

35 On 2 October 2025, Matthew Chadwick, Operations Manager at OSM (**Mr Chadwick**), prepared a draft memorandum for review and at 9.16 am he requested the memo be sent to all employees through the respondent's system that provides emails to employees' private email addresses.[33]

36 Employees were invited to confirm their current marine leave balance if they wished to do so. Ms Witzig assisted two employees to retrieve their leave balances and other staff members assisted several other employees to do so as well.[34]

37 Between 1 and 15 October 2025, Ms Witzig made numerous telephone requests and service requests via the web portal to ADP to resolve the marine leave display issue, including an urgent request before the next pay cycle. On 10 October 2025, a member of the ADP team informed her there was no resolution and the issue was not resolved before the next pay cycle. On 15 October 2025, Mr Chadwick sent a further memorandum to employees informing them that they had not lost their marine leave entitlements.[35]

38 Between 15 and 24 October 2025, Ms Witzig continued to have numerous communications with ADP to resolve the marine leave balance display on the pay slips. ADP provided a solution on 21 October 2025, but it was not until 24 October 2025 that the issue was fully resolved with the pay slips correctly displaying the marine leave balance.[36]

39 Ms Witzig also liaised with Ms Jewson and on 16 October 2025, she provided Ms Jewson with three templates as part of the ADP's suggested solution.[37]

40 Ms Witzig explains that the respondent is heavily dependent on the ADP payroll system and the respondent is unable to control what is included or excluded on pay slips beyond the options made available to the respondent by ADP. The respondent can send service requests to ADP, but is dependent on ADP to process the requests and provide solutions. Making changes is complex because of the extensive customisations that were in place when the respondent took over the existing payroll system from Tidewater.[38]

41 In cross-examination, Ms Witzig confirmed that she could not contact ADP late on 1 October 2025 and had assumed the marine leave balance would transit through onto the pay slip. She made the decision to proceed with the pay slips without the marine leave balance and informed her manager resulting in the memorandum being sent to employees the next day. ADP did not 'marry up' the marine leave when the Logo changed.[39]

42 Ms Witzig clarified that what was not shown was the marine leave balance, but other leave (such as leave taken) was shown.[40]

43 She maintained that the whole of the issue (the Logo and marine leave balance) took from 22 September 2025 to 24 October 20225 to resolve. She denied that she could reissue the pay slips and manually correct the marine leave balance. She denied that this was an easy issue to fix.[41]

44 Ms Jewson is employed by the respondent in the position of Human Resources, Industrial Relations and Engagement Manager. In this role, amongst other things, she engages with employees and union representatives, including liaising with Ms Witzig and Mr Gakis over various employment issues.[42]

45 Ms Jewson became aware of an issue with the omission of marine leave on the pay slips in early October 2025 via members of the payroll team. Ms Witzig discussed the issue with her and told her that it required the involvement of ADP and there was no straightforward solution.[43]

46 On 16 October 2025, Ms Jewson received a telephone call from Mr Gakis and she discussed with him the reason for marine leave not being displayed on the pay slips. At 5.22 pm, she sent Mr Gakis an email confirming their discussion and advised Mr Gakis that leave accruals continued to be processed correctly and remained fully available to employees at any time.[44]

47 Ms Jewson also attached to this email a template pay slip for his review with marine leave accruals at the bottom rather than the top of the pay slip and asked him to advise her of any major issues by midday on 17 October 2025.[45]

48 Ms Jewson continued to correspond with Mr Gakis concerning the new pay slip format with a final email sent on 20 October 2025 confirming the new pay slip captured the required information.[46]

49 Ms Jewson refers to an additional issue between the parties regarding the display of long service leave on pay slips, which is recorded separately. This issue is the subject of ongoing negotiations with the claimant and does not form part of the Claim, although Ms Jewson notes that at no point in her communications with Mr Gakis in October 2025 about the marine leave display on pay slips did Mr Gakis raise the long service leave display on pay slips. The respondent continues to consult with the claimant on this.[47]

**Submissions**

50 Both parties refer to the law in respect of the determination of an appropriate pecuniary penalty for contraventions of the FWA. I do not intend to recite the parties' references to the applicable law. Schedule I to these reasons sets out a summary of those principles.

**Claimant**

51 In summary, the claimant submits that:

(a) the object of a civil penalty is to promote the public interest in compliance with the provisions of the FWA by securing future compliance;

(b) there are two contraventions of s 50, arising from the non-compliance with cl 16.4 of the Agreement on 1 and 15 October 2025. These contraventions are contraventions of a civil remedy provision: s 539(2) of the FWA;

(c) the maximum penalty applicable is five times the maximum number of penalty units proscribed for a natural person

(given the respondent is a corporation);

(d) a failure by a person to whom an enterprise agreement applies to comply with their obligations has the potential to undermine the regime for establishing the rights and entitlements of industrial parties. The seriousness of the contravening conduct or the involvement of senior management will generally suggest a higher penalty is necessary to achieve specific and general deterrence;

(e) Ms Jewson ought to have set an example and, therefore, there is a need for substantial deterrent penalties;

(f) the respondent is 'a sizeable entity with substantial resources', including an in-house payroll team, and it outsources to ADP;

(g) the respondent was aware at the time of issuing the 1 October 2025 pay slips that there was not compliance with the Agreement, and cognisant of the risk, proceeded to issue the pay slips and 'take the odds';

(h) the respondent took no corrective action to rectify the first contravention;

(i) the second contravention was 'subjectively reckless in the sense that the respondent was aware of their obligations and corrective action could have been *easily* implemented';

(j) for that reason, the Court should find the respondent intentionally contravened s 50 of the FWA;

(k) the respondent has failed to exhibit contrition; and

(l) the respondent has a history of non-compliance of the FWA and enterprise agreements and a 'habit of treating their obligations with no small measure of disdain'.[48]

52 In oral submissions, the claimant further contended the respondent could or should have issued manual pay slips to 90 of the 150 employees (who may be the claimant's members) and that this would not have been difficult taking three hours to manually amend the 'master file'.[49] I place little weight on the claimant's suggestion that a particular cohort of employees should have been prioritised over other employees – there is nothing that remotely demonstrates a requirement for the respondent to prioritise its employees in this way. I also reject the submission that some form of immediate remediation of the pay slips was 'easy'. The evidence does not bear out that submission.

**Respondent**

53 The respondent submits that it is not appropriate to impose a penalty where the respondent's contraventions fall within the lower end of possible conduct contravening s 50 of the FWA. Alternatively, if the Court considers the imposition of a penalty is appropriate, any penalty should be at the lower end of the spectrum. In summary:

(a) it is not alleged, nor is there evidence to suggest, that the respondent's conduct amounts to a serious contravention pursuant to s 557A of the FWA;

(b) the maximum penalty is but one factor in a number of relevant factors and does not constrain the exercise of discretion under s 546 of the FWA other than requiring a reasonable relationship between the theoretical maximum and the final penalty imposed;

(c) the purpose of civil penalties is specific and general deterrence, with concepts such as retribution, denunciation and rehabilitation having no role to play; and

(d) proportionality should be considered by the Court, where the penalty imposed strikes a reasonable balance between deterrence and oppressive severity.

54 The respondent points to the contraventions not being deliberate, intentional, or reckless as it was caused by a third-party provider, resulting in no loss to employees, and the steps taken to remediate the contraventions indicate that primarily no penalty should be imposed.

**The Nature, Extent and Circumstances of the Conduct**

55 The claimant submits that the respondent has a record of non-compliance and treats their obligations with disdain.

56 The respondent submits that the contraventions were the result of a technical error by the respondent's third-party payroll system, ADP, where the respondent acquired Tidewater and it was already using the ADP payroll system.

57 The marine leave balances were omitted from employee pay slips on two occasions. However, there is no evidence this resulted in the employees' entitlements being altered or effected.

58 The conduct was not underpinned on the part of the respondent to in any way contravene industrial laws or entitlements. To the contrary, Ms Witzig identified the omission by reviewing the pay slips before they were issued because she was aware of an issue with the Logo and was trying to fix the Logo issue. She then took immediate steps to try and correct the issue with the marine leave balances but could not do so because of the time difference between Western Australia and Victoria and the time the issue was identified.

59 She then had a decision to make about whether to continue to issue the pay slips given that payroll had already been provided to the bank. In those circumstances, at 8.00 pm, Ms Witzig was caught between the proverbial rock and hard place and decided the better course of action was to issue the pay slips to employees and address the omission of the marine leave balance with her manager(s). This resulted in a memorandum being issued to employees the next morning explaining what had happened and inviting them to liaise directly with the respondent to check their marine leave balances.

60 Unless something else happens with the ADP payroll system, it seems unlikely this particular issue would occur again.

**Course of Conduct**

61 Each of the contraventions are attributable to the same unintended configuration of the respondent's payroll system by ADP

resulting in the omission of marine leave balances on employee pay slips dated 1 and 15 October 2025.

62 However, the respondent submits that common law course of conduct principles is applicable to the contraventions in the Claim. Where there are multiple contraventions arising from the same act or omission, it is appropriate to approach those contraventions in such a way so as to avoid a situation where the respondent is penalised twice for the same act or omission. Further, once the various considerations have been taken into account, the totality principle is to be applied, where the Court reflects on whether the aggregate of any penalty(s) to be imposed is appropriate.

63 Section 557 of the FWA does not otherwise exclude the operation of the common law.[50] In ***Patrick Stevedores Holdings Pty Ltd v Construction, Forestry, Maritime, Mining and Energy Union [No 4]*** [2021] FCA 1481 (***Patricks***), Lee J referred to comments made by the Full Court in the ***Fair Work Ombudsman v Construction, Forestry, Maritime, Mining and Energy Union*** [2019] FCAFC 69 (the ***Hutchison Ports Appeal***) at [183] to [184] (per Rangiah J):

> As I have said, s 557(1) of the [FWA] was regarded in [***Rocky Holdings Pty Ltd v Fair Work Ombudsman*** [2014] FCAFC 62] at [18] as a protection against double punishment. Seen in that context, s 557(3) withholds from a contravener a protection that would otherwise be conferred by s 557(1). However, s 557(3) does not remove the protection against double punishment conferred under the course of conduct principle. The primary judge held that where s 557(1) does not apply because of s 557(3), the course of conduct principle would apply, and I respectfully agree. If s 557(1) does not apply, a court is left with the instruction of s 546(1) to impose a pecuniary penalty that 'the court considers is appropriate'. Where there are multiple contraventions, assessment of an appropriate penalty must take into account whether the factual or legal circumstances overlap to an extent that there is a risk of multiple punishments for what is essentially the same contravention. In other words, the course of conduct principle must be considered.
>
> Section 557(3) of the [FWA], having withheld the absolute protection against more than one penalty conferred by s 557(1), leaves the contravener with the same protection as a person who commits, within a single course of conduct, multiple contraventions of a civil penalty provision not set out in s 557(2). That protection is the course of conduct principle. That does not automatically or necessarily mean that a single penalty must be imposed, but, rather, that the sentencing court is left to decide what penalty is, or penalties are, appropriate.

64 Further comments by Lee J in ***Patricks***, at [153], are apposite to the Claim:

> This is a case that engages the broad discretion to ensure penalties are appropriate to the conduct in a given case and to ensure that the respondents are not penalised twice for the same or substantially similar conduct.

65 As is the following reference by Lee J, in ***Patricks*** at [155], to Rangiah J's statement in ***Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union*** [2019] FCAFC 59; (2019) 269 FCR 262:

> The course of conduct principle exists to ensure that where that conduct results in more than one contravention, an offender is not punished more than once for what is effectively the same offending conduct. A finding that multiple contraventions are connected by a single course of conduct raises a question as to what is the appropriate penalty for those contraventions that avoids double punishment, but does not answer that question. *The question is answered by evaluating the conduct and its course and assessing what penalty is, or what penalties are, appropriate for the contraventions*. (emphasis added)

66 I am satisfied that while there are two contraventions, a single course of conduct lead to the two contraventions where it arose out of the same pay slip configuration issue when ADP, after changing the Logo on the pay slips, did not configure the pay slip format correctly by failing to link it with the marine leave module.

67 Accordingly, an appropriate penalty (if any) for the two contraventions should avoid 'double punishment' for this same conduct.

**Deliberate Conduct**

68 There is no evidence the respondent engaged in deliberate conduct to circumvent industrial laws or to deprive employees of their entitlements.

69 The contraventions were borne of a third-party configuration of pay slips when there was a change of company logo.

70 The respondent promptly informed employees about what happened and took steps to address the issue with employees.

71 I would also add that, to her credit, Ms Witzig acted diligently in trying to resolve the issue. She had prompt and ongoing contact with ADP, informed her manager to facilitate a memorandum being sent to employees on 2 October 2025, and ensured through other team members that employees who wanted information about marine leave balances were given that information.

72 Unlike in ***Construction, Forestry, Mining and Energy Union v Hail Creek Coal Pty Ltd [No 2]*** [2018] FCA 480 there is no *evidence* the respondent should have been on notice or have had a heightened awareness of the risk that if ADP changed a company logo it would reconfigure pay slips to omit marine leave.

**Similar Previous Conduct of the Respondent**

73 The parties did not refer to any similar previous conduct by the respondent (including when it was Tidewater).

74 However, the relevance of 'similar previous conduct' by OSM was raised. This previous conduct was referred to in ***Construction, Forestry and Maritime Employees Union v OSM Australia Pty Ltd [No 2]*** [2025] WAIRC 00924; (2025) 105 WAIG 2728 (***OSM Australia [No 2]***) at [27] to [30], noting this case also involved the imposition of a pecuniary penalty.

75 In 2022, the Court, constituted by a different Industrial Magistrate, imposed a $1 penalty where the same claimant conceded that OSM's contravention was the result of an inadvertent error on the part of an inexperienced payroll employee, which was not brought to OSM's attention until the claimant lodged the claim in the Court. Upon the claim being lodged, OSM

immediately rectified the error.[51]

76 In 2024, the Court imposed a total penalty of $1,700 for the failure to pay over cycle payments for four employees where the parties were in prior dispute about the interpretation of the relevant term of an enterprise agreement. After the commencement of proceedings, OSM admitted the contravention and rectified the contravention by paying the relevant amount to the four employees.[52]

77 In ***OSM Australia [No 2]***, the Court imposed a penalty of $2,000 following a contested hearing about the timing of offers to convert to permanent employment five casual employees. The Court found that OSM had failed to provide the five casual employees with offers to convert to permanent employment within four weeks of registration of the relevant enterprise agreement.[53] However, the Court also found OSM had called for expressions of interest within the timeframe provided for in the enterprise agreement and the Court was not satisfied that the claimant had proven the whole of the claim the subject of the litigation. Notably in ***OSM Australia [No 2]***, at [18] to [21], the Court, in referring to the liability decision, made findings about the nature of the conduct, and why the contravening conduct was unlikely to occur again in the future.

78 As can be seen, none of the 'similar previous conduct' involved the entity purchased by the respondent, albeit the respondent assumed responsibility for Tidewater's payroll system. Notwithstanding this, it is still difficult to draw a bow supporting a finding that the respondent disregards its industrial obligations.

79 The circumstances of this case were atypical, and the respondent took immediate responsibility and steps to reduce the impact of the omission of marine leave that the two pay slips might have upon its employees. It did so without any need for the Court to become involved.

80 Thus, to the extent the 'previous similar conduct' by the respondent is relevant, it is of little weight in determining an appropriate penalty in this case.

**Applicable Maxima**

81 The maximum penalty with respect to a contravention of s 50 of the FWA by the respondent is 300 penalty units, given the respondent is a body corporate.

82 At the date of the contraventions the penalty unit value was as follows:[54]

| Dates of Contravening Conduct | Penalty Unit |
|---|---|
| October 2025 | $ 330 |

83 The theoretical maximum is $99,000 for each contravention with the total theoretical maximum being $198,000.

**Size of the Respondent and Involvement of Senior Management**

84 Contrary to the claimant's assertion that senior management were involved in the contravention, there is no evidence of the involvement of senior management in the contravention.

85 The evidence demonstrates that the omission of marine leave on the pay slips occurred as a result of an issue with ADP, a third-party provider, and not because of any act or omission by any of the respondent's employees or anything the respondent did. That is, in the course of changing a company logo, ADP's configuration of pay slips resulted in marine leave being inadvertently omitted from the pay slips.

86 Nothing the respondent or any of its employees did had caused the contraventions beyond a desire to alter a company logo to reflect a change of name from a client name.

87 Thereafter, the respondent and its employees took steps to respond to the issue.

88 There was some complaint by Mr Gakis that Ms Jewson did not respond to him or one of the employees the 'next day' or quickly enough. However, the contravention is not about Ms Jewson. Further, it is apparent the respondent, via Ms Witzig and Mr Chadwick, acted immediately on the issue and sent a memorandum to all employees the next day to inform them what had happened and provided employees with their marine leave balance upon request.

**Cooperation, Contrition and Corrective Action**

89 The respondent cooperated in the legal proceedings and promptly admitted the contravention. The parties also prepared a statement of agreed facts.

90 While not expressed as an apology, the email from Mr Chadwick on 2 October 2025 explained the situation and reassured employees that marine leave continues to accrue and no information had been lost. He also encouraged employees to contact the respondent if they would like confirmation of their current marine leave balance. To that end, various employees did contact the respondent and were promptly provided with their current marine leave balance via email.

**Loss or Damage Suffered**

91 There is no evidence of any loss or damage suffered by any employee. The employees' entitlements related to marine leave did not change and were not affected. The respondent sent an email to all employees the following morning after the issue was identified and invited any concerned employee to request details of their marine leave. The respondent promptly provided this information to those employees who requested it.

**Deterrence**

92 It is often said deterrence, specific and general, is the principle (if not sole) objective in determining civil penalties.[55] That is, imposing a penalty that promotes the public interest in compliance with, in this case, industrial laws.

93 The respondent says, consistent with comments made by the High Court in ***Australian Building and Construction Commissioner v Pattinson*** [2022] HCA 13; (2022) 274 CLR 450 (***Pattinson***) at [46], the conduct the subject of the

contraventions does not bear a reasonable relationship to the imposition of a penalty where the conduct arose out of inadvertence and the contraventions were not deliberate.

94 In ***Pattinson***, at [71], the majority judgment concluded that a court's 'real task under s 546' is 'fixing the penalty which it considers fairly and reasonably to be appropriate to protect the public interest from future contraventions of the Act' where, at [58], 'the maximum penalty is intended by the Act to be imposed in respect of a contravention warranting the strongest deterrence within the prescribed cap'.

95 In ***Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union [No 2]*** [2018] FCA 1211; (2018) 70 AILR 102-975 (and also referred to in ***Pattinson*** at [26]), Tracey J stated at [20]:

> [T]he maximum penalty may be appropriate for a person who has repeatedly contravened the same or similar legislative provisions despite having been penalised regularly over a period of time for such misconduct. The gravity of the offending, in such cases, is to be assessed by reference to the nature and the quality of the recidivism rather than by comparison of individual instances of offending: see ***Director of the Fair Work Building Industry Inspectorate v Construction, Forestry, Mining and Energy Union (No 2)*** [2015] FCA 1462 at [8] (Jessup J). Relevant matters will include the number of contraventions which have occurred over a period, whether the ongoing misconduct is the result of conscious decisions, whether the repeated contravenor has treated the payment of penalties as a cost of doing business and whether any attempt has been made to comply with the law as declared by the Court.

**Determination**

96 There is limited role for specific deterrence in this case.

97 The respondent identified the issue with the omission of marine leave on the pay slips in the evening of 1 October 2025 and immediately set about trying to rectify the issue. When it could not do so, the next morning the respondent informed employees of what had happened, reassured employees that their entitlements were not affected (which they were not), and encouraged employees to contact the relevant staff members for their marine leave balance (which they did and which the respondent promptly provided).

98 ADP took some time to rectify the issue, which did not happen before the next pay cycle of 15 October 2025, although not without significant effort by Ms Witzig to have the issue fixed.

99 Against that background, there is no reason to find the respondent is failing to take its industrial obligations seriously.

100 What then is left for the role of general deterrence in this claim?

101 Comments made by Feutrill J, at [94], in ***Construction, Forestry and Maritime Employees Union v Qube Ports Pty Ltd*** [2025] FCA 208 may be relevant, albeit they were directed to specific deterrence:

> Contraventions are not only the consequence of intentional or deliberate conduct but carelessness, oversight and inadvertence. Part of deterrence involves encouraging employers to implement and maintain systems, policies, procedures and a culture aimed at preventing careless, unintentional or ignorant contraventions of the Act. Therefore, the size and spread of an employer's operation is not a reason for diminishing corporate responsibility for historical contraventions as these may be indicative of systemic or underlying failings in corporate systems, policies, procedures and culture and, therefore, of an ongoing and enhanced risk of future contraventions.

102 Further guidance may be derived from ***Australian Building and Construction Commissioner v Powell [No 2]*** [2019] FCA 972 at [28] to [30] in which Bromberg J refers to Allsop CJ, Collier and Rangiah JJ in ***Auimatagi v Australian Building and Construction Commissioner*** [2018] FCAFC 191; (2018) 267 FCR 268 (at [176]):

> The well settled principles most recently expressed in [***Parker v Australian Building and Construction Commissioner*** [2019] FCAFC 56] call for a structured approach to the imposition of a penalty on a contravener with a history of contraventions, the object of which is to ensure that the contravener does not 'suffer the fate of being sanctioned anew for past contraventions' (at [341]). *First*, the Court must identify the applicable range of penalties for that contravention without regard to the contravener's prior history of contraventions. *Having done that*, the Court should then take into account that history in assessing where, within the applicable range, the penalty should fall. (original emphasis)

103 No penalty was awarded in ***Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Telstra Corporation Ltd*** [2007] FCA 1607; (2007) 168 IR 368 and ***Australian Rail, Tram and Bus Industry Union v Qube Logistics (Rail) Pty Ltd*** [2020] FCA 1520; (2020) 300 IR 198. Caution needs to be exercised when considering these cases, as both were decided prior to the High Court decision in ***Pattinson.*** However, no penalty was imposed where it was determined that the issue arose from disputable breaches of an industrial instrument rather than from any deliberate or wilful contravention.

104 The contraventions arose from circumstances somewhat out of the ordinary. The respondent's employee, Ms Witzig, faced with a decision to make, made the best decision with the information she had and at the time she had it. She chose to send out the pay slips on 1 October 2025 with the marine leave balance omitted and then sought to ensure through a manager that employees were advised of what had happened and what the respondent could do to assist. The issue with the omitted pay slips was not resolved by ADP by 15 October 2025, but not through lack of trying by Ms Witzig. The respondent again continued to advise employees.

105 No entitlements were affected. The issue was finally resolved on 24 October 2025. The genesis of the contraventions came from the need to change the Logo with ADP. There was no evidence the respondent should have been on notice that in doing so, the marine leave balance might be affected on the pay slip.

106 It could not be said the contraventions occurred through carelessness, oversight or inadvertence on the part of the respondent. There was no systemic failure in the respondent's policies and procedures, or at least none that were identified.

107 The Court retains a discretion to order the payment of a pecuniary penalty it considers appropriate *in the circumstances of the particular case*.

**No Penalty to be Imposed**

108 With respect to the contraventions in the Claim, I do not consider the payment of any pecuniary penalty is appropriate in the circumstances of this case.

109 Having regard to all of the factors discussed above, I am not satisfied that the imposition of a penalty is what is necessary to deter the respondent from future non-compliance with industrial laws. Further, in the circumstances of this case, I am not satisfied that the principle of general deterrence warrants the imposition of a pecuniary penalty. If anything, the circumstances of this case, highlights what employers should be encouraged to do in the event something goes wrong – communicate with their employees.

**Conclusion**

110 Pursuant to s 546(1) of the FWA, notwithstanding the Court is satisfied that the respondent has contravened a civil penalty provision, the appropriate civil penalty to be imposed is no penalty.

**D. SCADDAN**

**INDUSTRIAL MAGISTRATE**

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[1] Orders made by the Court 22 April 2026, ts 8 - 9.

[2] Orders made by the Court 12 June 2026.

[3] Exhibit 1 – Statement of Agreed Facts lodged on 12 January 2026.

[4] Exhibit 1 [6].

[5] Exhibit 1 [7].

[6] Exhibit 1, agreed document 2.

[7] Exhibit 1, agreed document 3.

[8] Exhibit 2 – Witness Statement of George Gakis signed on 26 January 2026.

[9] Exhibit 2 [1].

[10] Exhibit 2 [3].

[11] Exhibit 2 [6], GG01.

[12] Exhibit 2 [7], GG01.

[13] Exhibit 2 [8], GG01.

[14] Exhibit 2 [9], GG02.

[15] Exhibit 2 [11].

[16] Exhibit 2 [12], GG03.

[17] Exhibit 3 – Witness Statement of Leona Witzig signed on 23 February 2026.

[18] Exhibit 4 – Witness Statement of Ilana Louise Jewson signed on 20 February 2026.

[19] Exhibit 3 [1], [5].

[20] Exhibit 3 [6].

[21] Exhibit 3 [10].

[22] Exhibit 3 [12] - [13].

[23] Exhibit 3 [14] - [15], LW01.

[24] Exhibit 3 [16] - [17].

[25] Exhibit 3 [18] - [20], LW02.

[26] Exhibit 3 [21] - [23], LW02.

[27] Exhibit 3 [24] - [25], LW02.

[28] Exhibit 3, LW02 (comment by Ms Witzig on 1 October 2025 at 6.31 pm).

[29] Exhibit 3 [26], LW02 (comment by Ms Witzig on 1 October 2025 at 7.54 pm).

[30] Exhibit 3 [27].

[31] Exhibit 3 [28].

[32] Exhibit 3 [29], LW03.

[33] Exhibit 3 [30] - [31], LW04.

[34] Exhibit 3 [32] - [34], LW03, LW05 - LW20.

[35] Exhibit 3 [35] - [40], LW22.

[36] Exhibit 3 [41] - [44].

[37] Exhibit 3 [42], LW23.

[38] Exhibit 3 [46] - [48].

[39] ts 14 - 15.

[40] ts 18.

[41] ts 19.

[42] Exhibit 4 [1] - [8].

[43] Exhibit 4 [9].

[44] Exhibit 4 [11] - [12], IJ01.

[45] Exhibit 4 [13], IJ01.

[46] Exhibit 4 [14] - [17], IJ02 - IJ05.

[47] Exhibit 4 [18] - [26], IJ06 - IJ07.

[48] Claimant's outline of submissions [40].

[49] ts 31 - 33.

[50] ***Patrick Stevedores Holdings Pty Ltd v Construction, Forestry, Maritime, Mining and Energy Union [No 4]*** [2021] FCA 1481 [152].

[51] ***Construction, Forestry, Maritime, Mining and Energy Union v OSM Australia Pty Ltd*** [2022] WAIRC 00713; (2022) 102 WAIG 1298.

[52] ***The Australian Workers' Union v OSM Australia Pty Ltd*** [2024] WAIRC 00853; (2024) 104 WAIG 2172.

[53] ***Construction, Forestry and Maritime Employees Union v OSM Australia Pty Ltd*** [2025] WAIRC 00349; (2025) 105 WAIG 1216.

[54] See s 4AA of the *Crimes Act 1914* (Cth) and s 12 of the FWA.

[55] ***Pattinson*** at [16].

**Schedule: Pecuniary Penalty Orders Under the *Fair Work Act 2009* (Cth)**

**Pecuniary Penalty Orders**

[1] The FWA provides that the Court may order a person to pay an appropriate pecuniary penalty if the Court is satisfied that the person has contravened a civil remedy provision: s 546(1) of FWA. The maximum penalty for each contravention by a natural person, expressed as a number of penalty units, set out in a table found in s 539(2) of the FWA: s 546(2) of the FWA. If the contravener is a body corporate, the maximum penalty is five times the maximum number of penalty units proscribed for a natural person: s 546(2) of the FWA.

[2] The purpose served by penalties was described by Katzmann J in ***Fair Work Ombudsman v Grouped Property Services Pty Ltd (No 2)*** [2017] FCA 557 (***Grouped Property Services***) at [388] in the following terms (omitting citations):

> In contrast to the criminal law, however, where, in sentencing, retribution and rehabilitation are also relevant, the primary, if not the 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.

[3] In ***Pattinson*** [42], the plurality confirmed that civil penalties 'are not retributive, but rather are protective of the public interest in that they aim to secure compliance by deterring repeat contraventions'. However, 'insistence upon the deterrent quality of a penalty should be balanced by insistence that it "not be so high as to be oppressive"': [40], citing ***NW Frozen Foods Pty Ltd v Australian Competition and Consumer Commission*** [1996] FCA 1134; (1996) 71 FCR 285.

[4] In ***Kelly v Fitzpatrick*** [2007] FCA 1080; 166 IR 14 [14], Tracey J adopted the following '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' which had been set out by Mowbray FM in ***Mason v Harrington Corporation Pty Ltd*** [2007] FMCA 7:

(a) The nature and extent of the conduct which led to the breaches.

(b) The circumstances in which that 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 similar previous conduct by the respondent.

(e) Whether the breaches were properly 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.

[5] The list 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.' (Buchanan J in ***Australian Ophthalmic Supplies Pty Ltd v McAlary-Smith*** [2008] FCAFC 8; (2008) 165 FCR 560 (***Australian Ophthalmic Supplies***) [91]).

[6] Although these factors provide useful guidance, the task of assessing the appropriate penalty is not an exact science: ***Commonwealth v Director, Fair Work Building Inspectorate*** [2015] HCA 46; (2015) 258 CLR 482 [47]. The Court must ultimately fix a penalty that pays appropriate regard to the contraventions that have occurred: ***Pattinson*** [19]. '[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:' ***Pattinson*** [48].

[7] 'Multiple contraventions' may occur because the contravening conduct done by an employer:

(a) resulted in a contravention of a single civil penalty provision or resulted in the contravention of multiple civil penalty provisions;

(b) was done once only or was repeated; and

(c) was done with respect to a single employee or was done with respect to multiple employees.

[8] The fixing of a pecuniary penalty for multiple contraventions is subject to s 557 of the FWA. It provides that two or more contraventions of specified civil remedy provisions by an employer are taken be a single contravention if the contraventions arose out of a course of conduct by the employer. Subject to proof of a 'course of conduct', the section applies to contravening conduct that results in multiple contraventions of a single civil penalty provision whether by reason of the same conduct done on multiple occasions or conduct done once with respect to multiple employees: ***Rocky Holdings Pty Ltd v Fair Work Ombudsman*** [2014] FCAFC 62; (2014) 221 FCR 153; ***Fair Work Ombudsman v South Jin Pty Ltd (No 2)*** [2016] FCA 832 [22] (White J) The section does not apply to cases where the contravening conduct results in the contravention of multiple civil penalty provisions (example (a) above): ***Grouped Property Services*** [411].

[9] The totality of the penalty must be re-assessed in light of the totality of the offending behaviour. If the resulting penalty is disproportionately harsh, it may be necessary to reduce the penalty for individual contraventions. ***Australian Ophthalmic Supplies*** [47] - [52].

[10] Section 546(3) of the FWA also provides:

*Payment of penalty*

(3) The court may order that the pecuniary penalty, or a part of the penalty, be paid to:

(a) the Commonwealth; or

(b) a particular organisation; or

(c) a particular person.

[11] In ***Milardovic v Vemco Services Pty Ltd (No 2)*** [2016] FCA 244 [40] - [44], Mortimer J, in light of ***Sayed v Construction, Forestry, Mining and Energy Union*** [2016] FCAFC 4; 239 FCR 336, summarised the law: (omitting citations)

> [T]he power conveyed by s 546(3) is ordinarily to be exercised by awarding any penalty to the successful applicant. … [T]he initiating party is normally the proper recipient of the penalty as part of a system of recognising particular interests in certain classes of persons … in upholding the integrity of awards and agreements the subject of penal proceedings. Where a public official vindicates the law by suing for and obtaining a penalty, it is appropriate that the penalty be paid to the Consolidated Revenue Fund. Otherwise, the general rule remains appropriate, that the penalty is to be paid to the party initiating the proceeding, with the [***Gibbs v The Mayor, Councillors and Citizens of City of Altona*** [1992] FCA 553; 37 FCR 216] … exception that the penalty may be ordered to be paid to the organisation on whose behalf the initiating party has acted. (original emphasis)

[redacted]

**2026 WAIRC 00456**

**NDUSTRIAL MAGISTRATES COURT OF WESTERN AUSTRALIA**

| | | |
|---|---|---|
| **CITATION** | **:** | 2026 WAIRC 00456 |
| **CORAM** | **:** | INDUSTRIAL MAGISTRATE D. SCADDAN |
| **HEARD** | **:** | WEDNESDAY, 3 JUNE 2026 |
| **DELIVERED** | **:** | FRIDAY, 3 JULY 2026 |
| **FILE NO.** | **:** | M 172 OF 2025 |
| **BETWEEN** | **:** | CONSTRUCTION, FORESTRY AND MARITIME EMPLOYEES UNION |
| | | **CLAIMANT** |
| | | AND |
| | | DOF AUSTRALIA PTY LTD |
| | | **RESPONDENT** |

| | | |
|---|---|---|
| **CatchWords** | **:** | INDUSTRIAL LAW – Application for costs in proceedings under the *Fair Work Act 2009* (Cth) – Whether the late discontinuance of a claim was an unreasonable act pursuant to s 570(2)(b) of the *Fair Work Act 2009* (Cth) – Whether other acts were unreasonable acts pursuant to s 570(2)(b) of the *Fair Work Act 2009* (Cth) – Turns on own facts |
| **Legislation** | **:** | *Fair Work Act 2009* (Cth) |
| **Instrument** | **:** | *DOF Management Australia Pty Ltd Maritime and MUA Offshore Oil and Gas Enterprise Agreement 2023* |
| **Cases referred to in reasons:** | **:** | ***Fair Work Ombudsman v Construction, Forestry and Maritime Employees Union*** [2026] FCA 126<br>***Buchanan v G&R Rossen Pty Ltd*** [2020] WAIRC 00388; (2020) 100 WAIG 507<br>***Suda Ltd v Sims (No 3)*** [2014] FCCA 2127<br>***Construction, Forestry, Mining and Energy Union v Clarke*** [2008] FCAFC 143; (2008) 170 FCR 574 |
| **Result** | **:** | Application for costs is refused |
| **Representation:** | | |
| Claimant | : | Ms S Sayed (of counsel) |
| Respondent | : | Mr R Boothman (of counsel) |

**REASONS FOR DECISION**

**Background**

1 The issue for determination by the Industrial Magistrates Court of Western Australia (the **Court**) is whether the Construction, Forestry and Maritime Employees Union (the **Union**) should pay DOF Australia Pty Ltd's (**DOF**) costs following the Union's discontinuance of its originating claim the morning of the trial hearing.

2 On 19 December 2025, the Union lodged an originating claim alleging DOF had failed to comply with cl 28 of the *DOF Management Australia Pty Ltd Maritime and MUA Offshore Oil and Gas Enterprise Agreement 2023* (the **Agreement**) by failing to reimburse travelling expenses for an employee within a specified period of time. In doing so, the Union alleged DOF contravened s 50 of the *Fair Work Act 2009* (Cth) (**FWA**) (the **Claim**).

3 The Union sought the payment of a civil penalty payable to the Union.

4 On 19 January 2026, DOF lodged a response denying it had breached the Agreement and opposed the imposition of a civil penalty.

**Procedural History**

5 At a directions hearing before the Court on 26 March 2026, the Union was ordered to provide further and better particulars of claim in respect of what expense(s) it says was not paid by DOF and the specific clause it alleged had been breached by DOF.

6 The expense relied upon by the Union was a $53.45 taxi fare incurred by an employee on 15 August 2025 travelling from a hotel to the Perth Airport, which was reimbursed by DOF on 8 November 2025 (the **Taxi Fare**).

7 The Union alleged that DOF breached cl 28.7 of the Agreement by failing to reimburse the employee within 28 days of the production of the receipt for the Taxi Fare.

8 DOF contended that on the proper construction of cl 28.7 of the Agreement, the Taxi Fare was not an expense of a kind contemplated by cl 28 of the Agreement. That is, cl 28 of the Agreement did not require DOF to reimburse taxi fares for travel between the hotel and an airport in the employee's circumstances.

9 At the same directions hearing (referred to in paragraph 5), the Court accepted a suggestion that the parties confer on their own timeframe in preparing for a hearing on 3 June 2026. That is, the Court noted the Claim was between sophisticated litigants and experienced counsel who were familiar with the Court's processes. Accordingly, the Court accepted that where there was a defined issue for determination, principally the construction of a term of the Agreement, with little (if any) dispute on the facts, that the parties were in a good position to come to an arrangement which best suited them in respect of the time required to lodge and serve any witness statements and written submissions, provided it was completed before 29 May 2026. The only exception to this was that the Court required the further and better particulars and associated response to be lodged and served by 2 April 2026 and 17 April 2026 respectively, and a statement of agreed facts to be lodged and served on or before 1 May 2026.

10 Therefore, all the preparatory steps for the hearing of the Claim occurred between 26 March 2026 and 29 May 2026. To their credit, the parties generally complied with this, with the last document (written submissions) lodged by DOF on 27 May 2026.

11 The parties prepared a statement of agreed facts as ordered, which contained all of the essential facts upon which the Claim could be determined by the Court.

12 While the Union lodged and served a witness statement signed by the employee concerned, the contents of the witness statement did not alter the essential facts, and DOF indicated to the Union that it did not require the employee for cross-examination at the hearing of the Claim.

13 One additional issue is that 1 June 2026 was a public holiday in Western Australia.

14 On 2 June 2026, DOF requested that the Union consent to the Claim be heard 'on the papers', thus obviating the need for either counsel or the parties to attend the hearing on 3 June 2026.[1]

15 On 3 June 2026 at 8.47 am, the Union lodged a notice of discontinuance withdrawing from the whole of the Claim.

16 The Union's intention to discontinue the Claim was conveyed to DOF's counsel on 2 June 2026 at approximately 11.00 pm.

**Application for Costs**

17 The parties appeared before the Court on 3 June 2026, where DOF made an application for costs pursuant to s 570(2)(b) of the FWA.

18 Section 570(1) of the FWA provides that a party to proceedings in a court (which includes the Court) in relation to a matter arising under the FWA may be ordered by the court to pay costs incurred by another party to the proceedings only in accordance with (relevantly) s 570(2) of the FWA.

19 Relevant to DOF's application for costs, section 570(2)(b) of the FWA confers on the Court a discretionary power to award costs if the Court is satisfied that the Union's unreasonable act or omission caused DOF to incur costs.

**The Law**

20 In ***Fair Work Ombudsman v Construction, Forestry and Maritime Employees Union*** [2026] FCA 126 (***Kwinana Bulk Jetty Case***), Dowling J, at [6], summarised relevant principles relevant to an application for costs under s 570(2):

(1) the discretion conferred by s 570(2) should be exercised cautiously, and the case for its exercise should be clear: ***Ryan v Primesafe*** [2015] FCA 8; 323 ALR 107 at [64] (Mortimer J); ***BDR21 v Australian Broadcasting Corporation [No 2]*** [2021] FCA 1347 at [25] (Halley J);

(2) the reason for caution in the exercise of the discretion conferred by s 570(2) is the potential for discouraging parties to pursue, in a complete and robust way, the claims they seek to make under the Act, or the defence to those claims, and to ensure that the spectre of costs does not loom so large as to discourage parties from commencing, continuing or responding to claims: ***Ryan*** at [64]; ***BDR21*** at [26(f)] and the cases cited;

(3) unreasonableness is to be determined objectively and is to be assessed by reference to the particular circumstances of the case: see ***BDR21*** at [26(e)] and the cases cited;

(4) the word 'unreasonable' in s 570(2)(b) is not capable of precise definition and is inherently sensitive to context. It is appropriate for a court to examine the context or circumstances of the relevant conduct to ascertain whether that conduct could be characterised as unreasonable: ***Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union (the costs of the Cup of Tea Case)*** [2019] FCAFC 36 at [18] (Flick, Reeves and O'Callaghan JJ);

(5) inefficient conduct of the case or a misguided approach may be relevant to, but will not be conclusive of, unreasonableness: see ***BDR21*** at [26(b)] and [26(c)] and the cases cited; and

(6) a failure to accept a reasonable offer of compromise, including an offer expressed in accordance with the principles in ***Calderbank v Calderbank*** [1975] 3 All ER 333, is capable of constituting an unreasonable act or omission for the purposes of s 570(2)(b) of the Act: see ***Melbourne Stadiums Ltd v Sautner*** [2015] FCAFC 20; 229 FCR 221 at [166] (Tracey, Gilmour, Jagot and Beach JJ); ***Salama v Sydney Trains [No 2]*** [2021] FCA 1200 at [14] and [39] (Burley J).

21 In ***Buchanan v G&R Rossen Pty Ltd*** [2020] WAIRC 00388; (2020) 100 WAIG 507, Industrial Magistrate Flynn (as he was then), at [55], also summarised principles from various authorities:

- Section 570 of the FW Act is 'to be understood as reflecting a legislative policy of protecting parties to proceedings under the Act from costs orders so that a party with a genuine grievance will not be discouraged from pursuing a remedy to which they may be entitled, or from pursuing litigation in the manner which they deem best, for fear of an adverse costs order … Consequently, it is usually only in exceptional circumstances that costs will be awarded under s 570': ***Pettit v Evolution Mining Ltd*** [2016] FCA 1304 [62].
- The focus of s 570(2)(a) of the FW Act is upon the 'institution of proceedings' by the respondent to an application for costs. The focus of s 570(2)(b) of the FW Act is upon the 'unreasonable act or omission' of the respondent to an application for costs. Section 570(2)(b) of the FW Act alone is relevant to an application for costs against an employer who has unsuccessfully defended a claim: ***Fair Work Ombudsman, Kearns & Schmidt v Atkins Freight Services Pty Ltd*** [2016] SAIRC 19 [81].
- Section 570(2)(b) of the FW Act applies when two criteria are satisfied. 'The first criterion is that one party must have engaged in "an unreasonable act or omission" … [W]hether a party has conducted itself or its litigation in such a way as to cross this threshold will depend on the particular circumstances of the case. The second criterion is that the act or omission of one party must have "caused another party to the proceeding to incur costs in connection with the proceeding". Once both criteria are satisfied, then the Court "may" in its discretion order the party which has engaged in the unreasonable act or omission to pay some or all of the costs of the other party': ***Construction, Forestry, Mining and Energy Union v Hail Creek Coal Pty Ltd*** [2016] FCA 1526 [4].
- '[T]here is a danger of the exceptions in s 570(2) [of the FW Act] being used in circumstances in which the most that one can say is that the losing party had a self-evidently weak case … [T]hat is not the kind of situation to which s 570(2) [of the FW Act] is addressed. There must be a higher level of criticism or disapprobation which the court is able to express about a losing party's case if the bars in paras (a) and (b) of s 570(2) [of the FW Act] are to be crossed by a party which succeeds on the application concerned': ***Clarke v Dixie Cummings Enterprises Pty Ltd***

[2013] FCA 987 [14].

- Section 570(2)(b) of the FW Act 'is not necessarily engaged because: (a) a party does not conduct litigation efficiently; (b) a concession is made late; (c) a party may have acted in a different or timelier fashion; or (d) a party has adopted a genuine but misguided approach: ***Suda Ltd v Sims [No.3]*** [2014] FCCA 2127 [72].

**The Unreasonable Acts Alleged**

22 DOF submits that the alleged unreasonable acts by the Union included: the deficiency in the Claim requiring further and better particulars; the introduction of additional pleadings within its written submissions; denying the Claim being heard 'on the papers'; and the last-minute discontinuance of the Claim with late notice to DOF's counsel.

23 Underpinning DOF's submissions is its concern that there is now no precedent value for DOF, and the Union can institute future proceedings on the same issue, whereas there was no obvious prejudice in the Claim being heard 'on the papers' and the Court giving a determination potentially benefiting both parties.

24 Further, DOF submits that the amount the subject of the Claim was trivial and was paid by DOF, following further enquiries being made (and before the institution of the Claim). Thus, DOF submits that the proceedings caused it to incur costs for a trivial amount, paid by DOF, and was ultimately discontinued by the Union on the day of the trial hearing, which may have resolved the proper construction of a term of the Agreement.

**The Increase in Costs Caused**

25 DOF submits that the Union's unreasonable acts caused an increase in its costs where: it was required to apply for and respond to further and better particulars not particularised in the originating claim; having understood the Claim via the further and better particulars, the Union sought to introduce other terms of the Agreement in its written submissions; and it prepared for the hearing only to pivot late in the proceedings to address the discontinuance and costs application.

26 Underpinning DOF's submissions is, again, the hearing of the Claim could have been 'on the papers' obviating the need to attend Court, including attending for the purposes of the costs application. Further, the late notice of the Claim's discontinuance 'threw away' DOF's preparation for the substantive hearing and required DOF to attend to preparing the costs application and attending in person at the hearing.

27 DOF outlined to the Court the costs it says it incurred because of the Union's unreasonable acts.

**Union's Response to Costs Application**

28 The Union opposes DOF's application for costs. The Union submits that the Claim was not deficient and the further particulars were provided after ordered to do so by the Court. Thereafter, there was conferral between the parties to progress the Claim to a hearing.

29 The Union says it corresponded with DOF's counsel on 20 May 2026 about whether the Union's witnesses were required for cross-examination and DOF only raised the issue of the hearing being heard 'on the papers' on 2 June 2026.

30 The Union's counsel had some difficulty obtaining instructions. However, after considering DOF's written submissions, it was decided that the Claim would be discontinued and DOF's counsel was advised on 2 June 2026 of the Union's intention to discontinue the Claim (there did not appear to be any dispute that this occurred at 11.00 pm).

31 The Union referred to the tight time frame involved in the Claim.

**Determination**

32 For the following reasons, I am not satisfied that the alleged unreasonable acts relied upon by DOF amount to unreasonable acts by the Union for the purposes of enlivening the entitlement to costs under s 570(2)(b) of the FWA.

33 First, the provision of further and better particulars was part of the procedural steps clarifying the Claim. A party does not necessarily engage in an unreasonable act because its pleadings are in some way initially deficient and this is promptly remedied.[2]

34 Secondly, the Union, in conjunction with DOF, otherwise conducted the litigation in an efficient manner.[3] That is, there was limited involvement by the Court, with the parties largely determining the preparatory steps and complying with orders otherwise made by the Court. Save for the notice of discontinuance being lodged, from the Court's perspective, the litigation was lean and streamlined.

35 Thirdly, the reference to other clauses in the Agreement in the Union's written submissions, while annoying, did not markedly change the character of the Claim. Sadly, it is often the case that parties add or subtract issues in written submissions, or do not stay on point. Without more, of itself, wandering written submissions do not necessarily amount to an unreasonable act, particularly where otherwise, as already stated, the litigation was efficiently conducted.

36 Fourthly, following the lodgement of DOF's written submissions on 27 May 2026, there was three business days for the Union to decide to continue or discontinue the Claim. While it might be a question of degree, there was a 'short window of time' to form a view one way or another and lodge the notice of discontinuance.[4] I accept that from DOF's perspective, the consequence for it and its counsel is that costs and time were expended in preparing for trial the next day. However, on balance, this factor in this case weighs in favour of a decision that the late discontinuance of the Claim was not unreasonable.

37 Overall, I am not satisfied that, notwithstanding the lateness in discontinuing the Claim along with the other acts identified, the high level of criticism or disapprobation of the Union's conduct in the proceedings has been crossed required to meet the requirement under s 570(2)(b) of the FWA.

38 The gravamen of DOF's application for costs is its apparent frustration in the pettiness of commencing a claim about the payment of a very small amount of money, which was paid by DOF in any event and where DOF expressed doubts about the

basis underpinning the requirement to pay, only to have the claim discontinued at literally the 11th hour.

39 In that sense, DOF is deprived of certainty on the issue and fears it will be put to future costs to defend the same or similar types of claims.

40 The Union now has the benefit of DOF's written submissions on the issue, which appears to have prompted the discontinuance of the Claim. One imagines that a different argument may arise if the same issue was or continued to be relitigated.

**Other Issues**

41 In Court, DOF outlined the costs it sought by reference to the *Legal Profession (Magistrates Court) (Civil) Determination 2024* (**Determination**), where the maximum allowable hourly rate for a senior practitioner is $484 per hour.

42 DOF's counsel stated that a bill of costs had been completed the day before in the amount of $14,046 (which included the cost of attendance at the hearing on 3 June 2026). Counsel accepted that the hourly rate charged was higher than the maximum hourly rate under the Determination.[5]

43 Following a short adjournment, DOF submitted to the Court that the costs sought as a result of the Union's unreasonable act(s) was $5,665 by reference to item 16, item 13, item 15 and item 4 in the Determination. However, DOF indicated that if an amount of costs was agreed, it was prepared to accept $5,000. The Union's Counsel did not have instructions to agree an amount of costs (if the Court granted the costs application).[6]

44 The Union's counsel was given an opportunity to obtain instructions on this point and the Court invited counsel to email the Court a response. As indicated to the Union, the Court understood the costs application was opposed, but merely gave the Union an opportunity to agree or not an 'amount' of costs, where counsel said she did not have instructions.[7]

45 In response to that opportunity, the Court received an email, which stated that the Union did not agree to the proposed amount of $5,000. It also went further and made an unhelpful statement that the Union 'reserves its right to appeal any findings'.[8] This statement does not assist and is not relevant to any matter before the Court.

46 Had it been necessary to find an amount for the purposes of DOF's costs application, then an amount for time spent, in part, preparing for a hearing that did not proceed due to its discontinuance on the day of the hearing, preparing for a costs application and submissions and attending court on 3 June 2026 is reasonable.

47 I would have found that a total amount of $5,132 was reasonable for: counsel's attendance at the hearing on 3 June 2026 with a junior practitioner ($2,277); preparation of submissions by counsel ($1,452); and preparation for the hearing ($1,403).

**Outcome**

48 Where I am not satisfied of the threshold requirement of an unreasonable act or acts by the Union for the purposes of s 570(2)(b) of the FWA, the application for costs is refused.

**D. SCADDAN**

**INDUSTRIAL MAGISTRATE**

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[1] ts 3 - 4.

[2] See generally ***Suda Ltd v Sims [No 3]*** [2014] FCCA 2127 [72].

[3] See generally ***Construction, Forestry, Mining and Energy Union v Clarke*** [2008] FCAFC 143; (2008) 170 FCR 574 [29].

[4] See generally ***Kwinana Bulk Jetty Case*** [25] - [27], albeit this was in reference to a settlement offer.

[5] ts 8 - 9.

[6] ts 13 - 15.

[7] ts 20.

[8] Email from the Union to the Court, 5 June 2026.

**2026 WAIRC 00392**

**INDUSTRIAL MAGISTRATES COURT OF WESTERN AUSTRALIA**

| | | |
|---|---|---|
| **CITATION** | **:** | 2026 WAIRC 00392 |
| **CORAM** | **:** | INDUSTRIAL MAGISTRATE T. KUCERA |
| **HEARD** | **:** | MONDAY, 11 AUGUST 2025 |
| **DELIVERED** | **:** | MONDAY, 15 JUNE 2026 |
| **FILE NO.** | **:** | M 7 OF 2023 |
| **BETWEEN** | **:** | CONSTRUCTION, FORESTRY AND MARITIME EMPLOYEES UNION |
| | | **CLAIMANT** |
| | | AND |
| | | MSS SECURITY PTY LTD |
| | | **RESPONDENT** |

| | | |
|---|---|---|
| **CatchWords** | **:** | INDUSTRIAL LAW – FAIR WORK – breaches of award – underpayment of wages claim – award contraventions - alleged breach of instrument – where claimant employed on a fly-in, fly-out basis – failure to pay an amount under a modern award - *Security Services Industry Award 2010 – Security Services Industry Award 2020* – construction of award – where respondent provided one continuous 'long break' per roster cycle – where claimant required to work more than 48 hours without a 'long break' - whether rostering arrangements complied with 'long break' provisions contained in the Awards – whether claimant underpaid for work done – application of award rostering and long break provisions – entitlement to payment at overtime rates – Individual Flexibility Agreements – s 144 and s 145 of the *Fair Work Act 2009* (Cth) – whether employees are 'Better Off Overall' |
| **Legislation** | **:** | *Fair Work Act 2009* (Cth)<br>*Fair Work Regulations 2009* (Cth)<br>*Acts Interpretation Act 1901* (Cth) |
| **Instruments** | **:** | *Security Services Industry Award 2010*<br>*Security Services Industry Award 2020* |
| **Cases referred to in reasons:** | **:** | ***King v Melbourne Vicentre Swimming Club Inc*** [2021] FCAFC 123; (2021) 308 IR 171<br>***Wilkinson v Wilson Security Pty Ltd (No 3)*** [2024] FCA 705; (2024) 332 IR 387<br>***Sydney Night Patrol and Inquiry Company Limited v Pulleine*** [2014] FCA 385<br>***United Voice v Wilson Security Pty Ltd*** [2019] FCAFC 66; (2019) 269 FCR 608<br>***Berry v CCL Secure Pty Ltd*** [2020] HCA 27; (2020) 271 CLR 151<br>***Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd*** [2004] HCA 52; (2004) 219 CLR 165<br>***Four Yearly Review of Modern Awards*** [2015] FWCFB 4466; (2015) 252 IR 256<br>***Project Blue Sky Inc & Ors v Australian Broadcasting Authority*** [1998] HCA 28; (1998) 194 CLR 355 |
| **Result** | **:** | Claim proven |
| **Representation:** | | |
| Claimant | : | Mr O. Fagir (of counsel) and with him, Ms S. Sayed (of counsel) on behalf of Construction, Forestry and Maritime Employees Union |
| Respondent | : | Mr J. Bourke KC (of counsel) and with him, Ms N. Campbell (of counsel) as instructed by Gilchrist Connell |

**REASONS FOR DECISION**

**What This Matter is About**

1 This matter involves an underpayment of wages claim, in which it is alleged MSS Security Pty Ltd (**respondent**), has contravened the 'long break' and 'overtime' provisions of two modern awards being the:

i. *Security Services Industry Award 2010* (**2010 award**); and

ii. *Security Services Industry Award 2020* (**2020 award**).

2 Procedurally, this matter has a relatively long history, which commenced with an originating claim the Construction, Forestry, Maritime, Mining and Energy Union (**claimant**)[1] lodged on 9 March 2023 (**claim**).

3 Before setting out the issues to be decided, it is important to explain how the procedural history of this matter has affected the case the Court ultimately heard.

**Background**

4 The claim, as it was originally made, alleged the respondent had engaged in three types of contraventions of the *Fair Work Act 2009* (Cth) (**FW Act)** [2].

5 Firstly, the claimant alleged the respondent, in the period 6 July 2014 until 30 June 2019 (**initial claim period**) had committed numerous contraventions of the 2010 award by failing to pay one of its members, Craig Lummas (**Mr Lummas**), penalty rates as required and correct loadings, for overtime he had performed in addition to his ordinary hours of work.

6 Mr Lummas was employed by the respondent as a security officer on or around 16 November 2011 until his resignation on 24 July 2022. He worked at various locations which included on Fly in Fly Out work (**FIFO**) at BHP's Pilbara Operations in Port Hedland and for the Pilbara Port Authority (**PPA**).

7 The claimant alleged that by engaging in breaches of the 2010 award, the respondent had contravened s 45 of the FW Act, resulting in Mr Lummas being underpaid during the claim period, a total amount of $109,471.39.

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[1] On 17 December 2024, orders were issued amending the name of the claimant to the Construction, Forestry and Maritime Employees Union.

[2] *Form 1.1 – Originating Claim* lodged 9 March 2023 (**originating claim**) [12] – [15].

8 Secondly, the claimant alleged that contrary to s 323 of the FW Act, the respondent had failed to make all of the payments in full, that were owed to Mr Lummas in each of the pay periods the contraventions of the 2010 award were said to have been committed (**alleged s 323 contraventions**).

9 Thirdly, the claimant alleged the respondent had failed to provide employment records following a request the claimant made under regulation 3.42(4) of the *Fair Work Regulations 2009* (Cth) (**alleged records contraventions**).

10 By way of relief, the claimant sought declarations under s 545 of the FW Act the respondent had:

i. contravened various provisions of the 2010 award;

ii. breached s 323 of the FW Act; and

iii. in respect of the records contraventions, contravened s 535 of the FW Act[3].

11 In addition to the declaratory relief, the claimant sought:

i. an order requiring the respondent to compensate Mr Lummas by paying him the amount he was allegedly underpaid;

ii. the imposition of pecuniary penalties under s 546 for each contravention of the FW Act, payable to the claimant; and

iii. an order under s 547 of the FW Act for interest to be paid on the amount Mr Lummas was allegedly underpaid[4].

12 In its response to the claim that was lodged on 4 May 2023 (**first response**), the respondent admitted the 2010 award applied[5]. However, the respondent denied that it had contravened the 2010 award in the manner alleged or at all[6].

13 The respondent similarly disputed that it had engaged in the alleged records contraventions or that it had breached s 323 of the FW Act[7].

**Discovery Orders**

14 After the first response was lodged, the claim was (as is the Court's usual practice) referred to a Pre-trial Conference that was held on 24 July 2023.

15 While the claim could not be resolved in the Pre-trial Conference, orders issued that required the respondent to discover various categories of employment records, containing information on:

i. the roster Mr Lummas worked;

ii. his hours of work; and

iii. the classification Mr Lummas was engaged in during his employment with the respondent.

16 Pursuant to these orders, the respondent was required to provide the claimant with the types of documents described by 15 August 2023 (**discovery orders**)[8].

17 In the lead up to the date specified, the respondent's solicitors wrote to the claimant's representatives requesting an extension of time to comply with the discovery orders.

18 When the claimant opposed this request, the respondent emailed the Court on 15 August 2023 seeking an extension of time to comply with the discovery orders.

**First Initial Hearing**

19 In response to an exchange of correspondence that followed the respondent's email to the Court, the claim was referred to an initial hearing that was held on 26 September 2023 (**first initial hearing**).

20 During the first initial hearing, a direction requiring the respondent to comply with the discovery orders by 10 October 2023 was made.

21 In addition to an extension of the date for the respondent to comply with the discovery orders, the parties were ordered to confer on a minute of proposed programming orders so the claim could be progressed to a final hearing.

22 In the event the parties could not to agree upon a set of programming orders, the initial hearing would be reconvened on 23 October 2023 (**second initial hearing**)[9].

**Second Initial Hearing**

23 As directed, the parties conferred on a minute of proposed programming orders. When they were unable to agree upon the terms of these orders, the second initial hearing went ahead as planned.

24 At the conclusion of the second initial hearing, the claimant was ordered to lodge its witness statements in support of the claim

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[3] originating claim [50].

[4] originating claim [50].

[5] first response [2].

[6] first response [12] – [13].

[7] first response [15].

[8] discovery orders issued by the Clerk of the Industrial Magistrates Court of Western Australia on 25 July 2023.

[9] *Form 20 - Orders* issued by Industrial Magistrate Kucera 27 September 2023.

by 4 December 2023. The respondent for its part was ordered to lodge it's witness statements in response by 15 January 2024 (**programming orders**).

25 The second initial hearing was adjourned, but to a date to be fixed after the parties had lodged their witness statements[10].

**Milestones Extended**

26 After the second initial hearing, the dates by which the parties were each required to lodge their witness statements under the programming orders, were on three occasions, extended by consent.

27 As a result of the extensions to the programming orders, the date by which the claimant was required to lodge its witness statements was extended to 19 January 2024. It was agreed the respondent would be required lodge its witness statements by 4 March 2024.

28 In accordance with the programming orders, a further initial hearing was scheduled to be held on 25 March 2024 (**third initial hearing**).

**First Lummas Statement**

29 On 23 January 2024 the claimant lodged the Witness Statement of Craig Lummas (**first Lummas statement**). Attached to this statement were copies of his payslips and records of his working hours for the claim period that was referred to in the initial claim period.

30 In his statement, Mr Lummas said he worked for the respondent as a security officer from 16 November 2011, until his resignation on or around 24 July 2022[11].

31 He said that for the period commencing on or around 26 April 2013 until 15 January 2015 (**period 1**), he worked a three-week roster cycle and was paid a flat hourly rate that varied throughout his roster cycles[12].

32 In the period commencing on or around 20 June 2019 until on or around 10 July 2022 (**period 2**), Mr Lummas said he worked a three-week roster cycle comprised of two weeks on and one week off. During this period, Mr Lummas said he was employed as a Level 4 – Security Officer. Mr Lummas also said he was paid a flat hourly rate that varied throughout his roster cycles[13].

33 Mr Lummas attached a copy of the 'Site Agreement-BHP Security Officer (Full-Time) FIFO' that he signed on 23 May 2019 (**BHP site agreement**) to his statement.

34 The BHP site agreement was one of three site agreements Mr Lummas signed that are material to the respondent's defence to the claim, a point to which I will return.

**Third Initial Hearing**

35 On 25 March 2024, the third initial hearing was held. There was, however, no appearance by a representative for the respondent. At this stage of the proceedings, no witness evidence had been lodged in support of the respondent's case either.

36 During the third initial hearing, directions were made requiring the parties to provide their unavailable dates so the claim could be listed for a one-day hearing. The claim was subsequently listed for hearing on 18 June 2024 (**first scheduled hearing**).

37 The parties were required to lodge outlines of submissions prior to the first scheduled hearing.

**First Price Statement**

38 On 20 May 2024 the respondent lodged a Witness Statement of Paul Trevor Price (**first Price statement**). In this statement, Mr Paul Trevor Price (**Mr Price**) provided evidence about Mr Lummas' employment history and how the respondent had responded to the claimant's request for records.

39 He said the respondent is a security company which provides security services in every Australian state and territory. He said the respondent has a workforce of more than 6,000 employees[14].

40 Mr Price said he worked for the respondent as the General Manager (**GM**) of Western Australia (**WA**) from November 2013 until his retirement in February 2023[15]. Mr Price stated that in his role as GM, he was responsible for the management of the respondent's WA operations which included overseeing human resources and payroll functions. Mr Price said that in this role, he reported to the respondent's Managing Director[16].

41 Mr Price gave evidence that at the end of his employment with the respondent, the WA operation employed around 600 employees[17]. He said that employees who were covered by the award (**award covered employees**), which included Mr Lummas, were either paid:

(a) a base rate of pay, additional penalties, overtime rates and allowances, in accordance with the applicable award; or

(b) they were paid an all-inclusive rate (which compensated them for the base rate of pay, penalties, overtime rates and

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[10] *Form 20 - Orders* issued by Industrial Magistrate Kucera 23 October 2023.

[11] first Lummas statement [5].

[12] first Lummas statement [7] – [9].

[13] first Lummas statement [10] – [12].

[14] first Price statement [3].

[15] first Price statement [6].

[16] first Price statement [8].

[17] first Price statement [9].

allowances to which they were entitled under the applicable award), referred to as a 'flat rate'[18].

42 Mr Price said the way an 'award covered employee' was paid, depended on the site where the employees worked and the role they were required to perform[19].

43 He said that some award covered employees worked across different sites and in different roles. Mr Price said that in these cases, it was not uncommon for an employee to be remunerated in two different ways[20].

44 Mr Price stated that employees were only paid an all-inclusive flat rate where the employee had signed a 'site agreement'[21]. He also said that he was involved in determining the rates that applied for those sites where employees were paid flat rates[22].

45 Mr Price said that client contract rates tended to be negotiated annually after the Fair Work Commission delivered its national wage decision. He said that prior to renewing a contract (or entering any new ones), it was necessary to assess the work that had to be performed under the contract, against the labour costs that would be required to fulfill the contract. Mr Price said this assessment involved the preparation of a costings sheet[23].

46 Mr Price stated that when the respondent prepared a costing sheet, all the shifts that employees would be expected to work under the contract had to be recorded. He said this information would then have to be put into a roster, noting the ordinary and overtime hourly rates to be paid under the award, along with any applicable allowances[24].

47 Mr Price said that when determining the correct rates to be applied, the respondent had to consider the duties and responsibilities of the roles that were required and how they compared with the correct classification level under the award[25].

48 He said from this, the respondent produced an hourly figure as to how much, at a minimum, employees had to be paid when performing the contract. Mr Price said this figure was then used to calculate an all-inclusive flat rate. Mr Price said a flat rate was calculated to ensure that employees would be 'better off overall'[26].

49 Mr Price said that where an employee was paid a flat rate, they would not only receive the same rate for work performed, but also for any annual, personal or long service leave that was taken or accrued. He said the respondent also made superannuation contributions on behalf of the employee at this rate[27].

50 He said that at any given time, approximately one third of the respondent's employees working in WA were paid flat rates. Mr Price said a majority of the award covered employees who worked at PPA sites were paid by flat rates[28].

51 Mr Price stated that an employee would be given a 'site agreement' before they could be paid flat rates[29]. In addition to the BHP site agreement, Mr Price attached a copy of a Site Agreement – Pilbara Ports Authority Security Supervisor (Full-time), that he said Mr Lummas signed on 23 March 2020 (**PPA 1**).

52 Other documents attached to the first Price statement included the following:

i. 'Employment Change Advice' forms; and

ii. copies of payroll reports for Lummas for the period 27 November 2011–12 July 2022.

**Claimant's First Outline**

53 The parties each lodged outlines of submissions in the lead up to the first scheduled hearing. The 'Claimants Outline of Submissions' dated 23 May 2024 (**claimant's first outline**) was relatively brief and mostly described the provisions of the 2010 and 2020 awards the claimant alleged the respondent had breached.

54 The claimant's first outline also provided in tabular form, a description of the FIFO roster Mr Lummas said he worked during the initial claim period[30]. Mr Lummas was on a two and one roster cycle, comprised of seven 12-hour day shifts, seven 12-hour night shifts, followed by seven days off (**2 & 1 roster**).

55 On a 2 & 1 roster, Mr Lummas was to work a total of 168 hours which was averaged over a cycle of three weeks. The 168 hours was comprised of 152 ordinary hours and 16 hours of overtime. Extracted below, is a copy of the table from the claimant's first outline, that describes the 2 & 1 roster:

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[18] first Price statement [10].

[19] first Price statement [11].

[20] first Price statement [12].

[21] first Price statement [13].

[22] first Price statement [14].

[23] first Price statement [15].

[24] first Price statement [16].

[25] first Price statement [17].

[26] first Price statement [18].

[27] first Price statement [20].

[28] first Price statement [21].

[29] first Price statement [22].

[30] claimant's first outline [7].

| Shift | Day | Start time | Finish time | Hours | Total Hours |
|---|---|---|---|---|---|
| 1 | Friday | 600 | 1800 | 12 | 12 |
| 2 | Saturday | 600 | 1800 | 12 | 24 |
| 3 | Sunday | 600 | 1800 | 12 | 36 |
| 4 | Monday | 600 | 1800 | 12 | 48 |
| 5 | Tuesday | 600 | 1800 | 12 | 60 |
| 6 | Wednesday | 600 | 1800 | 12 | 72 |
| 7 | Thursday | 600 | 1800 | 12 | 84 |
| 8 | Friday | 1800 | 600 | 12 | 96 |
| 9 | Saturday | 1800 | 600 | 12 | 108 |
| 10 | Sunday | 1800 | 600 | 12 | 120 |
| 11 | Monday | 1800 | 600 | 12 | 132 |
| 12 | Tuesday | 1800 | 600 | 12 | 144 |
| 13 | Wednesday | 1800 | 600 | 12 | 156 |
| 14 | Thursday | 1800 | 600 | 12 | 168 |
| | Friday | - | - | - | - |
| | Saturday | - | - | - | - |
| | Sunday | - | - | - | - |
| | Monday | - | - | - | - |
| | Tuesday | - | - | - | - |
| | Wednesday | - | - | - | - |
| | Thursday | - | - | - | - |

56 Attached to the claimant's first outline, was a spreadsheet of underpayment calculations. As the claimant had, because of the discovery orders, received employment records that showed the hours of work Mr Lummas performed for the respondent, a revised set of underpayment calculations was provided with the claimant's first outline (**amended calculations**).

57 While the claimant maintained that Mr Lummas was underpaid, the level of underpayment as set out in the amended calculations was significantly less. Rather than alleging Mr Lummas was underpaid for the whole of the initial claim period, it was now claimed underpayments as described in the first Lummas statement, had only occurred in periods 1 and 2[31].

58 It was submitted Mr Lummas was underpaid the amount of $6,089.03 in period 1. For period 2, it was alleged Mr Lummas was underpaid the sum of $18,707.92. The total amount of the alleged underpayment was an amount of $24,796.95[32].

**Respondent's Initial Submissions**

59 In the 'Submissions of the Respondent' lodged on 11 June 2024 (**respondent's first outline**), the respondent made several submissions in response to the claimant's amended calculations.

60 The first of these related to the two periods described in the amended calculations. In relation to period 1, the respondent contended the claimant was unable to recover any amounts the claimant had alleged Mr Lummas was underpaid more than six years prior to the lodgment of the claim, with that date being 7 March 2017[33].

61 It was submitted the claimant was, by operation of s 544 and s 545(5) of the FW Act, statute barred from recovering the amount claimed for period 1 because the alleged underpayments were said to have occurred outside the prescribed six-year limitation date[34].

62 In relation to period 2, the respondent submitted the claimant, with the amended calculations had sought to make new allegations Mr Lummas was underpaid until 23 June 2022 that were outside the initial claim period[35].

63 The respondent submitted that because the original claim did not include allegations that were in effect now being raised in the claimant's first outline and the amended calculations, the respondent was being deprived of an opportunity to put on a proper

[31] claimant's first outline [17].

[32] Loss Caused by Contraventions, claimant's first outline [22]; exhibit C1, Court Book 126.

[33] respondent's first outline [7].

[34] respondent's first outline [8].

[35] respondent's first outline [10].

defence to new allegations that Mr Lummas was underpaid during period 2[36].

64 In addition to the respondent's submissions on the amended calculations, the respondent argued that Mr Lummas had signed contracts in which he had agreed to be paid 'flat hourly rates of pay' for all hours worked[37].

65 It was submitted that Mr Lummas was compensated for working overtime with the payment of a single hourly rate of pay that included payment for shift penalties, rostered overtime and allowances[38].

66 The respondent argued that where Mr Lummas may have been underpaid in any fortnightly pay period, the respondent was entitled to 'set off' that amount against any other fortnights where Mr Lummas may have been 'better off overall' than if he had been paid under the 2010 or 2020 awards (**set off**)[39].

**June 2024 Directions Hearing**

67 On Wednesday, 12 June 2024, a directions hearing was convened at the Court's initiative. Amongst the matters traversed, was a suggestion the claimant should lodge further submissions on the issue of set off and the difficulties raised in the respondent's first outline with the claimant's amended calculations.

68 Also canvassed was a request the respondent had made to vacate the scheduled hearing so the claimant could lodge an amended outline of claim, the respondent could lodge an amended response, and the matter could be set down for a further Pre-trial Conference before a Clerk of the Court.

69 After hearing from parties, orders issued vacating the first scheduled hearing. The claim was instead listed for a further Pre-trial Conference to occur in its place. If the claim could not be resolved by Pre-trial Conference the matter was to be relisted for further directions.

**Revised Programming Orders**

70 As directed, a further Pre-trial Conference in relation to the claim was held on 18 June 2024. Although the matter could not be resolved, revised programming orders were issued that required the claimant to lodge an amended outline of claim by 12 July 2024 and for the respondent to lodge an amended response by 26 July 2024.

71 Orders requiring the lodgment of a statement of agreed facts, the exchange of documents, the lodgment of additional witness statements and outlines of submissions were also made, all which was supposed to be completed by 4 October 2024.

**Amended Outline of Claim**

72 On 18 July 2024, the claimant lodged an Amended Outline of Claim (**amended claim**). In its amended claim, the claimant substantially altered the basis upon which it was alleged the respondent had contravened the 2010 and 2020 awards.

73 While the claimant maintained the respondent had committed numerous contraventions of the 2010 and 2020 awards, the allegations were to confined breaches of the 'long break' and 'overtime' provisions (**award breaches**).

74 In summary, the claimant alleged that because of the award breaches, the respondent, in the period 16 June 2019 to 23 June 2022 (**claim period**) had underpaid Mr Lummas a total amount of $50,725.32 (**alleged underpayment**).

75 In respect of the alleged underpayment, the claimant attached a new schedule of calculations to the amended claim (**underpayments schedule**).

76 For each fortnight in the claim period, the underpayments schedule shows the number of hours Mr Lummas worked, the amount the claimant says he should have been paid under the 2010 or 2020 award, the amount he was actually paid and the claimed underpayment per fortnight.

**The Entitlement to 'Long-Breaks'**

77 There are in effect two limbs to the claimant's award breaches allegations. The first of these is that Mr Lummas was, because of the roster he was required to work, deprived of an entitlement to 'long breaks' that he was entitled to receive under both the 2010 and the 2020 awards (**long break provisions**).

78 The claimant contended the long break provisions in both the 2010 and 2020 awards, provide that an employee:

i. who is working a 21-day roster cycle, should receive three breaks of two days off (48 continuous hours); and

ii. must not work more than a total of 48 hours of ordinary time without a long break of at least 48 continuous hours off.

79 As the claimant has alleged the award breaches were committed during a claim period in which both the 2010 and the 2020 awards applied, it is worthwhile setting out the provisions as they appear in both industrial instruments.

80 The entitlement to a long break in respect of the 2010 award arises under cl 21.4, which provides as follows:

**21.4 Long breaks**

(a) An employee must be given separate long breaks of continuous time off work in each roster cycle as follows:

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[36] respondent's first outline [10] – [12].

[37] respondent's first outline [34].

[38] respondent's first outline [35] – [36].

[39] respondent's first outline [39] –[40].

| Length of roster cycle | Minimum number of breaks |
|---|---|
| 3 weeks | 3 breaks of 2 days (48 continuous hours) |
| 4 weeks | 3 breaks of 3 days (72 continuous hours); or<br>4 breaks of 2 days (48 continuous hours) |
| 8 weeks | 6 breaks of 3 days (72 continuous hours); or<br>9 breaks of 2 days (48 continuous hours) |

(b) Regardless of the roster cycle, an employee on a roster cycle must not be required to work more than a total of 48 hours of ordinary time without a long break of at least 48 continuous hours.

81 Similarly, the entitlement to a long break in respect of the 2020 award arises under cl 14.5, which provides:

**14.5 Long breaks**

(a) An employee on a roster cycle of a length specified in column 1 of **Table 3 – Long breaks** is entitled to long breaks of continuous time off work in that roster cycle as specified in column 2:

**Table 3 – Long breaks**

| Column 1<br>Length of roster cycle | Column 2<br>Minimum number of breaks |
|---|---|
| 3 weeks | 3 breaks of 2 days (48 continuous hours) |
| 4 weeks | 3 breaks of 3 days (72 continuous hours); or<br>4 breaks of 2 days (48 continuous hours) |
| 8 weeks | 6 breaks of 3 days (72 continuous hours); or<br>9 breaks of 2 days (48 continuous hours) |

(b) The employer must not roster an employee on a roster cycle of any length to work more than a total of 48 ordinary hours without a long break of at least 48 continuous hours.

82 In short, the claimant says the long break provisions in both awards are directed at ensuring that employees do not work more than 48 ordinary hours without a 'long break' or a 'weekend'.

**Claim for Overtime Payments**

83 The second limb of the claimant's award breach allegations is that because Mr Lummas was required to work more than 48 hours without taking a long break, he was thereafter entitled to be paid at overtime rates.

84 The relevant provision of the 2010 award which the claimant alleges requires the respondent to pay overtime is cl 23.3, which states:

**23.3 Overtime rates**

Where an employee works overtime the employer must pay to the employee the ordinary time rate for the period of overtime together with a loading as follows:

| For overtime worked on | Loading payable in addition to ordinary time rate |
|---|---|
| | % |
| Monday to Friday—first 2 hours | 50 |
| Monday to Friday—thereafter | 100 |
| Saturday—first 2 hours | 50 |
| Saturday—thereafter | 100 |
| Sunday | 100 |
| Public holiday | 150 |

85 In relation to the 2020 award the claimant says the respondent breached cl 19.2 which provides:

**19.2 Payment of overtime**

**(a)** An employer must pay a full-time employee at the overtime rate for any time worked in excess of their ordinary hours.

…

86 The claimant says that when regard is had to the roster Mr Lummas worked during the claim period, the first 48 hours or the first four shifts he worked on the roster are to be treated and paid as ordinary hours.

87 In respect of the shifts that followed the first four, the claimant contended that for each hour worked, until he went on R&R, Mr Lummas should have been treated as though he was working overtime and paid at overtime rates.

**Amended Responses and the Claimant's Reply**

88 After the amended claim was lodged, the respondent lodged two amended responses. The first of these was lodged on

19 August 2024 (**second response**).

89 Attached to the second response was a spreadsheet of information on the amounts the respondent said it paid Mr Lummas in comparison to the amounts claimed for each pay period in the underpayment's schedule (**Annexure 1**).

90 On 8 July 2025, the respondent lodged a Further Amended Response (**third response**) in which the respondent claimed Mr Lummas had signed Individual Flexibility Agreements (**IFAs**) that had varied the operation and effect of various provisions under the 2010 and 2020 awards, which included the long break provisions[40].

91 In the lead up to the final hearing, the claimant on 24 July 2025, lodged the Claimant's Reply to the Further Amended Response (**claimant's reply**), in which the claimant disputed the validity and effect of the purported IFAs.

**Pathway to a Hearing**

92 After the second response was lodged, there were, until the matter was eventually heard on 11 August 2025, at least two attempts to progress the matter to a final hearing. During this time frame, both parties lodged further witness statements and outlines of submissions.

93 A trial date in March 2025 was moved due to the availability of the respondent's counsel. The rescheduled hearing on 19 May 2025 was vacated, after potential new matters were raised with the lodgment of a supplementary statement from one of the respondent's witnesses on 7 May 2025.

94 To the parties' credit, most of the facts giving rise to the issues in dispute were not contested. All the relevant documentary materials which included a Statement of Agreed Facts were compiled in a two volume Court Book of 1322 pages that went into evidence as exhibit C1.

95 As will become clear, the outcome in this matter largely turns on the interpretation of the 2010 and 2020 awards and whether the site agreements Mr Lummas signed during the claim period, varied or displaced the operation of those awards.

96 By the time the matter was ultimately heard, the claimant was no longer pressing for relief in respect of the alleged records or s 323 contraventions. In the end, the focus of this matter was solely about the alleged award breaches and the resulting underpayment of wages claim[41].

97 In the paragraphs to follow, I have provided a summary of the evidence that was contained in the further witness statements the parties lodged after the claimant lodged its amended claim.

98 None of the witnesses who provided witness statements in this matter were cross-examined. Each of the witness statements were tendered and accepted into evidence by consent. Any objections to the contents of the parties' witness statements were similarly resolved by agreement between the parties.

**Statements of Agreed Facts**

99 The parties lodged two statements of agreed facts in this matter. By way of summary, the parties agreed upon the following essential facts:

1. The claimant is an organisation as defined in s 12 of the FW Act with standing to prosecute the amended claim[42].
2. The respondent, is a national system employer within the meaning of s 14 of the FW Act that was engaged to provide security services for the PPA[43].
3. The 2010 and 2020 awards as varied from time to time, applied to the respondent and its employees who were engaged as security officers, including Mr Lummas[44].
4. The respondent employed Mr Lummas as a security officer in the period 16 November 2011 to 10 July 2022[45].
5. Mr Lummas was:
    a. a national system employee;
    b. a person to whom the 2010 and 2020 awards applied;
    c. a member of the claimant;
    d. employed by the respondent as a security officer at PPA sites, in the following classification set out in the 2010 and 2020 awards;
        i. 1 June 2019 to 3 October 2019 – Level 4;
        ii. 4 October 2019 to 25 August 2021 – Level 5, and
        iii. 26 August 2021 to 23 June 2022 – Level 4[46].
6. During his employment with the respondent at a PPA site, Mr Lummas was engaged as a full-time employee, on an

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[40] third response [11].

[41] ts 23.

[42] *Form 29 – Agreed Statement of Facts* lodged 30 August 2024 [1].

[43] *Form 29 – Agreed Statement of Facts* lodged 30 August 2024 [2].

[44] *Form 29 – Agreed Statement of Facts* lodged 30 August 2024 [3].

[45] *Form 29 – Statement of Agreed Facts* lodged 24 May 2024 [3].

[46] *Form 29 – Agreed Statement of Facts* lodged 30 August 2024 [5].

on-going basis[47].

7. The parties agreed Mr Lummas worked on the dates and for the hours as described in the amended claim and the underpayment calculations, during the claim period[48]; and

8. The various start and finish times, shift lengths and the dates on which Mr Lummas worked were compiled into a table and marked 'SOAF 1'. This table appears at exhibit C1, 372 - 391.

**First Witness Statement from Sharon Hall**

100 On 14 October 2024, the respondent lodged a Witness Statement of Sharon Hall (**first Hall statement**). In this statement, Sharon Hall (**Ms Hall**) gave evidence that she works for the respondent as a Payroll Administrator. Ms Hall said she has been employed in this position for about 15 years[49].

101 Ms Hall said that she is required to act as a liaison between the respondent's operations team and its payroll office. Ms Hall stated that she is responsible for ensuring that the security guards employed by the respondent in Western Australia are paid correctly, for both the number of hours they have worked, and at the applicable rates of pay[50].

102 Ms Hall stated that she reports to the Commercial Manager (WA), who in turn reports to the General Manager (WA). Ms Hall said there are no roles that report to her[51].

103 In the first Hall statement, Ms Hall explained that she prepared Annexure 1. Ms Hall said the information contained in Annexure 1 was based upon:

(a) the respondent's internal payroll records;

(b) her understanding and belief on the applicable minimum rates of pay that had to be paid to Mr Lummas during his employment with the respondent; and

(c) her own calculations[52].

104 Ms Hall said Annexure 1 includes a column that is headed 'Total Hours Worked'. The figures which appear in this column describe the total number of hours Mr Lummas worked in a relevant fortnightly pay period[53].

105 For the pay period ending 30 June 2019, Ms Hall said she included two amounts for the total number of hours worked; one for the hours Mr Lummas worked at a BHP site and the other for the hours he worked at a PPA site[54].

106 According to the information that is set out in Annexure 1, Ms Hall claimed the respondent had overpaid Mr Lummas during the claim period.

**Second Lummas Statement**

107 On 29 October 2024 the claimant lodged the second Witness Statement of Craig Lummas (**second Lummas statement**). In this statement, Mr Lummas accepted that he worked the days and hours as set out in the Statement of Agreed Facts[55].

108 He also confirmed that during the claim period he worked in the security officer classifications described as follows[56]:

i. From 1 June 2019 to 3 October 2019, I was engaged as a Level 4 Security Officer and my duties included gatehouse duties, CCTV monitoring, mobile patrols, exercising computer skills, operating the Cardex security system, drug and alcohol testing and first aid attendance.

ii. From 4 October 2019 to 25 August 2021, I was engaged as a Level 5 Security Officer. In my role, I supervised approximately 8 guards in total across three to four sites, attended daily meetings with other security officers to coordinate their activities, I monitored other security officers, completed monthly reports, completed incident reports, and operated computer programs which have the ability to remotely lock/unlock doors, program access cards, audit and record door access by individuals.

iii. From 26 August 2021 to 23 June 2022, I was engaged as a Level 4 Security Officer and my duties included gatehouse duties, CCTV monitoring, mobile patrols, exercising computer skills, operating the Cardex security system, drug and alcohol testing and first aid attendance.

109 Mr Lummas stated that he had reviewed the employment records the respondent had provided by way of discovery. He confirmed the employment records accurately described the hours he worked[57].

110 Mr Lummas attached a record of his employment history with the respondent during the claim period, which was marked CL-1

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[47] *Form 29 – Agreed Statement of Facts* lodged 30 August 2024 [6].

[48] *Form 29 – Agreed Statement of Facts* lodged 30 August 2024 [7].

[49] first Hall statement [4].

[50] first Hall statement [5].

[51] first Hall statement [6].

[52] first Hall statement [8] - [9].

[53] first Hall statement [9.3].

[54] first Hall statement [9.3].

[55] second Lummas statement [7].

[56] second Lummas statement [8].

[57] second Lummas statement [10].

and appears at exhibit C1, 476 - 482. This document not only shows the dates and days Mr Lummas worked, but importantly where he worked (**employment history**).

111 Mr Lummas said that during his 'on swing periods', the respondent required him to work more than 48 consecutive hours (i.e. four shifts at 12 hours each) without a break of 48 hours[58].

112 He also said there were times where he worked 14 consecutive shifts of 168 hours without a 48 hour break[59]. He stated that during his 'on swing periods', the respondent did not give him separate breaks of continuous time off[60].

**Second Price Statement**

113 In response to the second Lummas statement, the respondent on 12 November 2024, lodged a second Witness Statement of Paul Trevor Price (**second Price statement**).

114 In his second statement Mr Price explained that the site agreements he had referred to in his first statement, not only allowed the respondent to pay employees like Mr Lummas by way of a flat rate, but it was intended they would also address and alter the respondent's obligations under the long break provisions of both the 2010 and the 2020 awards[61].

115 Mr Price said the respondent's strict compliance with the long break provisions would not have been possible under the FIFO roster that Mr Lummas was required to work[62].

116 He said that he recalled considering the long break provisions when the site agreements were being designed and drafted. Mr Price stated the respondent had designed its site agreements and rosters to ensure its employees would receive their '*long breaks*' during the off-swing period of their roster[63].

**Second Hall Statement**

117 On 7 May 2025, the respondent lodged a Supplementary Witness Statement of Sharon Hall (**second Hall statement**). In this statement, Ms Hall when referring to the underpayments schedule made the following observations:

> 4. …Mr Lummas has elected to assume that the first 48 hours worked by him during his 2-week on-swing are to be treated as ordinary hours and that all hours worked on shift thereafter during this on-swing are to be treated and paid as overtime.
>
> 5. For the initial first 48 hours, Mr Lummas appears to have applied a base rate of pay, plus, in the case of work performed on Saturdays or Sundays or night shifts, the penalty rate applicable to hours worked on those days.
>
> 6. Mr Lummas then appears to treat as overtime, all hours worked in excess of 48 hours in an on-swing. For the period Monday to Friday, an overtime rate of 1.5 times the ordinary rate is applied for the first two overtime hours, while an overtime rate of 2 times the ordinary rate is applied thereafter.
>
> 7. For a Saturday or Sunday, an overtime rate of 2 times the ordinary rate is applied to all hours worked.

118 In relation to these observations, Ms Hall said the respondent did not use this methodology to determine which hours would be treated as ordinary time and overtime when assessing what Mr Lummas should have been paid under the 2010 or 2020 awards. Instead, the flat rate was provided by his site agreements[64].

119 The methodology Ms Hall said she used was set out in Annexure 1 that I referred to in the preceding paragraphs [89], [103] – [104] and [106]. A copy of a roster showing how Ms Hall said the respondent allocated ordinary hours and overtime to various days on the 2&1 roster was also attached to the second Hall statement (**SH-2**).

120 In her second statement Ms Hall said the respondent had structured a roster for Mr Lummas and employees like him, that allocated all hours worked between ordinary hours and overtime hours, during the 2-week on-swing period, which she named the 'Lummas Roster'[65].

121 Ms Hall explained that when preparing a costing for this roster, which was also used to calculate the flat rates that applied under the site agreements and to make an assessment as whether the rates to be paid were 'superior to any Award entitlements', the respondent had allocated the majority of overtime on the roster as occurring on Saturdays and Sundays[66]. Using this methodology, Ms Hall claimed that Mr Lummas was not underpaid.

122 The second Hall statement also provided a description of three other methods by which Ms Hall said, ordinary hours and overtime hours could be allocated on a 2&1 roster. Each of these methods (which were set out as attachments to the second Hall statement) assume that if the long break provisions applied, the requirement to provide a long break was not triggered after Mr Lummas had worked his first 48 hours on the 2&1 roster.

123 Rather, the three alternative methods each assume the respondent was within its rights to allocate overtime hours on the first

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[58] second Lummas statement [11].

[59] second Lummas statement [12].

[60] second Lummas statement [13].

[61] second Price statement [6] – [8].

[62] second Price statement [7].

[63] second Price statement [8].

[64] second Hall statement [8].

[65] second Hall statement [10] – [11].

[66] second Hall statement [13].

Saturday and Sunday of the 2&1 roster and that the obligation to provide a long break, only applied after the completion of 48 ordinary hours, instead of the first 48 working hours on the roster.

**Third Lummas Statement**

124 On 30 June 2025, the claimant lodged the third Witness Statement of Craig Lummas (**third Lummas statement**). The claimant lodged this statement in response to the second Hall statement.

125 In this statement, Mr Lummas said that before these proceedings were commenced, he had never seen a roster that showed days/shifts, on which he would be working ordinary hours and the days/ shifts that would be overtime[67].

126 Mr Lummas said that he was also never shown any of the attachments to the second Hall statement, which included SH-2[68]. Mr Lummas stated that during his employment with the respondent, he was not told that his overtime hours would fall on Saturdays and Sundays[69].

**Third Hall Statement**

127 On 8 July 2025, the respondent lodged the 'Second Supplementary Witness Statement of Sharon Hall' (**third Hall statement**).

128 The third Hall statement attached a chain of emails between Mr Lummas and Jason Raftery, who was the respondent's business Manager from December 2012 until July 2022.

129 Attached to this email chain which ends on 20 August 2021, was a copy of a third site agreement that Mr Lummas signed on 20 August 2021 for work as a Level 4 Security Officer at PPA sites (**PPA 2**).

**Defence to the Amended Claim**

130 There are several limbs to respondent's defence to the amended claim. The first is in respect of the construction of the overtime provisions of the 2010 and 2020 awards.

131 By this defence, the respondent says that even if there is an obligation under the award to provide a long break, there is no express obligation to pay an employee at overtime rates until a long break is taken.

132 The second limb is in respect of the site agreements the claimant signed. The respondent has contended the site agreements have the effect of varying either version of the award, in respect of any obligation to:

i. provide a long break; or

ii. to pay an employee at overtime rates where an employee may be required to work more than 48 hours without taking a long break.

133 The third limb of the respondent's defence depends on whether it's methodology for allocating overtime hours on the roster, to calculate whether Mr Lummas was 'better off overall' under the award flexibility provisions is accepted by the Court.

134 If the respondent's methodology is accepted, a further limb is in respect of the 'set off' defence that was raised in the first response and the respondent's first outline. As I understood the respondent's defence, it is contended that any overpayment in one pay period may be 'set off' against any underpayment in another.

**Consideration - Construction of Awards**

135 Determining the issue of whether the respondent was required to pay Mr Lummas at overtime rates, in circumstances where his roster prevented him from taking a long break following the completion of 48 hours ordinary time, necessarily involves an application of the principles to be applied when interpreting awards.

136 These principles were summarised by a Full Court of the Federal Court of Australia in ***King v Melbourne Vicentre Swimming Club Inc*** [2021] FCAFC 123; (2021) 308 IR 171 at [40]- [43] (Collier, Katzmann and Jackson JJ) (***King***) which I have extracted below;

> 40. The principles governing the construction of awards are well-established and the primary judge's exposition of them was not challenged on appeal. The construction of an industrial instrument depends on its language, understood in light of its industrial context and purpose: see ***Amcor Ltd v Construction, Forestry, Mining and Energy Union*** [2005] HCA 10; (2005) 222 CLR 241 at [2] (Gleeson CJ and McHugh J). In ***City of Wanneroo v Holmes*** [1989] FCA 369; (1989) 30 IR 362 at 378-379, French J said (most citations removed);
>
> > The interpretation of an award begins with a consideration of the natural and ordinary meaning of its words. The words are to be read as a whole and in context. Ambiguity if any, may be resolved by a consideration, inter alia, of the history and subject matter of the award. Resort to such matters as prefatory statements and negotiations is of dubious assistance if admissible at all. The logs of claim and arbitrator's reasons for decision may be referred to … determine the ambit of the dispute which led to the making of the award so that where there are two possible interpretations, one within the ambit and one without, the former may be preferred. … That is not to say the words must be interpreted in a vacuum divorced from industry realities. As Street J said in ***Geo A Bond & Co Ltd (in liq) v McKenzie*** [1929] AR(NSW) 498 at 503:
> >
> > > it must be remembered that awards are made for the various industries in the light of the customs and working conditions of each industry, and they frequently result … from an agreement between the parties, couched in terms intelligible to themselves but often framed without that careful attention to form and

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[67] third Lummas statement [3].

[68] third Lummas statement [5] – [6].

[69] third Lummas statement [7].

> draughtsmanship which one expects to find in an Act of Parliament. I think, therefore in construing an award, one must always be careful to avoid a too literal adherence to the strict technical meaning of words, and must view the matter broadly, and after giving consideration and weight to every part of the award, endeavour to give it a meaning consistent with the general intention of the parties to be gathered from the whole award.

41. We agree with the primary judge's observation (at PJ [127]) that:

> Practices in the relevant industry may provide material context. An illustration is ***Transport Workers Union v Linfox Australia Pty Ltd*** [2014] FCA 829; 318 ALR 54, where Tracey J held that evidence about the morning commencement time of work in the transport industry, together with an examination of the history of relevant award provisions, informed the construction of the term 'day shift' with the consequence that ordinary day workers were not to be regarded as shift workers for the purposes of the award, and were therefore not entitled to 'crib time'.

42. Hence the framers of documents such as awards may well have been more concerned with expressing their intention in a way likely to be understood in the relevant industry rather than with legal niceties or jargon, so a purposive approach to interpretation is appropriate and a narrow or pedantic approach is misplaced: see ***WorkPac Pty Ltd v Skene*** [2018] FCAFC 131; (2018) 264 FCR 536 at [197] (Tracey, Bromberg and Rangiah JJ) applying ***Kucks v CSR Ltd*** [1996] IRCA 166; (1996) 66 IR 182 at 184 (Madgwick J). An award may be read that way despite mere inconsistencies or infelicities of expression which might tend to some other reading, and 'meanings which avoid inconvenience or injustice may reasonably be strained for': *Kucks* at 184.

43. The circumstances may lead the court to conclude that a clause in an award is a product of history; in such circumstances it may be possible to discern the purpose of the award only by reference to its history: see ***Short v FW Hercus Pty Ltd*** (1993) 40 FCR 511 at 518 (Burchett J). But there are limits to that; as the primary judge said in the present case (at PJ [128]-[129]), the texts of modern awards are widely available to members of the public and should be reasonably capable of being understood and implemented by participants in the relevant industry by reference to the language of the award itself, without having to delve into the pedigree of the instrument. That is especially so where, as here, non-compliance with an award can expose a person to pecuniary penalties: see *Wanneroo* at 380.

137 The passages I have extracted from ***King*** were followed and applied by Colvin J in ***Wilkinson v Wilson Security Pty Ltd (No 3)*** [2024] FCA 705; (2024) 332 IR 387 (***Wilkinson***).

138 ***Wilkinson*** in the context of the present case is significant because it is, together with an earlier decision of Katzmann J in ***Sydney Night Patrol and Inquiry Company Limited v Pulleine*** [2014] FCA 385 (***Pulleine***), one of two cases in which the principles that apply when interpreting awards, were applied to the construction of provisions in the 2010 and 2020 awards that are in issue.

139 In view of this, it is worth providing a summary of ***Pulliene*** and ***Wilkinson*** in the order in which they were decided, particularly on the issue of how the long break provisions, should be interpreted and applied.

**The Decision in *Pulleine***

140 ***Pulleine*** involved an appeal of decision by a NSW Industrial Magistrate, where it was held the employer; Sydney Night Patrol, was in breach of the 2010 award, by failing to pay the claimant overtime where he was required to work more than 48 hours of ordinary time without giving him a long break.

141 The claimant in the case at first instance, like Mr Lummas, was employed as a security officer, but on a fortnightly roster. The claimant was paid at overtime rates when he worked a shift of more than 10 continuous hours or when he worked more than 76 hours in any two-week roster cycle.

142 Before the Industrial Magistrate, the claimant argued that it was a contravention of cl 21.4(b) of the 2010 award, to require him to work more than 48 hours of ordinary time without giving him a long break and that if he was required to do so, his employer was obliged to pay him at overtime rates.

143 Sydney Night Patrol denied that cl 21.4(b) applied to employees on a fortnightly roster because this type of roster was not expressly mentioned under the heading 'Length of roster'. In the alternative, Sydney Night Patrol argued that if the requirement to give the claimant a long break did apply, the 2010 award did not require that he be paid overtime in the event of a breach.

144 At first instance, the Industrial Magistrate concluded that the construction pressed by Sydney Night Patrol would produce the absurd result that employees on a fortnightly or weekly roster, would not be entitled to a long break after 48 hours of ordinary time, unlike employees on a roster of three, four or eight weeks.

145 Her Honour was also satisfied that for the purpose of cl 21.4(b) a long break is a minimum of 48 continuous hours. On this construction, the Industrial Magistrate held that Sydney Night Patrol was in breach of the 2010 award, by requiring the claimant to work more than 48 hours without giving him a break.

146 The Industrial Magistrate also accepted the claimant's argument that hours worked in excess of 48 hours of ordinary time, should have been paid at overtime rates. It is of note that on appeal, Sydney Night Patrol did not dispute that overtime would be payable in the event the award applied to the claimant.

147 The issue that ultimately found its way on appeal to Katzmann J, was on the issue of whether the long break provisions applied to employees on a fortnightly roster.

148 In determining the long break provisions under cl 21.4(b), the 2010 award extended to employees who worked fortnightly

rosters, Her Honour at [41] – [52] reached the following conclusions;

41. In my opinion, the interpretation given to cl 21.4 by the learned magistrate is reasonably open and is to be preferred because it more closely conforms to the intention of the award.

42. I accept that there is an advantage, however, in the interpretation for which Sydney Night Patrol contends. Its interpretation would provide certainty and there is some uncertainty in how the clause would operate if the learned magistrate's interpretation is upheld. That uncertainty arises in part because there is no definition of 'long break' in the award. So if employees on a fortnightly roster are to have a long break, how long should it be? And how many breaks are they entitled to? But the uncertainty may be resolved by a process of construction. The conclusion the learned magistrate reached – that a long break means a minimum of 48 continuous hours – is an obvious one, derived, no doubt from the terms of cl 21.4(a). The number of long breaks is more difficult to resolve. But that question, too, may be determined by a process of construction. It is reasonable to infer from the text of cl 21.4(a) that an employee on a two-week roster is entitled to two breaks, each of two days (48 continuous hours). Clause 21.4(a) requires employees on three-week rosters to be given three breaks, each of two days, and employees on four-week rosters four breaks, each of two days. It follows that employees on two-week rosters are to be given two breaks each of two days' duration. True it is that employees on eight-week rosters are entitled to nine (rather than eight) breaks of the same duration. I am not, however, persuaded that this minor discrepancy is sufficient to undermine the pattern established by the shorter roster cycles and that, for the shortest – the two-week cycle – the inference I have drawn is not the appropriate one.

43. There are also some important contextual reasons favouring this interpretation.

44. First, cl 21.4 should be seen against the background of the industrial struggles for shorter working hours and the declarations by the Commonwealth Arbitration Court and its successors of standard working weeks, beginning with the 48-hour week recognised in ***Australian Builders' Labourers' Federation v Archer*** (1913) 7 CAR 228 and culminating in the legislative recognition of a 38-hour week.

45. Second, in Australia most working people have long worked a five-day week and have enjoyed a two-day break on the weekend. Those who do not generally receive time off in lieu. Most, if not all, awards provide for penalty rates for working over the weekend. This award is no different. Clause 22.3 provides for the payment of a 50% penalty rate on top of the ordinary time rate for working ordinary hours on a Saturday and 100% for working on a Sunday.

46. Third, the Award is a modern award made under the Workplace Relations Act and varied from time to time thereafter. In making an award, s 576B of the Act (which appears in Div 2 of Part 10A) required that the Australian Industrial Relations Commission have regard (amongst other things) to:

    (f) the need to assist employees to balance their work and family responsibilities effectively, and to improve retention and participation of employees in the workplace; [and]

    (g) the safety, health and welfare of employees[.]

47. These considerations are reflected in the time limits for 'ordinary time shifts' and the requirements for health monitoring, suitable roster arrangements and adequate breaks if those limits are to be exceeded by up to two hours (cl 21.2). They are also reflected in the requirement for breaks between successive shifts (cl 21.3) and the prohibition against working for more than 14 hours (cl 23.2). And they are reflected in the requirement for long breaks in cl 21.4. The statute treats work/life balance and safety, health and welfare for all employees as mandatory considerations in the making of a modern award. The statute does not discriminate between employees based on the length of their roster cycles. It may reasonably be inferred that in making the award neither did the Commission.

48. Indeed, Sydney Night Patrol pointed out that the Full Bench of the Commission in its award modernisation decision [[2008] AIRCFB 1000] said that it had paid 'close attention' to the requirements in Part 10A of the Act.

49. Third, the Award is to be read with the National Employment Standards ('NES'), which came into effect on 1 January 2010, the same day the Award commenced. Clause 6 of the Award provides that the minimum conditions of employment for employees covered by it are contained in the NES and the Award. 'NES' is defined in cl 3.1 to mean the National Employment Standards contained in ss 59–131 of the Fair Work Act. Section 62(1) provides that, unless the additional hours are reasonable, an employer must not request or require a full-time employee to work more than 38 hours a week or an employee who is not a full-time employee the lesser of 38 hours a week and the employee's ordinary hours of work in a week. Section 63 permits a modern award to contain terms providing for the averaging of hours of work over a specified period, but those hours are not to exceed the above-mentioned hours unless they are reasonable. In determining in each case whether additional hours are reasonable, s 62(3) provides that certain matters be taken into account. Those matters include:

    (a) any risk to employee health and safety from working the additional hours;

    (b) the employee's personal circumstances, including family responsibilities;

    (c) the needs of the workplace or enterprise in which the employee is employed;

    (d) whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, working additional hours;

    …

50. These provisions tend to reinforce the notion that all employees can expect to receive a long break or, as the learned magistrate put it, 'a weekend', at the end of an ordinary working week or compensation (here, overtime payments)

in lieu, and that that notion lies behind cl 21.4(b).

51. Fourth, s 576S of the Workplace Relations Act (compare s 153 of the Fair Work Act) provides that '[a] modern award must not include terms that discriminate against an employee because of, or for reasons including … family responsibilities'. If Sydney Night Patrol's interpretation were correct, this award might discriminate indirectly against sole parents, if not all parents. In other words, while neutral on its face, cl 21.4 could have a discriminatory effect (see, for example, the discussion in ***Waters v Public Transport Corporation*** (1991) 173 CLR 349). It is highly unlikely that the Commission would have made an award which contained a term that contravened the statutory prohibition against discrimination.

52. In view of these considerations, there is no good reason to conclude that the Award was intended to deny a long break to employees working a fortnightly roster or to deprive those who work beyond the 48 hours of the appropriate overtime rate.

149 I accept the respondent's submission that ***Pulliene***, was concerned with the discrete issue of whether an employee on a fortnightly roster, is entitled to a long break.

150 I similarly accept that the Industrial Magistrate's finding that an employee who does not receive a long break after performing 48 hours of ordinary time, should receive overtime, was not under appeal.

151 Notwithstanding this, I regard Katzmann's J analysis of an employee's entitlement to a long break under cl 21.4 of the 2010 award in the paragraphs I have extracted, and her view (even if obiter) that overtime is payable when a long break is not taken, as highly persuasive.

**The Decision in *Wilkinson***

152 Following ***Pulliene***, Colvin J's decision in ***Wilkinson*** was decided in a very similar context to the present case. Like this matter, the applicant was employed to work as a security officer on a resources project in the Pilbara region of Western Australia.

153 The applicant in ***Wilkinson*** (**Mr Wilkinson**) was for a period, employed on a comparable 2&1 roster. When he was rostered to work, the applicant like Mr Lummas was required to work 14 consecutive 12-hour shifts, comprising of seven 12-hour day shifts and seven 12-hour night shifts.

154 Upon the completion of these 14 consecutive shifts, Mr Wilkinson, like Mr Lummas had seven days continuous days off, during which he returned to Perth from the Pilbara. The total number of hours Mr Wilkinson was rostered to work, for the 14 days he was on site was 168.

155 In relation to this roster, Colvin J was asked to consider whether an employer, by providing one continuous long break in each three weekly roster cycle, (which is identical to the roster under consideration in this case) was in breach of the long break provisions of the 2010 and 2020 awards (**Claim 1**).

156 Colvin J was also asked to consider whether by reason of its rostering arrangements, the employer in ***Wilkinson*** had failed to comply with the long break provisions of the 2010 and 2020 awards, that stipulated employees must not work more than 48 hours of ordinary time, without a long break of at least 48 continuous hours off **(Claim 2**).

***Wilkinson* Claim 1**

157 Applying the award interpretation principles I earlier referred to, His Honour in ***Wilkinson*** at [63] – [71] reached the following conclusion in relation to Claim 1;

63. The case for Wilson Security was to the effect that it could conform with the long break provisions by providing for consecutive long breaks of the required duration. It claimed that it met the long break requirements because it provided more days off than were provided for by the Awards when it came to long breaks. It pointed to the fact that, as part of the three-week roster, Mr Wilkinson was entitled to a long break of seven days which was said to amount to three long breaks of two days plus an extra day. As each period of two days was a continuous period of 48 hours it was a long break that was 'separate' from the employee's rostered shift and there was no requirement that each of the 'separate' breaks could not be consecutive.

64. If the contentions for Wilson Security were to be accepted, then it could roster an employee on an eight-week roster to work 38 days (or about five and a half weeks) consecutively as long as it then provided 18 consecutive days of long break. Further, in the case of a four-week roster, it could roster an employee to work 20 days (or about three weeks) consecutively followed by eight consecutive days of break because that would meet the requirement for four long breaks of two days. That would be so even though the Awards expressly provide that where the long breaks are for three days then there must be three of them, making a total of nine days.

*65.* In context, it is plain that the long break provisions limit the extent to which an employer can require an employee to work consecutive rostered days without a long break. It is concerned with the frequency of long breaks as well as their duration. The 'continuous time off work' that is specified in each of the Awards is not simply a number of days for each specified length of roster cycle. Rather, it is *both* a number of breaks and a number of days for each break. Both requirements must be met. The case for Wilson Security would reduce the long break provisions to provisions which simply specified the number of days of a long break in a roster cycle. It is a construction that is inconsistent with the express language of the relevant provisions which refers to a minimum number of breaks and the use of the plural form 'long breaks' in the operative provision. It is also supported by the use of the term 'separate long breaks' in the 2010 Award together with the absence of any matter of context to suggest that the parties intended the long break provisions (which are otherwise expressed in the tables in each of the Awards in the same terms) to operate in a different manner in the case of the 2020 Award compared to the 2010 Award. The change in terminology in the 2020 Award appears to be explained by the fact that its foundational version was prepared as a 'plain language

re-drafting of the [2010 Award]': see *4 yearly review of modern awards - Plain language re-drafting - Security Services Industry Award 2010* [2018] FWCFB 6755.

66. It was suggested for Wilson Security that a provision could easily have been inserted to make clear that the long breaks could not be contiguous if that was indeed the intention. However, that submission is premised upon the long break provisions taking a form which contemplates that possibility thereby inviting language of qualification to that effect if it was intended that long breaks could not be rostered contiguously. For reasons that have been given, the long break provisions do not contemplate such a possibility. Instead, they provide expressly for a minimum number of breaks, specifying those breaks both by number and duration. There is no real room in the language of the provisions for the construction for which Wilson Security contends. Therefore, there is no real foundation in the language for a submission of the kind advanced.

67. When there is regard to the rostering provisions in the Awards, the result would mean that employees undertaking work in the security services industry could be required to work very long hours over many consecutive days without a break. The coverage provisions in the Awards refer to the industry as including patrolling, protecting or guarding people or property, crowd, event or venue control, body guarding and traffic control incidental to those activities. It does not cover cash-in-transit protection or work in prisons, correctional or other detention facilities or relating to the installation or repair of electronic alarms or ATMs. Nevertheless, it is work of a kind that may be expected to require vigilance and attention for sustained periods. These are matters which bear upon the proper construction of the Awards.

68. It was further submitted by Wilson Security that its construction of the long break provisions was supported by the fact that the Awards applied to the provision of work by FIFO employees. It was suggested that a construction which required each long break to be separate would make it difficult to accommodate FIFO arrangements where security guards work. There are a number of problems with this submission.

69. First, as has been explained, the Awards apply broadly. The construction contended for would allow for rostering of a kind that would apply in many different circumstances. The construction must be one which has regard to the work to be undertaken by all employees covered by the Awards. Second, there is no evidence advanced of admissible contextual material to support the construction of the Awards by reference to the particular requirements of FIFO employment arrangements. Third, I am not persuaded that an application of the long break provisions on the basis that long breaks must not be continuous is inconsistent with FIFO employment. For example, a four days on, three days off roster would comply, as would a rolling four-week roster which was five days on and four days off with an extra day on in the first four weeks and an extra day off in the second four weeks.

70. There are also other industrial mechanisms by which different work arrangements may be put in place with approval of the Fair Work Commission. The availability of those alternatives is part of the context in which the Awards are to be construed.

71. It follows that Claim (1) by Mr Wilkinson must succeed. In relation to his employment, Wilson Security has not provided him with sufficient long breaks. He has been made to work for longer periods without a break than should have been the case (and would have been the case if Wilson Security had complied with the long break provisions of the Awards). It follows that Mr Wilkinson has established the alleged contravention of s 45 of the *Fair Work Act* that was the basis for Claim (1).

***Wilkinson* Claim 2**

158 Referring to the decision of ***Pulliene***, Colvin J at [72] – [83] reached the following conclusion in relation to Claim 2;

72. As to Claim (2), Mr Wilkinson submitted that after 48 hours of ordinary time worked there was an entitlement to a long break. He relied upon the language of the Awards that were concerned with the number of ordinary hours that may be included in a roster cycle of any length without a long break. As has been noted, the ordinary hours to be worked where a roster is operated are an average of 38 hours per week. However, Mr Wilkinson's submission fails to take account of the fact that the Awards expressly contemplate shift rosters with work hours of up to 14 hours in any 24-hour period. It is also possible for an employer to roster overtime.

73. In my view, the provisions concerning 48 hours of ordinary time before a long break is to ensure that a roster is not formulated which provides in a two-week roster say for 60 hours of ordinary time in the first week with a long break followed by a roster in the second week of say 16 hours of ordinary time and then a long break, but with no overtime. A roster of that kind would mean that an employee would be required to work long hours for part of the roster without receiving any overtime payments.

74. There was no suggestion that the roster in the present case was one which operated in that way. Although there had been a dispute in the past as to payment of overtime, by the time of these proceedings that issue had been addressed by the payment of back pay in relation to overtime (at least for so long as Mr Wilkinson was working as a full-time employee and not as a casual employee). The present issue did not concern whether there had been adequate overtime payments. It was concerned with whether there had been compliance with the long break provisions. That is to say, the case being made was that the amount and frequency of long breaks was inadequate, not that there had been inadequate pay for overtime.

75. For Mr Wilkinson it was submitted that after working four days of a typical 14-day swing, he was entitled to a long break and the requirement under his roster arrangements to work each of the following 10 days would mean that Wilson Security contravened s 45 of the *Fair Work Act* on each of those days for each of the times that he was rostered on to work.

76. The long break provisions in the 2010 Award were considered by Katzmann J in ***Sydney Night Patrol and Inquiry***

***Company Limited t/as SNP Security v Pulleine*** [2014] FCA 385. In that case, the employee worked on a fortnightly roster and was paid overtime when he worked a shift of more than 10 hours or more than 76 hours in any two-week roster cycle: at [1]. He based his claim to overtime and a first aid allowance on the long break provisions. In a similar argument to that advanced by Mr Wilkinson in the present case, the employee had claimed that it was a contravention of the 2010 Award to require him to work more than 48 hours of ordinary time without giving him a long break and that that if he was required to do so then he was entitled to be paid at overtime rates.

77. Before Katzmann J, the employer, Sydney Night Patrol, accepted that if employees on a fortnightly roster were entitled to a long break after 48 hours of ordinary time worked in a week then overtime was payable. Sydney Night Patrol claimed that the long break provisions did not apply to employees on a fortnightly roster cycle: at [15]. At that time, the words 'Regardless of the roster cycle' did not form part of cl 21.4(b) of the 2010 Award. They were introduced by way of amendment after the dispute arose with Sydney Night Patrol.

78. In the course of reasoning as to why the prohibition on being required to work more than 48 hours of ordinary time with a long break of at least 48 hours applied to all employees, Katzmann J referred to provisions of the National Employment Standards which 'tend to reinforce the notion that all employees can expect to receive a long break or, as the learned magistrate put it, ‘a weekend’, at the end of an ordinary working week or compensation (here, overtime payments) in lieu, and that that notion lies behind cl 21.4(b)': at [50].

79. Significantly, after considering the above and other matters bearing upon the proper construction of cl 21.4(b), Katzmann J expressed her final conclusion as to the meaning of the provision in the following terms at [52]:

> In view of these considerations, there is no good reason to conclude that the Award was intended to deny a long break to employees working a fortnightly roster or to deprive those who work beyond the 48 hours of the appropriate overtime rate.

80. The expression of her Honour's conclusion in that way supports Wilson Security's position that the prohibition in cl 21.4(b) is not transgressed where the employer pays overtime. That is to say, the relevant Awards provide for a roster with an average of 38 hours of ordinary time per week. After that, time worked is overtime.

81. What cl 21.4(b) makes clear is that there is a limit on the averaging that can occur such that ordinary hours beyond 48 hours in any week must be paid at an overtime rate or, if overtime is not to be paid, the employee must be given a long break. In that regard the use of the term 'ordinary time' in the relevant provisions in the 2010 Award and in the 2020 Award is significant. It is not a provision that operates to curtail the possibility of a roster with reasonable overtime that conforms to the provisions of the relevant awards in relation to overtime and for which overtime is paid.

82. Of course, as has been explained, the separate requirements as to the minimum number of long breaks and their duration (as addressed in dealing with Claim (1)) must still be met.

83. It follows that Claim (2) fails.

***Pulliene*** **and** ***Wilkinson*** **Together**

159 When read together, several common elements may be gleaned from the passages in ***Pulliene*** and ***Wilkinson*** that I have referred to, regarding the application and interpretation of the long break provisions of the 2010 and 2020 awards.

160 In the context of the present case, I consider the decisions in ***Pulliene*** and ***Wilkinson*** confirm that where the 2010 and 2020 awards apply, an employee, on a 2&1 roster like the one Mr Lummas worked, should receive the following;

i. a long break after the completion of the first 48 hours of work on the roster;

ii. the long break (like a weekend) must be for a continuous period of 48 hours off; and

iii. the long break provisions of the 2010 and 2020 awards do not permit the long breaks to be taken together at the end of the roster cycle.

161 I consider that where the elements I have set out are not satisfied, both Colvin and Katzmann JJ have each found the 2010 and 2020 awards, make provision for payment at overtime rates until a long break can be taken in the manner prescribed.

162 I accept that ***Wilkinson*** like the decision in ***Pulliene,*** is not directly concerned with whether overtime is payable in the event of an employer’s failure to comply with the long break provisions.

163 That said, I will now turn to explain why I respectfully disagree with the respondent’s submission that the 2010 and 2020 award overtime provisions do not confer an entitlement to be paid at overtime rates in the event of an employer’s failure to comply with the long break provisions.

**Respondent’s Submissions on the Obligation to Pay Overtime**

164 The respondent submitted there is nothing in the text of the 2010 or 2020 awards that suggests the failure to give a long break ‘sounds in overtime’[70].

165 It was submitted that this is to be contrasted with other provisions in the 2010 and 2020 awards which clearly and expressly indicate that overtime is payable where a clause is not complied with.

166 One of the examples the respondent referred to in support of this submission was cl 14.4(d) of the 2020 award which provides:

> **14.4 Breaks between work periods**
>
> **…**

[70] *Form 29 – Respondent’s Consolidated Outline of Submissions* lodged 8 July 2026

> **(d)** If, on the instructions of the employer, the employee resumes or continues work without having had 8 hours off duty, the employer must pay the employee at a rate of 200% (emphasis added) of the employee's minimum hourly rate until the employee has a break of 8 consecutive hours. The employee must not suffer any loss of pay for ordinary hours not worked during that period of that break.

167 It was submitted that in the absence of wording similar to the language used in cl 14.4(d), there is no foundation to construe that any failure to provide a long break, results in overtime being payable[71].

168 Moreover, it was also submitted that in the absence of words that provide for an obligation to pay overtime, there is similarly no guidance within the 2010 or 2020 awards to explain how the overtime is to be calculated and over what period [72].

**Requirement to Pay Overtime Supported by Authority**

169 It is my view the arguments being made by the respondent regarding the payment of overtime are not supported by authority on the construction of the 2010 and 2020 awards, which includes the decisions in ***Pulliene*** and ***Wilkinson***.

170 I respectfully do not accept the respondent's submission the Court is not bound by or should not follow ***Pulliene*** and ***Wilkinson***, for several reasons.

171 Firstly, I am unable to ignore the first instance decision from Industrial Magistrate Lisa Stapelton in ***Noel Pulleine v Sydney Night Patrol and Inquiry Company Pty Limited t/as SNP Security*** 2011/409806; delivered 26 July 2013 (unreported) which preceded the appeal decision in ***Pulleine.***

172 At [31] Her Honor held:

> The Award provides for ordinary time, overtime and double time. Hours worked by an employee can only fall within these categories. An employee may work on a maximum of 10 ordinary hours under clause 21.2(a)(ii) (unless otherwise agreed under clause 21.2(b)) and any additional hours are overtime. The Award does not explicitly state that any additional hours are overtime and it is not necessary for it to do so. It is plain that if an employee has worked the maximum ordinary hours for a shift as required by the Award, additional hours worked by him are overtime, or if clause 23.5 applies, double time. Applying this reasoning if an employee has worked the maximum ordinary hours required to qualify for a long break, additional hours worked by him (whether described as during his long break or before his long break commences) cannot be categorised as ordinary hours. Those hours can only be overtime hours unless clause 23.5 applies. The Court accepts the applicant's argument that the additional hours he worked during the claim period should have been categorised as overtime by the employer and paid at the relevant rate.

173 As Industrial Magistrate Stapelton's decision on the requirement to pay overtime where an employee does not receive a long break was not appealed by Sydney Night Patrol in ***Pulliene***, I am not inclined to depart from Her Honour's reasoning on this point.

174 Secondly, the respondent's argument in respect of the obligation to pay overtime is predicated on there being a lack of clear prescription in both the 2010 and 2020 awards. This issue however was addressed by Katzmann J in ***Pulleine***, when dealing with the seeming absence of an express provision for an entitlement to long breaks, for employees on fortnightly rosters.

175 On one view, the absence of clear prescriptive text regarding the obligation to pay overtime might be because the parties did not intend that overtime would be payable where a long break is not provided (which is the respondent's submission).

176 On the other hand, Katzmann J's view in ***Pulleine*** as expressed at [38], on the absence of clear wording in the long break provisions of the 2010 award, in the circumstances of this case, is apposite;

> Moreover, if Sydney Night Patrol's construction were correct, it would be open to employers to circumvent the award's requirements for long breaks by rostering everyone on a fortnightly cycle. It is unlikely that such an outcome was intended. In my opinion the purpose of cl 21.4 (read in its context by reference to the other provisions in the Award and the Award as a whole) is, as Mr Pulleine submitted, to ensure that no employee is required to work an excessive number of consecutive days without an extended period away from the workplace *unless the employee is paid the appropriate penalty rate*. The purpose of paragraph (a) is to stipulate the minimum number of breaks for those employees on roster cycles of more than two weeks' duration. In these circumstances, it is likely that the omission from paragraph (a) of a reference to a two-week roster cycle *was either an oversight or its inclusion was regarded as unnecessary*.
>
> (emphasis added)

177 In other words, I consider that in the same way Katzmann J reached the conclusion that when drafting the award, it is unlikely the parties would have intended employers would be allowed to circumvent the long break provisions, it is also likely the parties would not have intended there would be no penalties payable, where an employee is prevented from taking a long break.

178 Thirdly, it is my view, (from what Katzmann J held in ***Pulleine***, that was subsequently followed by Colvin J in ***Wilkinson***), that when the long break provisions are construed in context, overtime is payable where an employee is unable to take a long break in the manner prescribed.

179 I therefore consider that along with Industrial Magistrate Stapelton's decision, the cases in ***Pulliene*** and ***Wilkinson*** provide a line of authority that I am required to follow when interpreting the 2010 and 2020 awards.

180 Fourthly, I consider the text of the overtime provisions in the 2010 and 2020 awards, that must be read together with s 62 and s 63 in Part 2-2 of the FW Act - National Employment Standard (**NES**), make it plain that where an employee works more than

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[71] *Form 29 – Respondent's Consolidated Outline of Submissions* lodged 8 July 2026 [17] – [21]

[72] *Form 29 – Respondent's Consolidated Outline of Submissions* lodged 8 July 2026 [18]

the maximum weekly or the maximum average weekly hours of 38, overtime is payable.

181 Section 63 of the NES permits the inclusion of terms in modern awards that allow hours of work to be averaged over a specified period. These terms appear at cl 21.1 of the 2010 award (Ordinary hours and roster cycles) and cl 13 of the 2020 award (Ordinary hours of work and rostering arrangements).

182 The effect of these provisions is to allow an employer to roster a greater number of ordinary hours in any one week of a roster cycle, so long as the average over the cycle do not exceed 38. For a 2&1 roster cycle, an employer has the discretion to operate a roster with an average of 38 ordinary hours in a roster cycle or 114 hours over a three-week cycle.

183 However, as Colvin J held in ***Wilkinson***, the long break provisions place a limit on the extent to which ordinary hours may be averaged in any one week, with the effect that overtime is payable for any hour worked over the 48-hour maximum.

184 On this basis, it appears reasonable to find the parties to the 2010 and 2020 awards would have likely considered that one of the purposes of the hours and rostering provisions (which is where the long break provisions appear) was ensuring employees' working hours could be arranged in a manner that would not offend s 62 and s 63 of the FW Act.

185 The construction I have favoured is purposive in the sense that it allows for flexibility in rostering average weekly hours, subject to the outer limit on the number of ordinary hours that may be rostered consecutively, which the long break provisions impose.

186 Accordingly for the reasons I have outlined, I consider a construction that construes the long break provisions of the 2010 and 2020 awards in context, as imposing a requirement to pay overtime where a long break is not provided, should be preferred.

**Consideration - Individual Flexibility Agreement Defence**

187 The second limb of the defence the respondent raised in opposition to the amended claim, is in respect of site agreements the claimant signed during the claim period and which the respondent says, applied as IFAs.

188 In relation to this defence, s 144 and s 145 of the FW Act provide:

> **144 Flexibility terms**
>
> *Flexibility terms must be included*
>
> (1) A modern award must include a term (a ***flexibility term***) enabling an employee and his or her employer to agree on an arrangement (an ***individual flexibility arrangement***) varying the effect of the award in relation to the employee and the employer, in order to meet the genuine needs of the employee and employer.
>
> *Effect of individual flexibility arrangements*
>
> (2) If an employee and employer agree to an individual flexibility arrangement under a flexibility term in a modern award:
>
> (a) the modern award has effect in relation to the employee and the employer as if it were varied by the flexibility arrangement; and
>
> (b) the arrangement is taken, for the purposes of this act, to be a term of the modern award.
>
> (3) To avoid doubt, the individual flexibility arrangement does not change the effect the modern award has in relation to the employer and any other employee.
>
> *Requirements for flexibility terms*
>
> (4) The flexibility term must:
>
> (a) identify the terms of the modern award the effect of which may be varied by an individual flexibility arrangement; and
>
> (b) require that the employee and the employer genuinely agree to any individual flexibility arrangement; and
>
> (c) require the employer to ensure that any individual flexibility arrangement must result in the employee being better off overall than the employee would have been if no individual flexibility arrangement were agreed to; and
>
> (d) set out how any flexibility arrangement may be terminated by the employee or the employer; and
>
> (e) require the employer to ensure that any individual flexibility arrangement must be in writing and signed:
>
> (i) in all cases – by the employee and the employer; and
>
> (ii) if the employee is under 18 – by a parent or guardian of the employee; and
>
> (f) require the employer to ensure that a copy of any individual flexibility arrangement must be given to the employee.
>
> **…**
>
> **145 Effect of individual flexibility arrangement that does not meet requirements of flexibility term**
>
> *Application of this section*
>
> (1) This section applies if:
>
> (i) an employee and employer agree to an arrangement that purports to be an individual flexibility arrangement under a flexibility term in a modern award; and

(ii) the arrangement does not meet a requirement set out in section 144.

Note: A failure to meet such a requirement may be a contravention of a provision of Part 3-1 (which deals with general protections).

*Arrangement has effect as if it were an individual flexibility arrangement*

(2) The arrangement has effect as if it were an individual flexibility arrangement.

*Employer contravenes flexibility term in specified circumstances*

(3) If subsection 144(4) requires the employer to ensure that the arrangement meets the requirement, the employer contravenes the flexibility term of the award.

**…**

189 Clause 7 (Individual flexibility arrangements) was included in the 2010 award as required under s 144 of the FW Act (**award flexibility provision**) in the following terms:

7.1 Despite anything else in this award, an employer and an individual employee may agree to vary the application of the terms of this award relating to any of the following in order to meet the genuine needs of both the employee and the employer:

(a) arrangements for when work is performed; or

(b) overtime rates; or

(c) penalty rates; or

(d) allowances; or

(e) annual leave loading.

7.2 An agreement must be one that is genuinely made by the employer and the individual employee without coercion or duress.

7.3 An agreement may only be made after the individual employee has commenced employment with the employer.

7.4 An employer who wishes to initiate the making of an agreement must:

(a) give the employee a written proposal; and

(b) if the employer is aware that the employee has, or reasonably should be aware that the employee may have, limited understanding of written English, take reasonable steps (including providing a translation in an appropriate language) to ensure that the employee understands the proposal.

7.5 An agreement must result in the employee being better off overall at the time the agreement is made than if the agreement had not been made.

…

190 The award flexibility provision in the 2020 award appears at cl 5 (Individual flexibility arrangements).

191 It is not disputed Mr Lummas signed three site agreements during the claim period (**site agreements**). The respondent says the site agreements are IFAs that were made under the award flexibility provision.

192 I have provided details of the site agreements in the table below:

| Number | 1 | 2 | 3 |
|---|---|---|---|
| Title | Site Agreement – BHP Security Officer (Full-time) FIFO | Site Agreement – Pilbara Ports Authority Security Supervisor (Full-time) | Site Conditions – Pilbara Ports Authority Security Officer (Full-time) |
| Flat Hourly Rate | $36.10 | $36.29 | $34.42 |
| Date signed | 23 May 2019 | 23 March 2020 | 20 August 2021 |
| Description | **BHP Site Agreement** | **PPA 1** | **PPA 2** |
| Reference | Preceding paragraph [33] and exhibit C1, Court Book 728 | Preceding paragraph [51] and exhibit C1, Court Book 732 | Preceding paragraph [129] and exhibit C1, Court Book 1001 |

193 As set out previously, the respondent maintains that each one of the site agreements, had the effect of varying obligations under the 2010 and 2020 awards in respect of:

i. the requirement to provide a long break; or

ii. to pay Mr Lummas at overtime rates, where because of the 2&1 roster he was prevented from taking a long break in the manner prescribed.

**The Respondent's Submissions on the IFAs**

194 The respondent submitted the site agreements did not need to comply with the long break provisions in either the 2010 or 2020 awards, because they were IFAs made under the award flexibility provision[73].

195 It was submitted the site agreements have this effect because the award flexibility provision allowed the respondent and an individual employee, to agree to vary the application of the 2010 and 2020 awards, in relation to arrangements for when work

[73] *Form 29 – Respondent's Consolidated Outline of Submissions* lodged 8 July 2026 [5] – [6].

is performed[74].

196 The respondent submitted the formal requirements for what an IFA must do are set out in the award flexibility provision. This includes identifying the terms of the award that are to be varied and setting out how that variation occurs[75].

197 On this, the respondent submitted that under the site agreements, Mr Lummas agreed that he would be paid a flat rate that compensated him for all shift penalties, rostered overtime, loadings and allowances[76].

198 It was submitted Mr Lummas agreed that he would be required to work a roster of 14 days on and seven days off, comprising of seven day shifts of 12 hours, seven night shifts of 12 hours, followed by seven days off. The respondent characterised this agreement as an 'arrangement for when work is performed'[77].

199 In the alternative, the respondent submitted that even if the site agreements did not meet the requirements of the award flexibility provisions, there is a 'curative provision' under s 145 of the FW Act whereby an IFA that fails to meet the requirements of s 144, will continue to apply[78].

**Claimant's IFA Submissions**

200 The claimant contended the difficulty with the respondent's submission regarding IFAs is that the site agreements are not, and do not purport to be IFAs in the form contemplated by the award flexibility provisions[79].

201 On this, the claimant submitted the site agreements were not 'arrangements for when work is performed' but were instead, agreements that 'vary the application of the terms relating to overtime rates, penalties and allowances in the [2010 award] by rolling up the rates and allowances payable into a higher hourly rate'[80].

202 More specifically, it was submitted the site agreements do not purport to vary or negate the entitlement under the 2010 and 2020 awards to a long break, expand the number of ordinary hours that may be worked consecutively or alter the circumstances in which overtime rates are payable[81].

203 In relation to s 145, the claimant submitted s 144(4)(c) of the FW Act does not authorise the making of an IFA unless an employee is 'better off overall' than the employee would have been, if no IFA was made[82].

204 The claimant argued an IFA could not be made that would authorise payments below the minimum standards that are contained in awards. The claimant argued the purpose of s 145 is not to excuse an employer's non-compliance with the award where an employee is worse off under the IFA[83].

205 Rather, it was contended that the effect of s 145 of the FW Act, is to deem below award payments under a purported IFA to be a breach of the award flexibility provision[84].

206 The claimant submitted that in the present case, any loss resulting from a contravention of an award flexibility provision would be identical to that claimed for a breach of the overtime provisions of the 2010 or 2020 awards[85].

**Observations on the Site Agreements**

207 The wording in each of the site agreements is very similar. They each describe the classification Mr Lummas is employed in and the flat hourly rate he must be paid for each hour he works on the roster. Each of the site agreements are less than two pages long.

208 The following words appear as a header, under the titles of the BHP site agreement and PPA 1:

> 'As per Part 1 Clause 7 of the Security Services Industry Award 2010'.

209 A similar header appears under the title of PPA 2, with the only difference that it refers to the award flexibility provision in the 2020 award.

210 Each of the site agreements state that Mr Lummas agrees to vary the application of the terms of the applicable award relating to overtime rates, penalties and allowances by rolling up the rates and allowances payable to a higher hourly rate.

211 The payment of this single rate is made in accordance with a series of enumerated conditions that are common to each of the site agreements that include the following:

i. A single hourly rate of pay will be paid for all hours worked that is accompanied with the statement which will result in the employee being better off financially than if paid under the award;

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[74] *Form 29 – Respondent's Consolidated Outline of Submissions* lodged 8 July 2026 [7].

[75] *Form 29 – Respondent's Consolidated Outline of Submissions* lodged 8 July 2026 [7].

[76] *Form 29 – Respondent's Consolidated Outline of Submissions* lodged 8 July 2026 [8].

[77] *Form 29 – Respondent's Consolidated Outline of Submissions* lodged 8 July 2026 [8].

[78] *Form 29 – Respondent's Consolidated Outline of Submissions* lodged 8 July 2026 [9].

[79] *Form 29 – Claimant's Outline of Submissions* lodged 24 July 2025 [26]

[80] *Form 29 – Claimant's Outline of Submissions* lodged 24 July 2025 [26], exhibit C1, Court Book 288.

[81] *Form 29 – Claimant's Outline of Submissions* lodged 24 July 2025 [27], exhibit C1, Court Book 289.

[82] *Form 29 – Claimant's Outline of Submissions* lodged 24 July 2025 [30] – [32].

[83] *Form 29 – Claimant's Outline of Submissions* lodged 24 July 2025 [33].

[84] *Form 29 – Claimant's Outline of Submissions* lodged 24 July 2025 [34].

[85] *Form 29 – Claimant's Outline of Submissions* lodged 24 July 2025 [36].

ii. The single hourly rate includes compensation for all shift penalties, rostered overtime and allowances;

iii. Ordinary hours will be averaged to 38 hours per week over the roster cycle;

iv. Rosters will include 12-hour shifts worked as ordinary hours.

212 Each one of the site agreements specifies the type of roster that will be worked. The BHP site agreement for example states that Mr Lummas would be required to work a 14-day FIFO roster cycle of eight days on, six days off and seven nights on, seven nights off, working 12-hour shifts (**8&6 Days-7&7 Nights roster**).

213 In contrast, PPA 1 and PPA 2 both state that Mr Lummas would be required to work a 2&1 roster. While both of these site agreements state the roster will be comprised of 38 ordinary hours per week averaged over the roster cycle, only PPA 2 states that an average of 18 hours per week overtime, will be included in the roster.

**Difference Between the BHP Site Agreement and PPA 1 and PPA 2**

214 One of the ways in which the site agreements differ is in respect of the workplaces the site agreement says that it applies to. By way of example, the BHP site agreement, according to its terms, states it only applies to the role of full-time security officers working on 'BHP sites' for the respondent.

215 PPA 1 and PPA 2 on the other hand, both state that they only apply to full time positions working on PPA sites for the respondent.

216 I have also noted there is difference in the type of roster worked under the BHP site agreement and the 2&1 roster that Mr Lummas was required to work at the PPA sites. Under the BHP site agreement, Mr Lummas was required to work a FIFO **8&6 Days-7&7 Nights roster** comprised of eight 12-hour day shifts with six days off and seven 12-hour night shifts with seven nights off.

**Work at Pilbara Ports from 20 June 2019**

217 I have closely reviewed the evidence as set in the employment history on the hours Mr Lummas worked, where he did that work and the days and dates Mr Lummas worked for the respondent during the claim period. I have compared the employment history with the underpayments schedule.

218 Even if I was to accept the site agreements were IFAs, they could only apply in accordance with their terms. By this, I mean the site agreements could only apply on those dates, where Mr Lummas worked on a site, to which the terms of a site agreement applied.

219 Critically, I have noted that from 20 June 2019 until 23 March 2020 which is the timeframe within the claim period before he signed PPA 1, Mr Lummas only worked as a security officer on sites operated by the PPA[86].

220 It is well known the PPA is a different corporate entity to BHP, with operations separate from those that BHP has in Port Hedland. In other words, although the BHP site agreement may have applied for this period, Mr Lummas was not according to its terms, covered by this site agreement because he was not working on a BHP site.

221 I have also noted that from 30 June 2019, Mr Lummas was paid a flat rate of $33 per hour which continued until 6 October 2019. This is well below the flat hourly rate of $36.10 that was contained in the BHP site agreement[87].

222 It therefore cannot be said that even if it was found the BHP site agreement was a validly made IFA that ousted or varied the operation of the 2010 award, it had no application to Mr Lummas in the period 20 June 2019 until 23 March 2020. This is because the employment history shows he did not work at a BHP site and only worked as a security guard at PPA sites.

223 As a result, the only instrument that may be found to have applied for this part of the claim period is the 2010 award. My findings on how overtime should have been paid to Mr Lummas because he did not receive his entitlements to a long break on the 2&1 roster in this period, is a matter I will return to.

**Work at Pilbara Ports from 23 March 2020**

224 From my analysis of the employment history, I accept that from 23 March 2020 until 20 August 2021 the terms of PPA 1 applied to Mr Lummas's employment with the respondent.

225 It is also reasonable to find that PPA 2 applied from when Mr Lummas signed it on 20 August 2021 until he resigned from his employment on 24 July 2022.

226 I make this finding on the basis the employment history shows that Mr Lummas, for the duration of the claim period, continued to only work at PPA sites on those dates in the claim period after Mr Lummas had signed PPA 1 and PPA 2.

**Were the Site Agreements IFAs?**

227 In determining whether the site agreements were IFAs, it is necessary to consider if they were made in accordance with the requirements that apply under the FW Act and the award flexibility provisions in the 2010 and 2020 awards.

228 In relation to these requirements, I consider that they are deficient in several ways:

i. While the site agreements contain words like '*As per Part 1, Clause 7 of Security Services Industry Award*' they do not identify with sufficient clarity each one of the award terms to be varied and how the application of these clauses will be changed.

ii. The site agreements do not provide any real detail on how the award terms are to be varied other than stating Mr Lummas will receive a single hourly rate that will be paid for all hours worked, that includes compensation for

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[86] exhibit C1, 881 – 903.

[87] exhibit C1, 103.

all shift penalties, rostered overtime and allowance*s*.

iii. Other than declaring the employee will be financially 'better off overall' than if paid under the award, the site agreements do not explain how they result in an employee being better off for each hour worked.

iv. While the site agreements do describe the FIFO roster Mr Lummas would work, they do not expressly refer to, exclude or vary the long break provisions of the 2010 or 2020 awards.

229 I consider that the respondent's compliance with its obligation under the award flexibility provision to set out the award terms the purported IFA will vary can, at best, only be inferred. This in my view, is not sufficient, particularly where the obligation under the award flexibility provision is cast in clear mandatory terms and where the respondent is a large, well-resourced national security firm.

230 As IFAs have the effect of varying the minimum standards of employment that apply under an award it is incumbent upon employers to provide an employee with the level of detail an employer is required to provide under the award flexibility provision.

231 If the respondent had as Mr Price suggested in his second witness statement, designed its site agreements and rosters to ensure its employees received their 'long breaks during the off-swing period', the site agreements (as is required by the award flexibility provisions) would have made this clear.

232 While the respondent might have drafted the site agreements with this variation of the long breaks provision in mind, this is not clear from the text of the documents the respondent provided to Mr Lummas. As I have indicated, the language of the award flexibility provision, on the information an employer must provide to an employee in an IFA, is very clear.

233 Accordingly, for the reasons set out, I am not, because of the deficiencies in the respondent's drafting of the site agreements, prepared to find that they were validly made IFAs.

234 While contractually I am inclined to accept the site agreements may have altered or formed a part of Mr Lummas' contract of employment, I do not accept the respondent's argument that they were IFAs that varied or ousted the operation of the 2010 and 2020 awards.

**Effect of the Long Break Provisions on the Site Agreements**

235 The difficulty the respondent has created by not making it clear in the site agreements that it was the respondent's intention to vary the long break provisions, is that the effect of this clause could not have been amended in the way the respondent says it was.

236 I therefore find that notwithstanding the terms of the site agreements, the long break provisions in the 2010 and 2020 awards, would have continued to apply for the duration of the claim period.

237 Following the reasoning of Colvin J in ***Wilkinson*** that I earlier referred to, it is clear the requirement for the respondent to provide a long break could not have been complied with by the adoption of a 2&1 roster under PPA 1 and PPA 2.

238 It is also worth noting, the 8&6 Days-7&7 Nights roster that is in the BHP site agreement, on the reasoning of Colvin J in ***Wilkinson***, would not have complied with a requirement to provide a long break under the 2010 or 2020 awards either.

239 Having made these findings, I consider that the continued application of the long break provisions would have affected the respondent's assessment of whether Mr Lummas was better off financially under the site agreements, than if he was paid under the 2010 or 2020 awards.

240 By this, and even if it may be said there was sufficient detail in the site agreements that allowed the respondent to vary the effect of some terms of the 2010 or 2020 awards (for example in respect of flat hourly rates of pay, the payment of penalty rates and an agreement to work 12-hour shifts), their validity as IFAs was by no means assured.

241 This is because the methodology the respondent said it used to assess if Mr Lummas was better off financially, which was described in the second Hall statement, for the reasons I will set out, would not have properly compensated Mr Lummas for the payment of overtime, where he was prevented from taking a long break.

**The Decision in *United Voice***

242 On the question of whether Mr Lummas was, having regard to the requirement under the award flexibility provisions, better off financially than if he was paid under the 2010 or 2020 awards, I do have to address the decision of a Full Court of the Federal Court in ***United Voice v Wilson Security Pty Ltd*** [2019] FCAFC 66; (2019) 269 FCR 608 (***United Voice***).

243 The decision in ***United Voice*** is both relevant to the methodology to be applied in assessing whether the site agreements breached the award flexibility provisions and the third limb of the respondent's defence that, even without the IFAs, Mr Lummas was still paid more than what he was entitled to receive under the 2010 and 2020 awards.

244 ***United Voice*** dealt with an appeal of a first instance decision in which it was decided Wilson Security Pty Ltd (**Wilson Security**), under the provisions of the 2010 award, was allowed to allocate 'overtime hours' to shifts on a pre-determined roster, where other penalty rates had to be paid.

245 Wilson Security employed guards on four-week rosters, to work an average of 38 ordinary hours per week and 152 ordinary hours over a four-week cycle. Employees on the roster were required to work 14 shifts of 12-hours duration over a four-week cycle; a total of 168 hours. It was not in dispute that 16 of the 168 hours, which were in addition to the 152 rostered ordinary hours, were to be treated and paid as overtime[88].

246 Until 31 October 2016, Wilson Security rostered the 16 hours of overtime so that they were worked only after the 152 ordinary

[88] ***United Voice*** at [4].

hours were completed. Under the 2010 award, ordinary hours may be worked on any day of the week, provided penalty rates are paid on ordinary hours performed on Saturdays and Sundays.

247 From 31 October 2016, Wilson Security changed its rostering practices so that it rostered overtime to be worked on Sundays, with the effect that if overtime fell on a weekday within the roster cycle, penalty rates would not have to be paid if the number of ordinary hours within the 152 on the roster cycle had not been exhausted.

248 The Full Court noted that a loading on top of ordinary rates, between 50% and 150% was payable under the 2010 award for overtime, depending on:

i. when the overtime was worked;

ii. how many overtime hours were worked; and

iii. if there was any agreement extending ordinary hours on a given rostered shift[89].

249 The Full Court observed that it was a matter of chance as to whether the 16 hours of overtime fell at a time when no other penalty was payable. This is because penalty rates did not have to be paid at the same time as overtime rates applied[90].

250 Due to this change in rostering practice, Wilson Security was able to reduce the amount paid in penalty rates for work performed on Sundays and to reduce superannuation costs.

251 In opposition to this change, the appellant argued the 16 hours of overtime, in line with existing practice, could only be worked after the 152 ordinary hours had been performed.

252 For context, it is useful to extract the roster the Full Court was required to consider below:

| **Shift** | **Day** | **Start time** | **Finish time** | **Hours** | **Total** |
|---|---|---|---|---|---|
| 1 | Monday | 600 | 1800 | 12 | 12 |
| 2 | Tuesday | 600 | 1800 | 12 | 24 |
| | Wednesday | - | - | | |
| | Thursday | - | - | | |
| 3 | Friday | 1800 | 600 | 12 | 36 |
| 4 | Saturday | 1800 | 600 | 12 | 48 |
| *5* | *Sunday* | *1800* | *600* | *12* | *60* |
| | Monday | - | - | | |
| | Tuesday | - | - | | |
| 6 | Wednesday | 600 | 1800 | 12 | 72 |
| 7 | Thursday | 600 | 1800 | 12 | 84 |
| | Friday | - | - | | |
| | Saturday | - | - | | |
| | *Sunday* | - | - | | |
| 8 | Monday | 1800 | 600 | 12 | 96 |
| 9 | Tuesday | 1800 | 600 | 12 | 108 |
| | Wednesday | | | | |
| | Thursday | | | | |
| 10 | Friday | 1800 | 600 | 12 | 120 |
| 11 | Saturday | 1800 | 600 | 12 | 132 |
| *12* | *Sunday* | *1800* | *600* | *12* | *144* |
| | Monday | | | | |
| | Tuesday | | | | |
| 13 | Wednesday | 1800 | 600 | 12 | 156 |
| 14 | Thursday | 1800 | 600 | 12 | 168 |
| | Friday | | | | |
| | Saturday | | | | |
| | *Sunday* | | | | |

Note: Total ordinary hours in a four week roster = 152.

Total number of rostered overtime hours = 16.

[89] ***United Voice*** at [4].

[90] ***United Voice*** at [5].

Total number of rostered hours in a four week roster = 168.

253 At first instance, the primary judge held that because the rostering arrangements under the 2010 award were within the discretion of the employer and the 2010 award did not contain any express restrictions on the exercise of this discretion, Wilson Security was entitled to:

- choose the day on which a roster is to begin;
- decide whether the overtime hours are to be scheduled in the roster, at a point before all the ordinary hours have been worked; and
- fix the number of days of the week on which the ordinary hours are to be worked, subject to the limitations prescribed by cl 21.3 and cl 21.4 of the 2010 award (which are the long break provisions)[91].

254 The appeal to the Full Court in ***United Voice*** was essentially a re-run of the case before the primary judge[92]. It was noted the resolution of the appeal turned on the meaning to be given to the relevant terms of the award.

255 At [30] – [32] the Full Court held:

> 30 Properly considered, '*overtime*' means no more than it states and has been long understood on the authorities referred to above – over, or more, than ordinary hours, in relation to the period of time for which ordinary hours apply. The chronological limitation Mr Davis seeks to impose is the product of historic usage and application, rather than inherent meaning. Even that usage and application does not necessarily support the appellants' argument. It is an amount of time that is *over* the ordinary hours, not necessarily *after* the ordinary hours, even if it more commonly, or even invariably, takes place after those ordinary hours will be, or have been, worked.
>
> 31 If the ordinary hours under consideration are those of a single day, then overtime may be such extra hours to be worked before those ordinary hours, or after those ordinary hours, being the number of hours that will be in excess of ordinary hours. The same approach may be taken on a weekly basis, or, as in this case, a four-weekly basis, but with the additional element that the overtime hours may take place not just before or after the ordinary hours for the week or four weeks have been, or will be, worked, but also during a period which ordinary hours are worked, or will be worked.
>
> 32 Once the broader meaning of overtime is appreciated, which is consistent with the prior curial understanding in *Re Steel Works Employees, Re Confectioners* and Mills, and not inconsistent with *Australian Communication Exchange*, all of which focus on the notion of overtime being additional working hours, that meaning does not influence the operation of the Award in the manner contended by the appellants. Nor do the findings of industrial tribunals or dictionary definitions assist, reflecting as they do common historic applications of the concept of overtime in one particular way, rather than reflecting any limitation to be given to its true meaning. Just because the extra or additional hours might often take place after ordinary hours have been, or will be, worked, that does not preclude them taking place before they have been, or will be, worked, or in between the time in which ordinary hours will be worked. In any of these scenarios, they are additional hours, and therefore constitute overtime for which a loading is payable, depending on when the additional hours are required to be performed.

**The Respondent's View of the Decision in *United Voice***

256 In its outline of submissions, the respondent relied upon the decision in ***United Voice*** to challenge the way in which the claimant had calculated the underpayment amount.

257 It was argued the claimant's approach to calculating the alleged underpayment assumed the first 48 hours Mr Lummas worked during his two week on swing are to be treated and paid as ordinary hours (which includes payment at the base rate plus penalty rates for Saturdays and Sundays) and that all the hours worked on his roster thereafter, are to be treated and paid as overtime. The respondent submitted this approach was inconsistent with the decision in ***United Voice***[93].

258 It was submitted that because of the decision in ***United Voice***, there were at least three alternative methods by which overtime could have been allocated and paid to Mr Lummas for a 2&1 roster (one of which the respondent says it used) to make an assessment as to whether he was, under the site agreements, better off overall than if he was paid by the 2010 and 2020 awards.

259 The respondent submitted the decision in ***United Voice*** requires each of these methods to be considered when assessing the allegations that Mr Lummas was not, in breach of the 2010 and 2020 awards, paid correctly for the overtime he worked because he was unable to take a long break[94].

260 Relying upon the decision of the High Court in ***Berry v CCL Secure Pty Ltd*** [2020] HCA 27; (2020) 271 CLR 151 (***Berry***) at [28]-[29] , the respondent argued that it was entitled to nominate how it could have lawfully met its obligations under the 2010 and 2020 awards, that 'minimises the level of loss caused by its breach'[95].

261 I understood this to mean, that even if it may be found Mr Lummas was entitled to be paid overtime for not receiving a long break, because of the decision in ***United Voice***, the Court is required to have regard to other rosters the respondent says it could have issued when determining if Mr Lummas was underpaid, even though the respondent never actually implemented these rosters.

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[91] ***United Voice*** at [15].

[92] ***United Voice*** at [16].

[93] *Form 29 - Respondent's Consolidated Outline of Submissions* lodged 8 July 2025 [41] – [43].

[94] *Form 29 - Respondent's Consolidated Outline of Submissions* lodged 8 July 2025 [38].

[95] *Form 29 - Respondent's Consolidated Outline of Submissions* lodged 8 July 2025 [38].

**The Respondent's Roster Allocations**

262 Relying upon the decision in ***United Voice*** the respondent, for the purpose of calculating if Mr Lummas was better off under the site agreements than if he was paid under the 2010 and 2020 awards, submitted that it could use any one of three different methods of allocating overtime hours that are described in the second Hall statement[96].

263 Under each one of the respondent's potential methods of allocating overtime hours on a 2&1 roster, the second and third shifts in order, fall on a Saturday and a Sunday. The respondent says these two shifts should both be treated and paid as overtime and should not count in the tally of ordinary hours to determine when a long break becomes due.

264 For comparison and by way of example, the respondent's stated method of allocating overtime on the first Saturday and Sunday shifts, as set out in SH-2 is as follows:

| **Guard Name** |
|---|
| **CRAIG LUMMAS** |

| **DAY** | **Shift** | **ORD** | **OT 1.5** | **OT 2.0** | **OT 2.5** | **21.7 % (N/S)** | **SAT 50 %** | **SUN 100 %** | **PH 150 %** |
|---|---|---|---|---|---|---|---|---|---|
| 1. FRIDAY | 0600-1800 | 12 | | | | | | | |
| 2. SATURDAY | 0600-1800 | | 2 | 10 | | | | | |
| 3. SUNDAY | 0600-1800 | | | 12 | | | | | |
| 4. MONDAY | 0600-1800 | 12 | | | | | | | |
| 5. TUESDAY | 0600-1800 | 12 | | | | | | | |
| 6. WEDNESDAY | 0600-1800 | 12 | | | | | | | |
| 7. THURSDAY | 0600-1800 | 12 | | | | | | | |
| 8. FRIDAY | 1800-0600 | 7.6 | 2 | 2.4 | | 6 | 1.6 | | |
| 9. SATURDAY | 1800-0600 | | 2 | 10 | | | | | |
| 10. SUNDAY | 1800-0600 | 7.6 | | 4.4 | | 1.6 | | 6 | |
| 11. MONDAY | 1800-0600 | 8.8 | 2 | 1.2 | | 8.8 | | | |
| 12. TUESDAY | 1800-0600 | 10 | 2 | | | 10 | | | |
| 13.WEDNESDAY | 1800-0600 | 10 | 2 | | | 10 | | | |
| 14. THURSDAY | 1800-0600 | 10 | 2 | | | 10 | | | |
| 15. FRIDAY | | | | | | | | | |
| 16. SATURDAY | | | | | | | | | |
| 17. SUNDAY | | | | | | | | | |
| 18. MONDAY | | | | | | | | | |
| 19. TUESDAY | | | | | | | | | |
| 20. WEDNESDAY | | | | | | | | | |
| 21. THURSDAY | | | | | | | | | |
| | | **114** | **14** | **40** | **0** | **46.4** | **1.6** | **6** | **0** |

**The Claimant's Submissions on the Decision in *United Voice***

265 The claimant submitted the evidence does not suggest the respondent published any roster which 'allocated' overtime to weekends or that anyone ever told Mr Lummas that his weekend shifts were being treated and paid as overtime[97].

266 It was submitted the respondent's overtime allocation appears to have been an entirely internal process, whereby the respondent resolved internally that Mr Lummas' weekend shifts, were overtime shifts, regardless of where they fell in the roster that was published[98].

267 The claimant contended the respondent's argument finds no support in ***United Voice*** which involved a case in which the

[96] *Form 29 - Respondent's Consolidated Outline of Submissions* lodged 8 July 2025 [46] – [52].

[97] *Form 29 – Claimant's Outline of Submissions* lodged 24 July 2025 [42].

[98] *Form 29 – Claimant's Outline of Submissions* lodged 24 July 2025 [42].

employer had in fact rostered overtime on Saturday and Sunday shifts. It was submitted the allocation in ***United Voice*** was not a notional or internal process, but conventional rostering[99].

268 The claimant submitted the decision in ***United Voice*** does not stand for the proposition that an employer is entitled to assume it would have structured its roster in a way that was the most beneficial to it, thereby reducing any compensation owing under an award[100].

269 It was further submitted the respondent's case regarding allocation of overtime should be rejected as a matter of fact. In support of this, the claimant submitted it should be sufficient to point out the site agreements indicated that overtime will be an average of 18 hours per week. The claimant submitted that this should be decisive against any argument that overtime was allocated to weekends[101].

270 The claimant submitted the Court should find the true position is that which appeared at [25] of the *Form 29 – Respondent Outline of Submissions* lodged 16 December 2024:

> '…after 38 hours of ordinary hours, the time was then allocated as overtime'[102].

271 It was submitted this earlier submission from the respondent accurately reflects the understanding Mr Lummas and the respondent (and any reasonable employee and employer in their positions) would have held in the circumstances of this case[103].

***United Voice*** **is Distinguishable**

272 From the outset, it is worth noting the circumstances at issue in the present case are very different from those that were considered by the Full Court in ***United Voice***. It is my view the decision in ***United Voice*** turns on its own facts and was concerned with allocation of overtime hours to a particular type of roster.

273 The roster that was being utilised by Wilson Security in ***United Voice*** is different from the roster that was used in the present case because it programmed long breaks during, rather than at the end of the roster cycle, with employees rostered to have 48 uninterrupted hours off, before they had completed 48 ordinary hours of work.

274 In contrast to the present case, Wilson Security's compliance with the long break provisions in ***United Voice*** was never in issue. Similarly, the question of whether the entitlement to a long break only arises following the completion of 48 'ordinary hours' on a roster, was not raised either.

275 Further, the decision in ***United Voice*** dealt with the change to the allocation of overtime hours to days worked on an actual pre-prepared roster, rather than one that was either theoretical or that employees had not seen before.

276 It is also of relevance, and I note from Mr Lummas' evidence, that the respondent did not share the methodology it used to determine that he was better off under the site agreements than if he was paid under the 2010 or 2020 award at the time he signed them.

277 I have noted from the third Lummas statement, that unlike the case in ***United Voice*** the respondent did not, at any stage prior to these proceedings, tell him that his ordinary hours would only be worked on weekdays and that overtime would only be allocated to Saturdays and Sundays, thereby reducing its exposure to the requirement to pay penalty rates on shifts that are not worked on weekends.

278 There is also no evidence the methodology the respondent says it used to determine if Mr Lummas was better off overall under the site agreements than if he was paid under the 2010 or 2020 award, was ever shared with him.

**Interpreting the Site Agreements**

279 Also different from the case in ***United Voice*** is the effect I consider the site agreements had on the manner and method of allocating overtime on the roster.

280 In making further findings on this point, it is worth touching on the principles to be applied when interpreting the site agreements, which I earlier noted may be regarded as forming a part of the contract of employment that Mr Lummas had with the respondent.

281 The meaning of the terms of a contract, is to be determined by what a reasonable person would have understood them to mean. That normally requires not only consideration of the text of the contract, but also the surrounding circumstances known to the parties and the purpose and object of the transaction[104].

282 When applying these principles, it is worth observing the site agreements do not say much about rostering. The site agreements do not provide any details on how overtime hours will be allocated on the roster. PPA 1 and PPA 2 both state that Mr Lummas would be employed on a 2&1 roster that will include 12-hour shifts, worked as ordinary hours.

283 While PPA 2 does confirm 18 overtime hours per week, on average, will be included in the roster, both PPA 1 and PPA 2 are silent on how those hours would be allocated to the various days on the roster.

284 Applying the principles I have referred to, it cannot be said the site agreements in any way suggest that ordinary hours and

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[99] *Form 29 – Claimant's Outline of Submissions* lodged 24 July 2025 [43].

[100] *Form 29 – Claimant's Outline of Submissions* lodged 24 July 2025 [44].

[101] *Form 29 – Claimant's Outline of Submissions* lodged 24 July 2025 [45].

[102] *Form 29 – Claimant's Outline of Submissions* lodged 24 July 2025 [46].

[103] *Form 29 – Claimant's Outline of Submissions* lodged 24 July 2025 [46].

[104] ***Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd*** [2004] HCA 52; (2004) 219 CLR 165.

overtime hours would be allocated on the 2&1 roster in the way they were in ***United Voice*** or in the way described in the second Hall statement.

285 Rather I consider that a reasonable person would have understood the payment of a flat, all-in hourly rate indicates the parties to the site agreements had intended that ordinary hours could be worked on any day within the 14-day cycle, including sequentially and on Saturdays and Sundays.

286 Lending weight to this view is that it is frankly not possible, with the payment of a flat hourly rate, to determine which hours on the 2&1 roster were ordinary hours and which ones should be treated as overtime, in the way the two were separated on the roster in ***United Voice***.

287 I consider that a reasonable person would have understood the terms of the site agreements to mean that an employee's ordinary hours on the 2&1 roster would be rostered chronologically.

288 Also relevant by way of context, is that the respondent believed it did not have to roster a long break following the completion of the first 48 hours worked. This was because the respondent believed the site agreements had varied the long break provisions, a point confirmed in the second Price statement.

289 The only method by which it may be reasonably said both parties had agreed to roster working hours on the 2&1 roster, is the method as set out in the site agreements which, relied upon a belief, as evidenced in the second Price statement, that the long break provisions did not apply[105].

290 Applying this methodology, the long break would have become due after the fourth 12-hour shift on the 2&1 roster. The hours performed on the first Saturday and Sunday on the roster because of the terms of the site agreements, should be regarded as ordinary hours that counted towards the first long break on the roster.

291 In the circumstances therefore, I do not regard the chronological approach the claimants have taken to calculating the alleged underpayment as artificial. Rather, I consider it a logical consequence of the way in which working hours were rostered under the site agreements.

**Conclusion on Whether Mr Lummas was 'Better Off Overall'**

292 In assessing if Mr Lummas was better off overall than if he was paid under the 2010 and 2020 awards, it is relevant to consider what he would have received if Mr Lummas's ordinary hours were rostered sequentially, from the first day of the roster cycle.

293 While the Full Court's decision in ***United Voice*** confirmed an employer could roster overtime hours on days before the number of ordinary hours in a roster cycle had been worked, it did not preclude parties from reaching an agreement to roster overtime hours, following the completion of all the ordinary hours in the roster cycle.

294 I raise this because I consider the method the respondent should have used for its 'Better Off Overall' assessment is what I have found is a consequence of the site agreements; that an employee's ordinary hours on the 2&1 roster would be rostered and exhausted chronologically, before overtime was paid.

295 On this analysis the only method by which it may be reasonably said both parties had agreed, is what is set out in the site agreements, and which relied upon the respondent's view the long break provisions did not apply. As Mr Lummas was paid a flat hourly rate for all hours worked, it did not matter when his ordinary hours were rostered.

296 Applying this methodology, the long break would have become due after the fourth 12-hour shift on the 2&1 roster. The hours performed on the first Saturday and Sunday because of the terms of the site agreements, should have been regarded as ordinary hours that counted towards the first long break on the roster.

297 Each one of the methods described in the second Hall statement assume that any work performed on Saturday and Sundays could be scheduled and paid as overtime rather than rostered as ordinary hours to which penalty rates would have applied.

298 They also assume that if work performed on Saturdays and Sundays is treated as 'rostered overtime' it will not count towards the first 48 ordinary hours of work on the roster even though the award contemplates ordinary hours may be worked on Saturdays and Sundays, albeit subject to the payment of penalty rates.

299 The difficulty I have with the alternative methods of allocating overtime hours that Ms Hall described in the second Hall statement is that there is simply no room within a 2&1 roster cycle to roster long breaks in the way they were scheduled in ***United Voice***.

300 Each of the shifts in a 2&1 roster must sequentially follow the other. Rostering overtime on Saturdays and Sundays on a 2&1 roster in the way the respondent says it can, would make the limit on the extent to which an employer can require an employee to work consecutive shifts, that Colvin J identified in ***Wilkinson*** and which the long break provision was intended to impose, ineffectual.

301 It is my view that under the long break provisions of the 2010 and 2020 awards, Mr Lummas should have received a long break upon the completion of his first four 12-hour day shifts on the 2&1 roster that applied under PPA 1 and PPA 2.

302 It is in my view, the combined effect of the site agreements and the correct application of the long break provisions is that overtime was payable following the completion of the first 48 hours on the 2&1 roster.

303 It is on this basis that I do not accept the respondent, notwithstanding the site agreements it made, should now be permitted to say that it's compliance with an industrial award, should be determined by reference to some other method of rostering ordinary hours and overtime that it did not apply in practice, nor disclose to Mr Lummas.

304 For this reason, I consider the decision in ***Berry*** has no application to the circumstances at issue in the present case. This is

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[105] second Price statement [6] – [8].

because I do not consider there is an alternative way in which overtime could be rostered on a 2&1 roster in the ways Ms Hall described.

305 The significance of these findings is that I consider the claimant's underpayments schedule more accurately reflects what Mr Lummas should have been paid on a 2&1 roster, where he was not given a long break as required, rather than the methods the respondent has urged me to prefer.

306 The underpayments schedule shows that when compared with what he was paid for each fortnight during the claim period, with what he should have received under the 2010 and 2020 awards, Mr Lummas was underpaid in each fortnightly pay period.

307 Accordingly, for all of the reasons outlined, and having regard to the underpayments schedule, I am not satisfied that Mr Lummas was better off overall under the site agreements than if he was paid under the 2010 and 2020 awards.

**Effect of the 'Better Off Overall Finding' on the Site Agreements**

308 There are two consequences for the respondent with my finding that Mr Lummas would not have been better off overall under the site agreements than if he had been paid under the 2010 and 2020 awards.

309 Firstly, my finding on this third limb of the respondent's defence, provides a further reason why I do not consider the site agreements were validly made IFAs.

310 The necessity for Mr Lummas to be better off overall under the site agreement than if he was paid under the 2010 and 2020 awards, is a requirement under s 144(4)(c) of the FW Act.

311 Having reached the conclusion, that this requirement of the award flexibility provision was not met, I am not however satisfied that s 145 of the FW Act has the curative effect on the site agreements the respondent says it does.

312 While I accept PPA 1 and PPA 2 and the 2&1 roster referred to in these site agreements would have continued to apply, I do not consider that s 145 of the FW Act permitted the respondent to pay Mr Lummas less than what was entitled to be paid under the 2010 and 2020 awards.

313 The effect of s 145(3) was explained by the Full Bench of the Fair Work Commission in its ***Four Yearly Review of Modern Awards*** [2015] FWCFB 4466; (2015) 252 IR 256 at [122] as follows:

> Section 145 deals with the situation where an IFA does not meet a requirement of s.144. In such circumstances the arrangement still has effect as if it were an IFA. However, where an employer is required to ensure that a requirement for a flexibility term in s.144(4) is met (such as ensuring that the employee is better off overall), failure to do so is a contravention of the flexibility term of the award (s.145(3)).

314 It is also worthwhile observing that s 145 of the FW Act must be construed so that it is consistent with the language and purpose of all the provisions of the statute as a whole; ***Project Blue Sky Inc v Australian Broadcasting Authority*** [1998] HCA 28; (1998) 194 CLR 355 at [69].

315 Also relevant is s 15AA of the *Acts Interpretation Act 1901* (Cth) (Interpretation best achieving Act's purpose or object**)** which provides:

> In interpreting a provision of an Act, the interpretation that would best achieve the purpose or object of the Act (whether or not that purpose or object is expressly stated in the Act) is to be preferred to each other interpretation.

316 I have noted s 3 of the FW Act (Object of this Act) relevantly states:

> The object of this Act is to provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians by:
>
> …
>
> (b) ensuring a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions through the National Employment Standards, modern awards and national minimum wage orders; and
>
> (c) ensuring that the guaranteed safety net of fair, relevant and enforceable minimum wages and conditions can no longer be undermined by the making of statutory individual employment agreements of any kind given that such agreements can never be part of a fair workplace relations system; …

317 In view of those parts of s 3 of the FW Act that I have referred to, I am more inclined to prefer the interpretation of s 145 that was described in the claimant's submissions.

318 The construction of s 145 being pressed by the respondent would seemingly permit or validate the making of individual arrangements that fall below the terms of an award, thereby undermining the minimum safety net as described in s 3 of the FW Act. I consider that such an outcome would be contrary to the objects in s 3 that I have extracted.

319 For this reason, I am more inclined to accept that if a purported IFA does not comply with a requirement under s 144(4) (one of which is that Mr Lummas could not be worse off than if he was paid under the 2010 and 2020 awards), s 145(3) provides the respondent will have contravened the award flexibility provision.

320 While it is not specifically alleged the respondent contravened s 145(3) of the FW Act, it cannot be said with the finding that Mr Lummas was not better off overall, that any loss arising from the alterations to his entitlements under the 2010 or 2020 awards, that were made by the site agreements, is not actionable.

321 Having made a finding the respondent did not comply with the requirements of the award flexibility provision, I do not consider there is any barrier to the relief that is sought for the loss resulting from the alleged contraventions of the long break and overtime clauses of the 2010 and 2020 awards.

322 In my view the loss resulting from both types of contraventions even though a contravention of the award flexibility provision is not being pressed in this case, is the same as the loss resulting from the award breaches.

**Set Off Defence**

323 The second consequence of my finding that Mr Lummas would not have been better off overall under the site agreements than if he had been paid under the award is that there is no need to consider the respondent's 'set off' defence.

324 The claimant's underpayments schedule shows that Mr Lummas was underpaid in each fortnightly pay cycle during the claim period. There are therefore no 'overpayments' in any of the relevant fortnightly pay periods that may be 'set off' against any claimed underpayments during the claim period.

**Conclusion**

325 For all the reasons set out in the preceding paragraphs, I am satisfied the claimant has established on the balance of probabilities, that the respondent has engaged in the award breaches as alleged and thereby contravened s 45 of the FW Act. I therefore find that the amended claim has been proved.

326 I am also persuaded that an order should be made under s 545(3) of the FW Act requiring the respondent pay Mr Lummas the sum of $50,725.32, being the amount by which he was underpaid because of the award breaches.

327 Having made this decision, I intend to hear from the parties on any further relief that should be granted and what if any other orders should follow, including on the number of contraventions and the issue of penalty.

**T. KUCERA**

**INDUSTRIAL MAGISTRATE**

# STAY OF OPERATION OF DECISIONS/ORDERS—Application for

**2026 WAIRC 00386**

**A STAY OF OPERATION OF THE ORDER IN MATTER NUMBER U 69 OF 2023 WHICH IS THE SUBJECT OF FBA 13 OF 2026**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | MARY WHITELAW MURPHY AS TRUSTEE FOR THE WILSON TRUST |
| | **APPLICANT** |
| | **-v-** |
| | LAURA-KAY SHIELDS |
| | **RESPONDENT** |
| **CORAM** | SENIOR COMMISSIONER R COSENTINO |
| **DATE** | FRIDAY, 12 JUNE 2026 |
| **FILE NO/S** | PRES 16 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00386 |

| | |
|---|---|
| **Result** | Application dismissed |
| **Representation** | |
| **Applicant** | Ms S Law and Mr G Dirk on behalf of the applicant |
| **Respondent** | Ms L Shields on her own behalf |

*Order*

HAVING heard from Ms S Law and Mr G Dirk on behalf of the applicant, and the respondent on her own behalf, the Commission, pursuant to the powers conferred under the *Industrial Relations **Act** 1979* (WA), hereby orders –

1. THAT the application be and is hereby dismissed; and
2. THAT pursuant to s 35(4) of the *Act,* the requirements of s 35(1) for the publication of reasons for decision be dispensed with.

(Sgd.) R COSENTINO,
Senior Commissioner.

[L.S.]

**2026 WAIRC 00461**

**A STAY OF OPERATION OF THE ORDER IN MATTER NUMBER P 18 OF 2025 WHICH IS THE SUBJECT OF FBA 15 OF 2026**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | | |
|---|---|---|
| **CITATION** | **:** | 2026 WAIRC 00461 |
| **CORAM** | **:** | CHIEF COMMISSIONER S J KENNER |
| **HEARD** | **:** | FRIDAY, 26 JUNE 2026 |
| **DELIVERED** | **:** | FRIDAY, 3 JULY 2026 |
| **FILE NO.** | **:** | PRES 18 OF 2026 |
| **BETWEEN** | **:** | QUAI-DE AZAM EDOO |
| | | Applicant |
| | | AND |
| | | SOUTH METROPOLITAN HEALTH SERVICE |
| | | Respondent |

| | | |
|---|---|---|
| Catchwords | **:** | Industrial Law (WA) – Appeal to the Full Bench – Application to stay operation of order – Relevant principles applied – Application dismissed |
| Legislation | **:** | *Public Sector Management Act 1994* (WA) s 76, s 78 |
| | | *Industrial Relations Act 1979* (WA) s 23, s 36A(2)(c), s 27(1)(a), s 29, s 29(1)(a)(ii), s 29(1)(i), s 49(11) |
| | | *Health Services Act 2016* (WA) s 171 |
| Result | **:** | Application dismissed |
| **Representation:** | | |
| Applicant | **:** | In person |
| Respondent | **:** | Mr M Aulfrey of counsel |

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

Palaloi v Director General, Department of Education [2025] WASCA 130

Springdale Comfort Pty Ltd trading as Dalfield Homes v Building Trades Association of Unions of Western Australia (1987) 67 WAIG 325

Western Australian Family Violence Prevention Legal Service Aboriginal Corporation (ICN 7333) v Natalia Suzanne Eggett [2026] WAIRC 00328; 106 WAIG 1012

*Reasons for Decision*

**Background**

1 The applicant, Mr Edoo, is employed by the respondent, the South Metropolitan Health Service. He is employed in the position of Program Manager. In or about May 2025, the applicant was directed by the respondent to not attend for work on the basis that an investigation had been commenced concerning a potential disciplinary matter in relation to his employment in the Mental Health Services of Fiona Stanley Fremantle Hospitals Group. The direction to the applicant to not attend work was on the basis that he would be paid his full entitlements in accordance with his contract of employment.

2 In or about June 2025, the applicant commenced proceedings before the Commission, purportedly under s 78 of the *Public Sector Management Act 1994* (WA). Such a matter may be referred to the Commission as an industrial matter under s 29(1)(i) of the *Industrial Relations Act 1979* (WA). By s 36A(2)(c) of the *Act*, the Commission is given jurisdiction to inquire into and deal with such a matter, under s 23 of the *Act*.

3 The respondent disputed the applicant's claim and contended that the Commission at first instance had no jurisdiction to inquire into and determine the matter, on the basis that the respondent is not an employer for the purposes of the *PSM Act*, rather, the employer is one subject to the *Health Services Act 2016* (WA). Furthermore, and in any event, the respondent contended that even if the application was made under the *HS Act*, specifically s 171 of that legislation, the Commission still had no jurisdiction to inquire into and deal with the applicant's claim. This was on the basis that s 171 of the *HS Act* does not apply in circumstances where an employee is suspended on full pay.

**An appeal is filed**

4 The applicant has appealed against the decision of the Commission at first instance to dismiss his application. The grounds of appeal are in the following terms:

- This is an appeal from the order delivered on 23 April 2026 in P 18 of 2025 (2026 WAIRC 00231) dismissing the Applicant's application under the **Industrial Relations Act 1979 (WA)**.
- The appeal concerns **legality only**. The Applicant does not seek merits review of the allegations or

investigation.

- The central issue is whether the Commissioner **lawfully exercised the discretionary power to dismiss**. The Applicant's case is that the dismissal resulted from a **failure to perform the discretionary task** required by s **27(1)(a).**

**Ground 1 — Failure to consider the Applicant's discretionary submissions (paras 24–25)**

- The Applicant filed written submissions dated 19 March 2026. At paragraphs 24–25, the Applicant addressed the nature and exercise of the s 27(1)(a) discretion, including that the discretion is broad, "swings both ways", and should not default to dismissal, but should be applied case-by-case.
- Those submissions went directly to the statutory task of whether dismissal should be ordered.
- A discretionary decision is affected by appealable error where the decision-maker fails to take into account a **material consideration** or otherwise fails properly to exercise the discretion (*House v The King*).

**Ground 2 — Paragraph 97: identified statutory pathway not considered in the discretionary outcome**

- At paragraph 97, of the Commissioner's order of the 23 April 2026, the Commissioner stated in substance that the suspension/investigation may give rise to an "industrial matter" that could be referred to the Commission, but only by way of a **fresh application by an organisation** under **s 29(1)(a)(ii)**.
- That observation identifies a relevant alternative pathway by which the matter could potentially proceed.

**Ground 3 — Form 1A interlocutory application not considered/determined before dismissal**

- On 19 December 2025, the Applicant filed a Form 1A Multipurpose Form seeking procedural and interlocutory relief including discovery/production/inspection of documents, examination of a witness, and an urgent interlocutory injunction under **s 96.**
- The decision does not address or determine that interlocutory application. The proceeding was dismissed without dealing with those procedural requests.

5 It is of some note that none of the grounds of appeal advanced by the applicant seek to challenge the findings and conclusions of the Commission at first instance, that no jurisdiction existed to entertain the applicant's claim.

**The applicant seeks a stay**

6 The applicant has, under s 49(11) of the *Act*, made an application that the order of dismissal made at first instance, be stayed, pending the hearing and determination of the appeal. The grounds of the application for a stay are as follows:

**GROUNDS**

**1. Serious question to be tried**

The appeal raises whether the Commission failed to exercise the discretion under s 27(1)(a) according to law.

**2. Prejudice**

Without a stay:

- the claim remains dismissed
- the Applicant cannot proceed
- the appeal may be rendered ineffective

**3. Balance of convenience**

- Applicant suffers prejudice
- Respondent suffers none
- Status quo preserved

**4. Interests of justice**

- Dismissal occurred at threshold
- Legality is in issue
- Stay ensures appeal is effective

7 Further, the applicant provided written submissions in response to those filed by the respondent, at the outset of the hearing of the stay application. Those submissions were as follows.

8 As to the merits of the appeal, the applicant contended that the appeal raises distinct issues of whether, having identified the jurisdictional issue, the learned Commissioner failed to exercise his discretion in accordance with the law. It was submitted that once the issue of jurisdiction had been identified, the Commission should have evaluated whether to exercise the power of dismissal of the application under s 27(1)(a) of the *Act*, as a matter of discretion. The applicant contended that an order of dismissal should not be automatic in cases of a jurisdictional challenge.

9 As to the last point in [8] above, the applicant contended that the respondent had misconstrued cases such as ***Palaloi v Director General, Department of Education*** [2025] WASCA 130 and that there should be no automatic dismissal of a matter where no

jurisdiction exists.

10 As I understood it, the applicant also contended that the respondent has not completely characterised the applicant's claim at first instance, to the effect that he be suspended on full pay. The applicant submitted that other broader issues are also relevant such as the impact of the suspension on the applicant arising from the 23 May 2025 direction.

11 As to ground 3, the applicant contended that the existence of the interlocutory application for production of documents and other matters was a relevant consideration in the exercise of the learned Commissioner's discretion, prior to the dismissal of the application. How this was relevant, was not explained.

12 As to the balance of convenience, the applicant contended that the respondent's position that the applicant remains on full pay and therefore suffers no prejudice, is incorrect. The applicant said that the refusal of a stay means that the applicant would be subject to ongoing suspension without any capacity to challenge it. The applicant also submitted that a refusal of the stay risks the appeal being ineffective, although again, the applicant did not explain how this may be so.

13 The respondent opposed the application for a stay and submitted that it had no merit. In short, the respondent contended that there was no serious issue to be determined arising on the grounds of appeal and that the balance of convenience did not support the grant of a stay. Furthermore, the respondent submitted that the applicant's appeal to the Full Bench in appeal FBA 15 of 2026 did not have any reasonable prospect of success. Nor, according to the respondent, has the applicant demonstrated special circumstances that are required to warrant the making of an order staying the order at first instance.

14 As to the lack of a serious question to be determined, the respondent submitted that the grounds of appeal do not assert any error of fact or law in the decision of the Commission, that the Commission lacked jurisdiction to inquire into and deal with the matter referred to the Commission by the applicant. The assertions of the applicant, according to the respondent, that the discretion of the Commission under s 27(1)(a) miscarried, was misconceived. The respondent contended that nothing has been raised by the applicant in his grounds of appeal to the Full Bench, seeking to challenge the learned Commissioner's conclusions at first instance that:

(a) The applicant had no standing to refer an industrial matter to the Commission under s 29 of the *Act* in connection with his suspension on full pay; and

(b) The applicant had no standing to refer an industrial matter to the Commission under s 78 of the *PSM Act* as the applicant was not an 'employee' for the purposes of s 76 of the *PSM Act*.

15 The respondent contended that the appeal grounds, and the submissions made at first instance in relation to s 27(1)(a) of the *Act*, misconceived the nature of that power and ground 1 of the appeal is lacking in substance. As to ground 2 of the appeal, the respondent contended that there is no basis for the Commission to not have made the order dismissing the application, simply because an organisation representing the applicant, may refer an industrial matter of the present kind under s 29(1)(a)(ii) of the *Act*.

16 As to ground 3, relating to an allegation that the Commission should have dealt with the applicant's interlocutory application concerning discovery and production of documents and other matters, the respondent submitted this did not advance the applicant's case any further. It is necessary for the Commission to have jurisdiction in any event, before any such application could be entertained.

17 As to the question of balance of convenience, it was submitted by the respondent that it is entitled to maintain the fruits of its litigation in this case. There are no special circumstances that have been advanced by the applicant to warrant the granting of a stay. This was especially so as the grounds of appeal have no merit. As to whether the appeal may be deprived of any practical effect, the respondent contended that the applicant has not explained what he means by this statement in his application for a stay. In the circumstances of this case, the respondent admitted that the only outcome of a refusal of a stay, is the continuation of the status quo, which being that the applicant continues to be suspended on full pay, as he has been since May 2025.

**Relevant principles**

18 As to the approach to the determination of stay applications, I provided both parties with a copy of my recent decision in ***Western Australian Family Violence Prevention Legal Service Aboriginal Corporation (ICN 7333) v Natalia Suzanne Eggett*** [2026] WAIRC 00328; 106 WAIG 1012, where at [12] of that decision I said:

> [12] The relevant principles applicable to a stay are well established. In ***Xu Hong Bin v Yan Li*** [2021] WAIRC 00662; (2021) 102 WAIG 37 I said at [8] as follows:
>
> > [8] For the purposes of the disposition of the present application, I refer to my recent decision on a stay application in ***GHD Pty Limited v WorkSafe Western Australia Commissioner*** [2021] WAIRC 00190; (2021) 101 WAIG 569 where at [8] I said as follows:
> >
> > > The relevant principles applicable to stay applications are not in contest. Reference was made by both parties to ***John Holland Group Pty Ltd v The Construction, Forestry, Mining and Energy Union of Workers*** [2005] WAIRC 02983; (2005) 85 WAIG 3918, per Ritter AP at [31] – [38]. These principles were recently discussed and considered by the Court of Appeal in ***Hancock Prospecting Pty Ltd v Wright Prospecting Pty Ltd*** [2019] WASCA 141, where the Court, at [47] - [48] said:
> > >
> > > > An application for a suspension order under s 5 of the *Civil Judgments Enforcement Act 2004* (WA) or an interim order for a stay under r 44 of the *Supreme Court (Court of Appeal) Rules 2005* (WA) is generally considered in the framework of the principles enunciated in ***Eastland Technology Australia Pty Ltd v Whisson***. Those principles were conveniently re-stated by Pullin JA in ***Tradesman Technologies Pty***

***Ltd v Ameduri*** in the following terms:

(a) The successful litigant is ordinarily entitled to enforce a judgment pending the determination of any appeal.

(b) It is for the applicant for a stay to move the court to a favourable exercise of its discretion. Under s 15(3) this court may only make a suspension order if there are 'special circumstances' that justify doing so and in an application for a stay under the rules this is also a usual requirement.

(c) The central issue will be whether the grant of a stay is perceived to be necessary to preserve the subject matter or the integrity of the litigation or whether a refusal of a stay could create practical difficulties in respect of the relief which may be granted on appeal. This may shortly be described as requiring the court to consider whether the right of appeal will be rendered nugatory if a stay is not granted.

(d) If it can be demonstrated that the right of appeal will be rendered nugatory if a stay is not granted, the stay will generally still be refused unless it can be established that the appeal has ultimately reasonable prospects of success.

(e) Finally, the stay may still be refused where it appears that the balance of convenience does not lie in favour of the applicant where, for example, the grant of a stay will occasion hardship to the respondent which may not be alleviated by the terms upon which the stay may be granted.

Accordingly, consideration of whether there are 'special circumstances' justifying an interim stay normally involves assessment of three things:

(1) Is the stay necessary to preserve the subject matter or the integrity of the litigation?

(2) Does the appeal have reasonable prospects of success?

(3) Does the balance of convenience favour the grant of the stay?

**Consideration**

19 For the following reasons, which I can relatively briefly express, I am not persuaded that the applicant has established that a stay should be granted.

20 The starting point is that the respondent is entitled to the order that it obtained, unless there are special circumstances to warrant the grant of a stay. The onus is on the applicant to demonstrate that a stay should be granted. In this case the order at first instance was made as a result of the Commission finding that it had no jurisdiction to enquire into and deal with the applicant's claim.

21 Unless and until that order is overturned on appeal, the Commission remains without jurisdiction. A stay cannot achieve what can only be achieved by the quashing or suspension of such an order on appeal by the Full Bench. Jurisdiction is fundamental and it must be determined to exist before the Commission takes any steps to enquire into and deal with an industrial matter before it: ***Springdale Comfort Pty Ltd trading as Dalfield Homes v Building Trades Association of Unions of Western Australia*** (1987) 67 WAIG 325.

22 Furthermore, in my view, there is no basis to conclude that a stay is necessary to preserve the subject matter of the litigation or that the refusal of a stay would create difficulties in respect of any relief that may be granted on the appeal. The applicant remains suspended on full pay. Prima facie that situation will continue, whether a stay is granted or not. It is also important to observe that the applicant's application at first instance only dealt with the circumstances of his suspension on full pay. He alleged that he had not been furnished with particulars of the allegations of improper conduct made against him. A further matter raised by the applicant was the arrangements in relation to his suspension and whether, as an alternative, he could work from home. The investigation and potential disciplinary processes formed no part of the applicant's application at first instance.

23 Therefore, the applicant's assertions on the hearing of the stay application, that the absence of a stay is prejudicial to him, as he may be subject to disciplinary action, is without substance.

24 As to the grounds of appeal, for the purposes of a stay application, only a broad brush consideration of them is necessary at this stage. Whilst it can only be a very preliminary view, given that it will ultimately be for the Full Bench on the appeal, I do not consider the appeal grounds to be strong. It would appear that the applicant has conflated the issues of discretion the Commission may have in dealing with a matter, with its jurisdiction to do so.

25 As to the balance of convenience, given the issue on appeal is the fundamental one of jurisdiction, and given that the applicant remains suspended on full pay, and will remain so in the event that a stay is refused, and the applicant has not explained how the 'appeal may not have practical effect', the balance of convenience is not in the applicant's favour.

**Conclusion**

26 Having regard to the foregoing, I am not persuaded that a stay should be granted. The application is dismissed.

**2026 WAIRC 00476**

**A STAY OF OPERATION OF THE ORDER IN MATTER NUMBER P 18 OF 2025 WHICH IS THE SUBJECT OF FBA 15 OF 2026**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | QUAI-DE AZAM EDOO |
| | **APPLICANT** |
| | **-v-** |
| | SOUTH METROPOLITAN HEALTH SERVICE |
| | **RESPONDENT** |
| **CORAM** | CHIEF COMMISSIONER S J KENNER |
| **DATE** | MONDAY, 6 JULY 2026 |
| **FILE NO/S** | PRES 18 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00476 |

| | |
|---|---|
| **Result** | Application dismissed |
| **Appearances** | |
| **Applicant** | In person |
| **Respondent** | Mr M Aulfrey of counsel |

*Order*

HAVING heard Mr Q Edoo on his own behalf and Mr M Aulfrey of counsel on behalf of the respondent, the Chief Commissioner, pursuant to the powers conferred on him under the *Industrial Relations Act 1979* (WA), hereby orders –

THAT the application be and is hereby dismissed.

(Sgd.) S J KENNER,
[L.S.] Chief Commissioner.

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

**2026 WAIRC 00414**

**REVIEW OF DECISION OF THE CONSTRUCTION INDUSTRY LONG SERVICE LEAVE PAYMENTS BOARD GIVEN ON 10 DECEMBER 2025**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | AIDAN JOSEPH SHANNON |
| | **APPLICANT** |
| | **-v-** |
| | CONSTRUCTION INDUSTRY LONG SERVICE LEAVE PAYMENTS BOARD |
| | **RESPONDENT** |
| **CORAM** | COMMISSIONER T B WALKINGTON |
| **DATE** | TUESDAY, 23 JUNE 2026 |
| **FILE NO/S** | APPL 67 OF 2025 |
| **CITATION NO.** | 2026 WAIRC 00414 |

| | |
|---|---|
| **Result** | Discontinued by Leave |
| **Representation** | |
| **Applicant** | Mr A Shannon |
| **Respondent** | Ms R Harding (of counsel) |

*Order*

WHEREAS this application concerns a review of a decision of the Construction Industry Long Service Leave Payments Board

pursuant to s 50 of the *Construction Industry Portable Paid Long Service Leave Act 1985* (WA);

AND WHEREAS on 17 June 2026, the applicant filed a Form 1A – Multipurpose Form, seeking leave to discontinue the application in full;

AND WHEREAS on 22 June 2026, the respondent advised that there was no objection to the applicant's request to discontinue this application;

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

THAT this application is hereby discontinued by leave.

(Sgd.) T B WALKINGTON,
[L.S.] Commissioner.

# RIGHT OF ENTRY PERMITS—Matters dealt with—

**2026 WAIRC 00372**

**APPLICATION TO ISSUE MICHAEL BUCHAN WITH A RIGHT OF ENTRY PERMIT**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | | |
|---|---|---|
| **CITATION** | : | 2026 WAIRC 00372 |
| **CORAM** | : | SENIOR COMMISSIONER R COSENTINO |
| **HEARD** | : | WEDNESDAY, 26 NOVEMBER 2025 |
| **DELIVERED** | : | WEDNESDAY, 10 JUNE 2026 |
| **FILE NO.** | : | ROE 124 OF 2025 |
| **BETWEEN** | : | CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION OF WORKERS<br>Applicant<br>AND<br>(NOT APPLICABLE)<br>Respondent |

| | | |
|---|---|---|
| CatchWords | : | Industrial Law (WA) - Application for right of entry permit - application unopposed - fit and proper person criteria - Prior imposition of penalty - Prior suspension of state right of entry permit - Consideration of right of entry training - Whether applicant a fit and proper person to hold a right of entry permit - right of entry permit issued |
| Legislation | : | *Building and Construction Industry (Improving Productivity) Act 2016* (Cth)<br>*Fair Work Act 2009* (Cth)<br>*Industrial Relations Act 1979* (WA)<br>*Industrial Relations Commission Regulations 2005* (WA)<br>*Trade Practices Act 1974* (Cth)<br>*Workplace Relations Act 1996* (Cth) |
| Result | : | Right of entry permit issued |
| **Representation:** | | |
| Counsel: | | |
| Applicant | : | Mr D Rafferty (of counsel) |
| Solicitor: | | |
| Applicant | : | Eureka Lawyers |

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

*Australian Building & Construction Commissioner v Construction, Forestry, Mining & Energy Union* [2011] FCA 810

*Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union* [2017] FCAFC 53

*Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union* [2017] FCA 491

*Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union* [2020] FCA 1662

*Australian Competition and Consumer Commission v The Construction, Forestry, Mining and Energy Union* [2006] FCA 1730

*Construction, Forestry and Maritime Employees Union - Construction and General Division, Western Australia Divisional Branch* [2025] FWC 1965

*Director of the Fair Work Building Industry Inspectorate v Construction, Forestry, Mining and Energy Union* [2016] FCA 616

*Electrical Trades Union WA v (Not Applicable)* [2026] WAIRC 00221; (2026) 106 WAIG 790

*Lee v McDonald* [2004] WAIRC 12071; (2004) 84 WAIG 2587

*Maritime Union of Australia v Fair Work Commission* [2015] FCAFC 56

*Radisich v Buchan* [2008] AIRC 896

*Registrar, Western Australian Industrial Relations Commission v Margjini* [2026] WAIRC 00314

*The Construction, Forestry, Mining and Energy Union of Workers v (Not Applicable)* [2025] WAIRC 00727; (2025) 105 WAIG 2241

*The Construction, Forestry, Mining and Energy Union of Workers v (Not Applicable)* [2026] WAIRC 00229; (2026) 106 WAIG 798

*The Plumbers and Gasfitters Employees' Union Of Australia, West Australian Branch, Industrial Union of Workers (PGEU) v (Not applicable)* [2026] WAIRC 00237; (2026) 106 WAIG 805

*United Workers Union (WA) v (Not Applicable)* [2025] WAIRC 00842; (2025) 105 WAIG 2603

*Reasons for Decision*

1 Mr Michael (Mick) Buchan, Secretary of the Construction, Forestry, Mining and Energy Union of Workers (**CFMEUW**) has applied to the Western Australian Industrial Relations **Commission** for the issue of a right of entry permit (**ROE permit**).

2 In his application, Mr Buchan gave affirmative responses to each of the questions:

> 3.4 Has the nominated official ever been ordered to pay a penalty under an industrial law in relation to the actions of the official?
>
> 3.5 Has the nominated official ever had a permit revoked, suspended or made subject to conditions by the Commission or the Fair Work Commission?
>
> 3.6 Has the nominated official ever had a right of entry for industrial work health and safety purposes and had that permit revoked, suspended or conditions imposed on it under an industrial law or a work health and safety law?

3 The application provided details of six penalties totalling $62,000 imposed against Mr Buchan by the Federal Court of Australia between 21 July 2011 and October 2020. The penalties imposed were for contraventions of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth) (**BCII Act**) and the *Fair Work Act 2009* (Cth) (**FW Act**). It also detailed:

(a) A 2004 Commission decision suspending Mr Buchan's ROE permit for three months; and

(b) A 2008 Fair Work Commission decision suspending Mr Buchan's federal ROE permit for three months, with a further two-month suspended suspension and the imposition of conditions.

4 Under s 49O of the *Industrial Relations Act 1979* (WA) (**IR Act**), a ROE permit can be issued to a nominated official of an organisation if the Commission is satisfied that the official is a fit and proper person to hold the permit.

5 Section 49P sets out the criteria the Commission must consider in determining whether an employee or officer is a fit and proper person. The matters disclosed in the application are all relevant to the s 49P criteria.

6 On 25 September 2025 the Registrar published notice of the application, as contemplated by reg 77E(6) of the *Industrial Relations Commission Regulations 2005* (WA) (**Regulations**). The Registrar's notice stated that submissions may be made to the Commission detailing whether the nominated official, Mr Buchan, is a fit and proper person to be issued with a ROE permit.

7 No submissions were received. The application was unopposed.

8 Aside from the matters put before the Commission in the application itself in support of the application, Mr Buchan also relied upon:

(a) A brief statutory declaration by Mr Buchan dated 16 September 2025 confirming the contents of the application;

(b) An even briefer supplementary statutory declaration dated 11 November 2025 stating his full legal name;

(c) Written submissions dated 12 November 2025;

(d) a National Police Certificate dated 14 November 2025 confirming that there are no disclosable court outcomes or pending charges against Mr Buchan;

(e) A memorandum from the CFMEUW's **federal** counterpart **union** to Mr Brian Lacy dated 28 May 2025 instructing Mr Lacy to:

> (i) conduct right of entry permit training for Mr Buchan; and
>
> (ii) assess and report on whether he considers Mr Buchan is a fit and proper person to hold an entry permit under s 512 of the FW Act.

(f) A curriculum vitae for Brian James Lacy AO;

(g) A training PowerPoint headed 'Rights and Responsibilities of Union Officials in the Exercise of Right of Entry' by

Mr Lacy;

(h) A report by Mr Lacy dated 9 June 2025 titled 'Report on Training and Instruction on Right of Entry Provided for Michael Buchan, Secretary of the Construction & General Division, WA Divisional Branch of the Construction, Forestry and Maritime Employees Union and its State Union Counterpart, the Construction, Forestry, Mining and Energy Union of Workers';

(e) A copy of Deputy President Slevin's decision dated 10 July 2025 granting a federal ROE permit to Mr Buchan: ***Construction, Forestry and Maritime Employees Union - Construction and General Division, Western Australia Divisional Branch*** [2025] FWC 1965.

9 A hearing for the purpose of determining the application was held before the Commission, differently constituted, on 26 November 2025. No evidence was presented and no further submissions were made at the hearing.

10 Having considered the material before the Commission, I am satisfied that Mr Buchan is a fit and proper person to hold a ROE permit. I therefore propose to make orders for the issue of a ROE permit to Mr Buchan accordingly.

**Statutory Framework and Principles**

11 Sections 49N, 49O and 49P of the IR Act say:

49N. Application for right of entry permit

(1) The secretary of an organisation of employees may apply to the Commission for an officer or employee of the organisation to be issued a right of entry permit.

(2) The application must comply with any requirements prescribed by the regulations.

(3) The officer or employee named in the application is the nominated official.

49O. Commission may issue right of entry permit

(1) The Commission may, on an application under section 49N, issue a right of entry permit to the nominated official if satisfied that the official is a fit and proper person to hold the permit.

(2) The Commission may decide to issue a right of entry permit subject to conditions.

(3) The Commission cannot issue a right of entry permit to the nominated official if, when the Commission is deciding the application —

(a) a right of entry the official had under an industrial law or work health and safety law is suspended under that law; or

(b) the official is disqualified under an industrial law or work health and safety law from exercising, or applying for, a right of entry under that law.

49P. Deciding whether nominated representative is fit and proper person

(1) In deciding whether a nominated official is a fit and proper person to hold a right of entry permit, the Commission —

(a) must consider the fit and proper person criteria in relation to the official; and

(b) may consider any other matters the Commission considers relevant.

(2) The following matters are the fit and proper person criteria in relation to a nominated official —

(a) whether the official has received appropriate training about the rights and responsibilities of an authorised representative;

(b) whether the official has ever been convicted of an offence against an industrial law;

(c) whether the official has ever been convicted of an offence against a law of the Commonwealth, a State, a Territory or a foreign country involving —

(i) entry onto premises; or

(ii) fraud or dishonesty; or

(iii) the intentional use of violence against another person; or

(iv) the intentional damage or destruction of property;

(d) whether the official, or another person, has ever been ordered to pay a penalty under an industrial law in relation to the actions of the official;

(e) whether a right of entry permit issued to the official has been revoked, suspended or made subject to conditions;

(f) whether a right of entry for industrial or work health and safety purposes the official had under an industrial law or a work health and safety law has ever been revoked, suspended or had conditions imposed on it;

(g) whether the official has ever been disqualified under an industrial law or a work health and safety law from exercising, or applying for, a right of entry for industrial or work health and safety purposes under that law.

12 In ***Registrar, Western Australian Industrial Relations Commission v Margjini*** [2026] WAIRC 00314 [71]-[73] the

Commission in Court Session observed that the right of entry provisions in Division 2G of the IR Act must be interpreted bearing in mind the dual purposes of balancing the interests of organisations in representing their members, and the rights of employers and occupiers of premises to conduct their business without undue interference.

13 In ***The Construction, Forestry, Mining and Energy Union of Workers v (Not Applicable)*** [2025] WAIRC 00727; (2025) 105 WAIG 2241 Commissioner Emmanuel followed the principles that are well established in the application of the fit and proper person test for the purpose of the right of entry provisions of the FW Act:

> 23 As the CFMEUW submits, s 49P of the IR Act is almost identical to s 513(1) of the FW Act. Under s 49P(1)(b), the Commission *may* consider any other matters it considers relevant, whereas under s 513(1)(g) of the FW Act, the FWC must take into account 'any other matters that the FWC considers relevant'.
>
> 24 Vice President Hatcher (as he was then) set out the principles to be applied by the FWC when assessing whether a person is a fit and proper person for the purpose of s 512 and 513 of the FW Act in ***Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia*** [2015] FWC 1522 [32]:
>
> > The proper approach to the assessment of whether a person is a fit and proper person to hold an entry permit for the purpose of the s.512 of the Act has been set out in a number of decisions including *The Maritime Union of Australia*, *CEPU v Director of the Fair Work Building Industry Inspectorate, Director of the Fair Work Building Industry Inspectorate v CFMEU*, *Construction, Forestry, Mining and Energy Union*, *Director of the Fair Work Building Industry Inspectorate v Construction, Forestry, Mining and Energy Industrial Union of Employees, Queensland* and *Construction, Forestry, Mining and Energy Union v Director of the Fair Work Building Industry Inspectorate*. The relevant principles maybe summarised as follows:
> >
> > - A "fit and proper" standard, generally speaking, involves assessing the relevant personal characteristics of the individual concerned in relation to the activities for which satisfaction of the standard is required.
> > - The expression "fit and proper person" in s.512, read in its context, is to be applied by reference to the suitability of the relevant official to hold an entry permit.
> > - The permit qualifications matters are not matters to be considered at large without reference to the question that needs to be answered in s.512. They are not matters to be considered to determine whether a person is a "fit and proper person" per se, but rather whether an official of an applicant organisation is a fit and proper person to hold the entry permit that has been applied for by the organisation.
> > - The question of whether an official is a fit and proper person to hold an entry permit will therefore necessarily require a consideration of the rights the holder of an entry permit may exercise, the limitations on and conditions attaching to the exercise of those rights, and the responsibilities that must be discharged in the exercise of those rights.
> > - The requirement to take the permit qualification matters into account means that the consideration of them must be treated as a central element in the deliberative process and that each matter must be given proper, genuine and realistic consideration and appropriate weight.
> > - The permit qualification matters are all concerned with matters personal to the official for whom the issue of an entry permit is sought.
> > - While each of the permit qualification matters are to be evaluated and given due weight, there is no statutory indication that any particular permit qualification matter should be given more weight than any other. In such circumstances it will generally be a matter for the first instance decision maker to determine the appropriate weight to be given to each of the matters which are required to be taken into account in exercising the power in s.513(1).
> > - Relevance referred to in s.513(1)(g) is relevance to the question of whether the particular official concerned is a fit and proper person to hold an entry permit, so that for a matter to be considered relevant, the Commission must form the view that it relates to those personal characteristics of the official in question which are pertinent to the discharge of the functions and the exercise of the rights and privileges associated with the holding of an entry permit. (footnotes omitted)

14 These principles have subsequently been adopted by other members of the Commission in the application of the fit and proper person test under the IR Act: ***The Plumbers and Gasfitters Employees' Union Of Australia, West Australian Branch, Industrial Union of Workers (PGEU) v (Not applicable)*** [2026] WAIRC 00237; (2026) 106 WAIG 805; ***The Construction, Forestry, Mining and Energy Union of Workers v (Not Applicable)*** [2026] WAIRC 00229; (2026) 106 WAIG 798; ***Electrical Trades Union WA v (Not Applicable)*** [2026] WAIRC 00221; (2026) 106 WAIG 790; ***United Workers Union (WA) v (Not Applicable)*** [2025] WAIRC 00842; (2025) 105 WAIG 2603.

**The Application**

15 The CFMEUW is an organisation of employees registered under Division 4 Part 2 of the IR Act.

16 It is an organisation of employees within the meaning of s 49N(1). Mr Buchan is an officer of the CFMEUW for the purpose of Division 2G and s 7 of the IR Act.

17 Mr Buchan's application complied with the requirements set out in reg 77E (1)-(5) of the Regulations. It was in the approved

form and had annexed to it:

(a) A photograph of Mr Buchan bearing his signature and certification;

(b) A legible copy of Mr Buchan's signature; and

(c) A certificate of satisfactory completion of WA Right of Entry Permit Holder training issued by Unity Training Services.

**Right of Entry Training: s 49P(2)(a)**

18 Mr Buchan has received appropriate training about the rights and responsibilities of an authorised representative, evidenced by a Unity Training Services Certificate of Satisfactory Completion of the WA Right of Entry Permit Holder training dated 26 May 2025.

19 Additionally, in June 2025 Mr Buchan was trained by Mr Brian Lacy AO on Rights and Responsibilities of Union Officials in the Exercise of Right of Entry. Mr Lacy is a Barrister practicing at the Victorian Bar. He was a Senior Deputy President of the Australian Industrial Relations Commission from 2001 to 2009. The training content focused on the right of entry provisions of the FW Act. It commenced with content about the rule of law generally and went on to also cover adverse action, s 348 of the FW Act's prohibition on coercion in relation to industrial activities, the FW Act's prohibition on misleading representations in s 349, and the provisions of s 417 in relation to unlawful industrial action.

20 The training session was designed by Mr Lacy to 'instil in Buchan an understanding of the relevant considerations essentially prerequisite to the issue of an entry permit and include an understanding of his statutory rights, responsibilities and obligations as a permit holder.'

21 Mr Lacy reported that Mr Buchan engaged and participated positively in the training and demonstrated a good knowledge of Part 3-4 of the FW Act:

> He articulated successfully the substance of the concepts of protected industrial action, unlawful industrial action, coercion, adverse action, industrial activity and freedom of association. He accurately explained the reasons and purposes for which permit holder may enter premises and the paper work necessary for those purposes.

22 Mr Lacy formed the view that Mr Buchan had sufficient knowledge to be able to comply with the FW Act should he be issued with an entry permit.

23 While this training was not specific to the rights and responsibilities of authorised representatives under the IR Act, it gives confidence that Mr Buchan has the necessary knowledge and understanding of the importance of complying with legislation about rights of entry and an understanding of the legislation's dual purposes of balancing the interests of organisations in representing their members, and the rights of employers and occupiers of premises to conduct their business without undue interference.

**Offences against industrial laws: s 49P(2)(b)**

24 Mr Buchan has not been convicted of any offence under or against an industrial law.

**Offences against other laws: s 49P(2)(c)**

25 Mr Buchan has not been convicted of an offence against any law involving entry onto premises, fraud or dishonesty, the intentional use of violence against another person, or the intentional damage or destruction of property.

**Ordered to pay a penalty: s 49P(2)(d)**

26 Mr Buchan, the CFMEUW and the federal union, have been ordered to pay penalties in relation to Mr Buchan's involvement in various civil penalty provisions on six occasions.

**2009 Diploma Constructions Hay Street Perth**

27 In 2011, on the application of the Australian Building and Construction Commissioner (**ABCC**), and by consent, Justice Gilmour of the Federal Court of Australia ordered the federal union to pay a penalty of $120,000 (27% to 45% of the then maximum penalties for a body corporate), its Assistant Secretary, WA Divisional Branch, Mr Joe McDonald to pay a penalty of $17,000 and Mr Buchan to pay a penalty of $17,000 for being involved in unlawful industrial action in contravention of the BCII Act (14% to 32% of the then maximum penalties for an individual). The federal union was also ordered to pay Diploma Constructions (WA) Pty Ltd $97,695.41 as compensation: ***Australian Building & Construction Commissioner v Construction, Forestry, Mining & Energy Union*** [2011] FCA 810.

28 The unlawful industrial action involved strikes at a Diploma Construction site on Hay Street in Perth on 5, 6, 8, 24 and 25 June 2009. Mr Buchan was not involved in the 24 June 2009 industrial action but was involved on the other dates.

29 At the time, Mr Buchan was employed as an organiser. The events in which he was involved are recorded at [40]-[56]. In brief summary:

(a) On 5 June 2009, Mr Buchan and Mr McDonald held a meeting of construction workers at which they put a vote to take strike action. The workers present at the meeting voted in favour of taking strike action. Some 120 employees then left the site and did not return to work for two days.

(b) On 8 June 2009, after Mr Buchan was denied entry to the site to hold a meeting of employees, he held a meeting outside the gates. Following this meeting, approximately 120 employees left work and did not return until 9 June 2009.

(c) As at 24 June 2009, around 60 employees had taken part in strike action. On the morning of 25 June 2009 Mr Buchan convened a meeting outside the site gates, and proposed a vote to continue the strike action from the previous day. The employees present voted in favour, and approximately 63 employees left work and did not return

to work on that day.

30 It was an agreed fact that there were no grounds for Mr Buchan to hold a reasonable belief that there was an imminent risk to employee's health or safety at the project so as to make the industrial action lawful. Rather, safety issues were used as a guise for the industrial action.

31 The Federal Court's decision did not involve any finding or penalty relating to an abuse of rights of entry. However, the reasons for decision record that Mr Buchan's contravening conduct on 5 June 2009 followed after he had purported to exercise rights of entry under s 49I of the IR Act as a permit holder. Mr Buchan refused to leave the site voluntarily when asked, necessitating police involvement.

**2013 Perth Children's Hospital**

32 On 30 November 2015, the federal union and several of its officials including Mr Buchan were found liable for admitted contraventions of ss 340, 346 and 348 of the FW Act. Declarations as to the contraventions were made by consent.

33 In WAD 16/2014 Mr Buchan and other officials admitted contravening s 340 of the FW Act on 25 January 2013 by blockading the construction site, to discourage employees from entering the site and thereby preventing the employers from exercising a workplace right to participate in a safety dispute settlement procedure in accordance with the applicable workplace instrument. Mr Buchan's conduct involved attending a meeting of approximately 100 employees, informing the employees that John Holland had refused to meet with the federal union to discuss safety issues, and being present at the meeting when a motion was put to strike until the following Wednesday. While it is not clear from the agreed facts as published in ***Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union*** [2017] FCA 491 (***Perth Childrens' Hospital Contraventions Case***) precisely what Mr Buchan's involvement was in the motion to strike, Justice Barker described his conduct as 'both defiant and serious': [166]. His Honour accepted a submission made on behalf of the ABCC that Mr Buchan provided endorsement to the unlawful action and 'gave it what might be called a misplaced legitimacy in the minds of the CFMEU members.' He accepted Mr Buchan and other senior officials were 'driving forces' in the events, which were a 'deliberate stratagem': ***Perth Childrens' Hospital Contraventions Case*** [174]-[175].

34 His Honour imposed an aggregate penalty of $66,000 on the federal union and $5,000 on Mr Buchan.

35 WAD 95/2014 concerned a blockade and strike action taken on 3 May 2013 whereby Mr Buchan, Mr McDonald and the union were each found to have engaged in coercion in contravention of s 348 of the FW Act. Mr Buchan admitted that he occupied entrances to the project site, prevented and dissuaded employees from entering the site and otherwise persuaded employees to engage in industrial action: ***Perth Childrens' Hospital Contraventions Case*** [199]. He did so to deprive John Holland of a contractor workforce to thereby coerce John Holland into acceding to a so called 'equal pay request.' An aggravating factor was that the conduct was in contravention of orders made by the Fair Work Commission to prevent industrial action from occurring on the project site: ***Perth Childrens' Hospital Contraventions Case*** [206]. His Honour described the conduct as deliberate and said it must be treated as serious: ***Perth Childrens' Hospital Contraventions Case*** [207]. His Honour imposed an aggregate penalty of $44,000 on the federal union and a penalty of $5,000 on Mr Buchan.

36 WAD 135/2014 concerned a blockade and strike action on 18 July 2013 which, among other things, caused the abandonment of a large concrete pour. Mr Buchan admitted engaging in adverse action in contravention of s 346 of the FWA. The conduct was engaged in because John Holland did not meet a 'whole-of-site EBA demand' made by the union. Mr Buchan organised, incited, participated in and controlled a blockade and protest on 18 July 2013 which prevented the concrete pour and prevented project employees from attending for work.

37 His Honour described this contravention as the most serious of the contravening conduct, accepting that the union and relevant officials engaged in an elaborate plan to arrange for a vast crowd of people to attend and blockade the site: ***Perth Childrens' Hospital Contraventions Case*** [218]-[219]. The disruption caused was significant. Mr Buchan and other officials addressed the crowd in relation to the equal pay request.

38 In respect of WAD 135/2014 his Honour imposed an aggregate penalty of $88,000 on the federal union and $6,000 on Mr Buchan.

39 The penalties Justice Barker imposed were a total of $220,500 on the federal union and a total of $16,000 on Mr Buchan.

**2013 Perth Airport Terminal 1**

40 In 2016, on the application of the Director of the Fair Work Building Industry Inspectorate, Justice Siopis of the Federal Court of Australia declared that Mr Buchan had engaged in coercion in contravention of s 348 of the FW Act on 22 October 2013 by participating in a blockade, with about 100 other persons, of the entrances to the Terminal 1 project work site at the Perth international airport to prevent workers having access to the site in order to coerce one or more companies to comply with a request by the union to pay outstanding wages and contractual entitlements then due to employees of a sub-contractor: ***Director of the Fair Work Building Industry Inspectorate v Construction, Forestry, Mining and Energy Union*** [2016] FCA 616. His Honour ordered that the federal union pay a total penalty of $12,000 and Mr Buchan and some other individual respondents to each pay a penalty of $2,250, with penalties of $1,000 to $2750 imposed on other individual respondents.

41 The relevant circumstances were summarised by his Honour at [3]:

> 3. Four officials and organisers of the CFMEU organised for about 100 protesters to attend the Terminal 1 project work site early on the morning of 22 October 2013. The protesters and the CFMEU officials and organisers attended the project work site and blockaded the entrances to that site for about three and a half hours. During that time, some of the CFMEU officials and unpaid workers employed by Concealed Interiors attended on representatives of Perth Airport Pty Ltd so that the unpaid workers could explain their plight to those representatives. The consequence of the blockade was that for about three and a half hours about 160 site workers were denied access to the project work site and, therefore, no work was carried out during that period

on the site.

42 The matter was determined on the basis of an agreed statement of facts. Mr Buchan was at the time the WA General Division Secretary. Mr Buchan, together with other officials, organised the blockade as well as participated in it. Mr Buchan stood in front of the blockade and gave an interview to a Channel 10 reporter, and addressed the assembled protesters from the back of a truck. The blockade lasted three and a half hours.

43 His Honour found that the purpose of the contravening conduct was directed at seeking to assist workers who the union reasonably believed had not been paid their wages, and that this was an important mitigating factor in assessing the seriousness of the alleged contraventions: ***Director of the Fair Work Building Industry Inspectorate v Construction, Forestry, Mining and Energy Union*** [2016] FCA 616 [43].

44 Justice Siopis' orders were appealed to the Full Court: ***Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union*** [2017] FCAFC 53.

45 A majority of the Full Court (Dowsett and Rares JJ) upheld the appeal and increased the federal union's penalty to $195,000 and Mr Buchan's penalty to $9,000, saying:

> 74. Thus, the respondents' motivation for organising and participating in the blockade could not be a mitigating factor and should have been treated as irrelevant to the primary judge's consideration of the appropriate penalties. However, in arriving at his decision that the penalties should be at the lower end of the range, his Honour expressly took into account the "lawfulness" of the "request" that he characterised as the respondent's motive for organising and participating in the coercive blockade.
>
> 75. His Honour also took into account that "there was no evidence of any quantifiable economic loss being suffered by the parties concerned by reason of the blockade". In our opinion, his Honour's reliance on the absence of evidence of "quantifiable economic loss" ignored the undisputed facts of actual substantive loss. The following facts demonstrated that the respondents' coercive action achieved what they intended it to achieve: that was the indiscriminate infliction of substantive economic loss not only on the "believed" wrongdoer, Concealed Interiors, but also on 21 other businesses working at the site and between 145 and 160 employees of those businesses, to say nothing of the impact of the blockade on a fine sunny day (as appeared in the television footage in evidence) on the timely completion of the overall construction work.
>
> …
>
> 78. In other words, the CFMEU and at least Mr Buchan, but we would infer all of the respondents, intended the blockade to affect, and so to injure, a wide range of persons quite apart from Concealed Interiors. As Mr Buchan said, "we don't care where it comes from". That statement reflected the reality of the blockade as industrial bullying. It indiscriminately targeted all persons and businesses associated with the construction work at the site, regardless of their possible responsibility for what was only a "reasonable belief" of the respondents that Concealed Interiors was in default of paying its, or some of its, employees their entitlements.
>
> …
>
> 86. The respondents' conduct complained of, that occurred on 22 October 2013, is a clear instance of them taking the law into their own hands and flouting the protection from coercion that s 348 is intended to provide. On the agreed facts, the respondents deliberately engaged in coercion, knowing that their conduct was unlawful. They intended to bully each of the 22 businesses working at the site until their demands were met, as exemplified by the attitude of Mr Buchan when he said, "we don't care where it comes from". The conduct was premeditated and orchestrated, as is plain from the organisation required to ensure that 100 people were present to conduct the blockade. The respondents, by that conduct, effectively prevented access to a large worksite for about three and half hours.

**2018 Perth to Forrestfield Rail Link**

46 In December 2018, Mr Buchan and other union officials engaged in conduct which they admitted was unlawful industrial action in contravention of s 46 of the BCII Act. The industrial action involved a walk-off from three of the construction sites for the Forrestfield to Perth Airport Rail Link project. Mr Buchan was one of several union officials and individual workers involved.

47 The ABCC commenced proceedings for the imposition of civil penalties. Justice Colvin imposed a penalty of $125,000 on the federal union and $20,000 on Mr Buchan. The maximums at the time were $210,000 and $42,000 respectively. The penalties imposed on other individual respondents were between $4,000 and $20,000: ***Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union*** [2020] FCA 1662.

48 As at 10 December 2018, an issue had arisen about an employer's proposed application of a redundancy clause in the applicable enterprise bargaining agreement. The employer, in effect, had not confirmed that it would be paying redundancy pay at the end of the project for all employees. A number of workers ceased working from about noon at various sites. It was not suggested that Mr Buchan was involved in the instigation of this industrial action. However, the union officials held a meeting with members in the car park of certain sites, and by what they said at the meeting, encouraged the continuation of a half-day strike. Mr Buchan's contravening conduct involved encouraging the continuation of industrial action that had already commenced.

49 There was no suggestion, on the agreed facts, of any coercion, intimidation or threats: [69] His Honour characterised the nature and quality of the objective circumstances comprising the admitted contraventions as being of moderate seriousness:[76]. While finding at [93] that the strike was 'plainly unlawful,' and of moderate seriousness, his Honour rejected a submission that Mr Buchan's conduct was most serious, premediated or sustained: [107].

50 These six occasions where Mr Buchan has been ordered to pay a penalty under an industrial law weigh against a finding that Mr Buchan is a fit and proper person to hold a ROE permit. While none of the penalties were imposed in respect of an abuse of rights of entry, they nevertheless reflect adversely on Mr Buchan's willingness to comply with industrial laws more generally.

51 The 2009 Diploma Constructions Hay Street Perth penalty would not, on its own, have had significant weight given the passage of time that has passed and the fact that it was the first occasion that a penalty was imposed on Mr Buchan. However, from that time, I infer that Mr Buchan has known and understood the limits of lawful industrial action.

52 Four of the contraventions took place in 2013 which is now over 12 years ago. Mr Buchan's January 2013 to July 2013 conduct associated with the Perth Children's Hospital was described by Justice Barker as defiant, deliberate and serious.

53 Mr Buchan's conduct in October 2013 associated with the Perth Airport Terminal was described by the Full Court as 'flouting' the protections from coercion, as deliberate, and engaged in knowing that the conduct was unlawful.

54 I am mindful that there has been only one contravention in the last 10 years, being Mr Buchan's involvement in unlawful industrial action on the Perth to Forrestfield Rail Link project in December 2018.

55 All of these considerations are relevant to how this criteria weighs against a finding that Mr Buchan is a fit and proper person to hold a right of entry permit.

**Revocation, suspension or conditions of previous ROE permits: s 49P(2)(e) & (f)**

**Lee v McDonald**

56 In 2004, Commissioner Gregor suspended Mr Buchan's right of entry permit issued under the IR Act for a period of three months under what was then s 49J of the IR Act: ***Lee v McDonald*** [2004] WAIRC 12071; (2004) 84 WAIG 2587. At the time, Mr Buchan was an organiser for the CFMEUW. The Building Industry and Special Projects Inspectorate sought revocation or suspension of Buchan's ROE permit on the grounds that on 16 April 2024 he had either acted in an improper manner or intentionally and unduly hindered an employer or employees during their working hours at a Doric Constructions site at Burswood Resort Casino, by using his person as a physical barrier to prevent a concrete pour, until being forcibly removed by police.

**Radisich v Buchan**

57 In 2008 the ABCC applied to the Australian Industrial Relations Commission under s 770 of the *Workplace Relations Act 1996* (Cth) (**WR Act**) for orders restricting Mr Buchan's entry rights on the basis his rights had been abused: ***Radisich v Buchan*** [2008] AIRC 896.

58 The basis for the allegation Mr Buchan had abused his rights related to three dates in 2007 when Mr Buchan attended two construction sites with Mr McDonald. Mr Buchan's conduct involved being in company and in concert with Mr McDonald who:

(a) failed to exercise the purported rights with due diligence, reasonable civility and avoidance of unnecessary obstruction by repeatedly making offensive statements to site personalities;

(b) refused directions to leave the site when he had no lawful basis to remain on site.

59 Further, Mr Buchan was alleged to have:

(a) deliberately misled the occupier of the site as to the basis of his right to enter.

(b) acted in an improper manner by refusing to comply with reasonable directions regarding site safety;

(c) remained on site contrary to reasonable requests and directions to leave;

(d) embarked on a general safety inspection despite reasonable requests to comply with Occupational Health & Safety requirements applicable to the areas inspected and generally.

60 Before the application was listed for hearing, the parties consented to orders for the suspension of Mr Buchan's permit for three months with immediate effect, and a further two-month suspension operating in the event of any further breach of Part 15 of the WR Act in the 12-month period following the making of the orders.

61 The parties also agreed to conditions being imposed in these terms:

> 4. The following condition be imposed on all current permits and all permits to be issued in the next 2 years in respect of the Construction and General Division, Western Australia Divisional Branch of the CFMEU: that the permit holder is not permitted to enter or remain on premises being construction sites in the company of, or in concert with, Joseph McDonald except where McDonald has been invited in advance on to those premises by an owner and has complied with the requirements of the direction in order 5: ***Radisich v Buchan*** [2008] AIRC 896

62 On 18 November 2008, Deputy President Lacy made orders in the terms the parties had agreed.

63 In the 22 years since April 2004, Mr Buchan has been the subject of two ROE permit suspensions of 6 months' total duration. More than 17 years have passed since the last suspension ended, with no further suspensions being imposed. Mr Buchan has not had a right of entry permit revoked or suspended, or made the subject of relevant conditions, in the last 17 years of working as a union official. Both past suspensions arose in circumstances involving Mr McDonald when Mr Buchan was Mr McDonald's subordinate. Since the suspensions were imposed, Mr Buchan has risen from the position of Organiser to Secretary. For all of these reasons, the suspensions weigh only very slightly in the assessment of whether Mr Buchan is now a fit and proper person to now hold a ROE permit.

64 Mr Buchan has disclosed that his federal permit ROE2025/523 is the subject of a generic condition that has potential application to all federal union permits but with no practical application to him in his employment in the construction and general division. This condition has not been applied as a result of any conduct by him. I therefore give it no weight in my

assessment.

**Prior disqualification: s 49P(2)(g)**

65 Mr Buchan has never been disqualified under an industrial law or work health and safety law from exercising, or applying for, a right of entry for industrial or work health and safety purposes under that law.

**Discretionary criteria: any other relevant matters under s 49P(1)(b)**

**ROE permit issued by the Fair Work Commission**

66 The Fair Work Commission issued Mr Buchan with an unconditional ROE permit on 10 July 2025. In granting the ROE permit, Deputy President Slevin considered that the penalties imposed on Mr Buchan set out in [27]-[29] above weighed against the issue of a ROE permit. However, the fact that Mr Buchan's record had been clean since 2020, that the 2020 penalties related to conduct in 2018 and that Mr Buchan had undertaken training by Mr Brian Lacy AO tipped the scales in favour of a finding that Mr Buchan was a fit and proper person: ***Construction, Forestry and Maritime Employees Union - Construction and General Division, Western Australia Divisional Branch*** [2025] FWC 1965 [22]-[24].

67 Mr Buchan submits that the Fair Work Commission's decision that he is a fit and proper person to hold a ROE permit without condition is 'apposite' and weighs in favour of the issuance of a new state permit. However, I must be satisfied that Mr Buchan is a fit and proper person to hold a ROE permit in light of the submissions, evidence led and findings of fact in these proceedings: ***Registrar, Western Australian Industrial Relations Commission v Margjini*** [20]. The Fair Work Commission's decision is one piece of evidence. It is not a mandatory criteria. Its relevance and weight will depend on, amongst other things, the extent to which the evidence before the Fair Work Commission aligns with the evidence before the Commission and the point in time that the Fair Work Commission makes its findings.

68 As the training by Mr Lacy did not relate directly to the rights and responsibilities under the IR Act, it is not part of the mandatory criteria. Nevertheless, the fact that Mr Buchan has dedicated his time to the training as outlined at [19]-[22] above is relevant to my assessment.

69 However, I am unable to conclude that the fact the training was undertaken, Mr Lacy's opinion that Mr Buchan has knowledge of and understands his right of entry rights and responsibilities, or indeed Mr Buchan's knowledge and understanding is indicative of Mr Buchan's willingness to comply with the law, or is reflective of his integrity in the sense discussed in ***Maritime Union of Australia v Fair Work Commission*** [2015] FCAFC 56 at [21]. Mr Buchan has a history of knowingly contravening industrial laws. Mr Buchan has not given evidence to the Commission to the effect that his knowledge or understanding has changed as a result of the training undertaken in 2025, nor has he given evidence about his willingness to comply with industrial laws.

**Penalties for contraventions of the *Trade Practices Act 1974* (Cth)**

70 In December 2006, Nicholson J of the Federal Court of Australia made declarations by consent that the federal union, the CFMEUW contravened s 45DC of the *Trade Practices Act 1974* (Cth) in relation to the secondary boycott that was the subject of ***Lee v McDonald***, discussed above and a further incident at the same site on 4 November 2004: ***Australian Competition and Consumer Commission v The Construction, Forestry, Mining and Energy Union*** [2006] FCA 1730.

71 The Court imposed penalties of $50,000 on each of the federal union and the CFMEUW and ordered that the unions pay the applicant's costs.

72 As the orders were made by consent on the basis of an agreed statement of facts, his Honour's reasons for decision do not reveal a great deal more than what is contained in the declarations.

73 For the reasons stated at [63] above, I regard this history as weighing only very slightly in the assessment of whether Mr Buchan is a fit and proper person to hold a right of entry permit.

**Mr Buchan's Career History**

74 I consider Mr Buchan's career history is relevant to my assessment. It goes to Mr Buchan's character, reputation and general integrity which the Commission in Court Session affirmed may be relevant to the determination of whether a person is a fit and proper person to hold a ROE permit, to the extent that it is directed to the purpose of holding and exercising a ROE permit and the rights that it confers: ***Registrar, Western Australian Industrial Relations Commission v Margjini*** [56]. It is not Mr Buchan's general fame, integrity and character at large that I am concerned with, but rather his integrity insofar as it concerns his ability and willingness to uphold the purposes underlying the IR Act's scheme for rights of entry: ***Registrar, Western Australian Industrial Relations Commission v Margjini*** [62], [192].

75 In this regard, the federal union's memorandum to Mr Lacy sets out Mr Buchan's lengthy history of union and civic activity:

(a) He was a workplace safety representative for five years while working as a scaffolder.

(b) He commenced working for the union as an organiser in 2003.

(c) In 2009 Mr Buchan became the union's Safety Officer.

(d) In 2012 he was elected Secretary.

(e) He is a foundation member of Mates in Construction WA which is a suicide prevention and mental health wellbeing not-for-profit directed at workers in the construction industry.

(f) He previously served as a Board Member of the Construction Industry Long Service Leave Payments Board.

(g) He is a current Director of Reddifund Limited, a WA Based redundancy fund open to employers operating within the building and construction industry.

(h) He is a current member of the Western Australian Building and Construction Consultative Committee which

provides policy advice to the Minister for Industrial Relations relating to the Western Australian commercial construction industry.

(i) He is a current Vice President of UnionsWA.

(j) He is a board member of the Construction Training Fund, a statutory authority which promotes training and skills development in the construction industry.

76 In my view, these are matters that reflect on Mr Buchan's personal character and integrity relevant to whether he is a fit and proper person to hold a ROE permit. His history of involvement in and contributions to improving conditions in the construction industry tells in a holistic way of his dedication to the industry generally. Such dedication in itself reflects an interest in upholding the rule of law and a respect for the balancing of the rights of employers as well as unions and their members.

**Conclusion**

77 The fact that Mr Buchan has completed appropriate training for the purposes of s 49P(2)(a) and has recently undertaken tailored right of entry training weighs in his favour. I am satisfied that Mr Buchan is a person who has a good understanding of his right of entry rights and responsibilities. This is critical to enabling the purposes of Division 2G of the IR Act to be upheld, and accordingly why it is a mandatory criteria.

78 Mr Buchan's past right of entry permits have been suspended, for a total period of six months. In the context of Mr Buchan's extensive history and experience as a union official, and given there has been no suspension since 2008, I do not give significant weight to this mandatory criterion.

79 While not a mandatory consideration, the fact that Mr Buchan has been found liable to pay penalties for contraventions of the *Trade Practices Act 1974* (Cth) is relevant. Again, I would give this insignificant weight, as it is historical.

80 While not a mandatory consideration, the fact that the Fair Work Commission has recently issued a right of entry permit to Mr Buchan, having found him to be a fit and proper person to hold a right of entry, is also relevant, but is of itself of little assistance to me in forming my own view.

81 Mr Buchan has been ordered to pay penalties for six instances of contraventions of industrial laws. These weigh against him. However, of the six instances, I consider the 2009 Diploma Constructions instance has minimal bearing. Only one instance of a penalty being imposed has occurred in the last decade.

82 I view this mandatory s 49P(2)(d) criteria in light of Mr Buchan's long career as a union official and his recent and current involvement in other bodies contributing to the advancement of the construction industry more generally. His career history favourably reflects on his personal character and integrity relevant to his willingness to uphold the rule of law generally and therefore his suitability to hold a ROE permit and exercising rights and responsibilities under it.

83 In the final balance, I find that Mr Buchan is a fit and proper person to hold a ROE permit. There is no reason for the imposition of any conditions on a ROE permit issued to Mr Buchan.

84 Mr Buchan has a current ROE Permit ROE 132/2023 which expires on 30 June 2026. Accordingly, I will order that a ROE permit be issued to Mr Buchan on and from 1 July 2026.

[redacted]

**2026 WAIRC 00383**

**APPLICATION TO ISSUE MICHAEL BUCHAN WITH A RIGHT OF ENTRY PERMIT**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION OF WORKERS |
| | **APPLICANT** |
| | **-v-** |
| | (NOT APPLICABLE) |
| | **RESPONDENT** |
| **CORAM** | SENIOR COMMISSIONER R COSENTINO |
| **DATE** | THURSDAY, 11 JUNE 2026 |
| **FILE NO/S** | ROE 124 OF 2025 |
| **CITATION NO.** | 2026 WAIRC 00383 |

| | |
|---|---|
| **Result** | Right of entry permit issued |
| **Representation** | |
| **Applicant** | Mr D Rafferty (of counsel) on behalf of the applicant |

*Order*

HAVING heard from Mr D Rafferty (of counsel) on behalf of the applicant and its nominated official, the Commission, pursuant to the powers conferred under s 49O of the *Industrial Relations Act 1979* (WA) hereby orders –

THAT a right of entry permit be issued to Michael (Mick) Buchan as the applicant's nominated official on and from 1 July 2026.

(Sgd.) R COSENTINO,
[L.S.] Senior Commissioner.

**2026 WAIRC 00429**

**APPLICATION TO ISSUE PETER DAVID JOSHUA WITH A RIGHT OF ENTRY PERMIT**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | | |
|---|---|---|
| **CITATION** | : | 2026 WAIRC 00429 |
| **CORAM** | : | COMMISSIONER C TSANG |
| **HEARD** | : | WEDNESDAY, 17 DECEMBER 2025<br>WRITTEN SUBMISSIONS FILED ON FRIDAY, 5 JUNE 2026 |
| **DELIVERED** | : | FRIDAY, 26 JUNE 2026 |
| **FILE NO.** | : | ROE 129 OF 2025 |
| **BETWEEN** | : | THE CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION OF WORKERS<br>Applicant<br>AND<br>(NOT APPLICABLE)<br>Respondent |

| | | |
|---|---|---|
| CatchWords | : | Industrial law (WA) – Application for a right of entry permit – Fit and proper person criteria – Whether the official has ever been convicted of an offence involving entry onto premises, fraud or dishonesty, the intentional use of violence against another person, or the intentional damage or destruction of property – Whether the official, or another person, has ever been ordered to pay a penalty under an industrial law in relation to the actions of the official – Whether a right of entry for industrial purposes the official had under an industrial law has ever been revoked, suspended or had conditions imposed on it – Other matters the Commission considers relevant |
| Legislation | : | *Industrial Relations Act 1979* (WA)<br>*Industrial Relations Commission Regulations 2005* (WA)<br>*Spent Convictions Act 1988* (WA)<br>*Fair Work Act 2009* (Cth)<br>*Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)<br>*Workplace Relations Act 1996* (Cth) |
| Result | : | Application granted; right of entry permit to issue on and from 1 July 2026 |
| **Representation:** | | |
| Applicant | : | Mr D Rafferty (of counsel) |
| Respondent | : | |

**Cases referred to in reasons:**

*Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union* [2017] FCAFC 53

*Construction, Forestry, Maritime, Mining and Energy Union-Construction and General Division, WA Divisional Branch* [2018] FWC 2817

*Construction, Forestry, Maritime, Mining and Energy Union-Construction and General Division, WA Divisional Branch* [2019] FWC 4270

*Director of the Fair Work Building Industry Inspectorate v Construction, Forestry, Mining and Energy Union* [2016] FCA 616

*Radisich v Buchan and Others* [2008] AIRC 896

*Registrar, Western Australian Industrial Relations Commission v Margjini and Another* [2026] WAIRC 00314

*Reasons for Decision*

1 On 26 September 2025, the Secretary of the Construction, Forestry, Mining and Energy Union of Workers (**CFMEUW**) filed a *Form 16 – Application to Issue a Right of Entry Permit* for Peter David Joshua (**Mr Joshua**) under Division 2G of Part II of the *Industrial Relations Act 1979* (WA) (**IR Act**).

2 The CFMEU, Construction and General Division, Western Australia Divisional Branch (**CFMEU**) is the federal counterpart of the CFMEUW.

3 The application is to be determined under Division 2G of Part II of the IR Act:

**Division 2G – Right of entry and inspection by authorised representatives**

**Subdivision 1 – Preliminary**

**49G. Terms used**

(1) In this Division –

***authorised representative***, of an organisation of employees, means an officer or employee of the organisation who holds a right of entry permit;

***conviction*** –

(a) means a finding of guilt by a court, or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded; and

(b) includes –

(i) a spent conviction as defined in the *Spent Convictions Act 1988* section 3(1), regardless of sections 13 and 25 to 27 of that Act; and

(ii) a conviction against a law of another jurisdiction if, under a law of that jurisdiction, the person concerned is permitted not to disclose the fact that the person was convicted or found guilty of the offence;

***expiry day***, of a right of entry permit, has the meaning given in section 49Q(3);

***federal counterpart***, in relation to an organisation, means a federal organisation that is –

(a) a federal counterpart (as defined in the FW (Registered Organisations) Act section 9A) of the organisation; or

(b) prescribed to be a federal counterpart of the organisation by regulations made by the Governor;

***fit and proper person criteria*** has the meaning given in section 49P(2);

***industrial law*** means the following –

(a) this Act, the LSL Act and the MCE Act;

(b) the FW Act and the FW (Registered Organisations) Act;

(c) another law of the Commonwealth, or a law of another State or a Territory, prescribed to be an industrial law by regulations made by the Governor;

***nominated official***, in relation to an application under section 49N(1), has the meaning given in section 49N(3);

***relevant employee***, when used in connection with the exercise of a power by an authorised representative of an organisation, means an employee who is a member of the organisation or who is eligible to become a member of the organisation;

***right of entry permit*** means a permit issued by the Commission under Subdivision 3;

***work health and safety law*** means –

(a) the *Work Health and Safety Act 2020*; or

(b) a law of the Commonwealth, another State or a Territory prescribed to be a work health and safety law by regulations made by the Governor.

(2) In this Division, a reference to an officer or employee of an organisation includes a reference to an officer or employee of a federal counterpart of the organisation.

…

**Subdivision 3 – Right of entry permits**

**49N. Application for right of entry permit**

(1) The secretary of an organisation of employees may apply to the Commission for an officer or employee of the organisation to be issued a right of entry permit.

(2) The application must comply with any requirements prescribed by the regulations.

(3) The officer or employee named in the application is the ***nominated official***.

**49O. Commission may issue right of entry permit**

(1) The Commission may, on an application under section 49N, issue a right of entry permit to the nominated official if satisfied that the official is a fit and proper person to hold the permit.

(2) The Commission may decide to issue a right of entry permit subject to conditions.

(3) The Commission cannot issue a right of entry permit to the nominated official if, when the Commission is deciding the application –

(a) a right of entry the official had under an industrial law or work health and safety law is suspended under that law; or

(b) the official is disqualified under an industrial law or work health and safety law from exercising, or applying for, a right of entry under that law.

**49P. Deciding whether nominated representative is fit and proper person**

(1) In deciding whether a nominated official is a fit and proper person to hold a right of entry permit, the Commission –

(a) must consider the fit and proper person criteria in relation to the official; and

(b) may consider any other matters the Commission considers relevant.

(2) The following matters are the ***fit and proper person criteria*** in relation to a nominated official –

(a) whether the official has received appropriate training about the rights and responsibilities of an authorised representative;

(b) whether the official has ever been convicted of an offence against an industrial law;

(c) whether the official has ever been convicted of an offence against a law of the Commonwealth, a State, a Territory or a foreign country involving –

(i) entry onto premises; or

(ii) fraud or dishonesty; or

(iii) the intentional use of violence against another person; or

(iv) the intentional damage or destruction of property;

(d) whether the official, or another person, has ever been ordered to pay a penalty under an industrial law in relation to the actions of the official;

(e) whether a right of entry permit issued to the official has been revoked, suspended or made subject to conditions;

(f) whether a right of entry for industrial or work health and safety purposes the official had under an industrial law or a work health and safety law has ever been revoked, suspended or had conditions imposed on it;

(g) whether the official has ever been disqualified under an industrial law or a work health and safety law from exercising, or applying for, a right of entry for industrial or work health and safety purposes under that law.

4 In ***Registrar, Western Australian Industrial Relations Commission v Margjini and Another*** [2026] WAIRC 00314 (***Margjini***), the Commission in Court Session considered the proper approach to the fit and proper person assessment under Division 2G of Part II of the IR Act. The following principles are relevant to this application:

(a) Although ss 49O(1) and 49P(2) of the IR Act are based on ss 512 and 513 of the *Fair Work Act 2009 (Cth)* (**FW Act**), the provisions are not identical. Under s 513(1)(g) of the FW Act, the Fair Work Commission (**FWC**) *must* take into account any other matters it considers relevant. By contrast, under s 49P(1)(b) of the IR Act, the Commission *may* consider any other matters it considers relevant: ***Margjini*** [75].

(b) Section 49P(1)(b) confers a broad discretion on the Commission as to the additional matters it may consider when deciding whether a nominated official is a fit and proper person to hold a right of entry permit: ***Margjini*** [55].

(c) Matters of character and reputation may be considered under s 49P(1)(b), provided those matters are directed to the purpose of holding and exercising a right of entry permit and to the rights conferred by Division 2G: ***Margjini*** [56].

(d) The fit and proper person criteria in ss 49P(2)(a)–(g) are not to be read restrictively. In particular, matters falling within s 49P(2)(c) may be taken into account in assessing a person's character and integrity, provided they are considered in the context of the powers and purposes effected by Division 2G, read with the objects of the IR Act: ***Margjini*** [62].

(e) An applicant with a lengthy history of serious criminal offending would attract more weight than an applicant with one conviction for a minor criminal offence, when considering the criterion in s 49P(2)(c): ***Margjini*** [62].

(f) Criminal offending can extend over a broad continuum, from minor and brief, to serious and extensive. Each case must be weighed in the balance: ***Margjini*** [63].

(g) The weight given to each of the criterion in s 49P(2) is a matter for the Commission. The assessment requires a balancing of the criteria and any other matters: ***Margjini*** [64].

(h) The provisions of Division 2G have a combination of protective purposes, for both permit holders and employers and occupiers; in the interpretation of the relevant provisions of the right of entry scheme, these dual purposes must be kept in mind: ***Margjini*** [73].

(i) Division 2G requires the permit process to be applied with rigour, and all relevant considerations are to be taken into account: ***Margjini*** [75].

5 In addition to the matter identified at [4(a)] above, the IR Act treats spent convictions differently from the FW Act. Section 49G(1) defines 'conviction' to include a spent conviction as defined in s 3(1) of the *Spent Convictions Act 1988* (WA), regardless of ss 13 and 25–27 of that Act. It also includes certain convictions in other jurisdictions even if, under the law of that jurisdiction, the person is permitted not to disclose the conviction. Accordingly, if a nominated official has a spent conviction falling within ss 49P(2)(b) or (c), that spent conviction remains a matter the Commission must consider.

**Consideration**

**Section 49N(1) and (2) requirements**

6 Section 49N(1) states that a secretary of an organisation of employees may apply to the Commission for an officer or employee of the organisation to be issued a right of entry permit.

7 I am satisfied that each of the requirements in s 49N(1) has been met, as:

(a) The application was made by Michael Buchan (**Mr Buchan**).

(b) Mr Buchan is the Secretary of the CFMEUW.

(c) The CFMEUW is an organisation of employees.

(d) The Form 16 application states that Mr Joshua is an employee of the CFMEUW, employed as a Safety Officer.

8 Section 49N(2) states that the application must comply with the requirements prescribed by the regulations.

9 Regulations 77E(2)–(6) of the *Industrial Relations Commission Regulations 2005* (WA), state:

(2) The application must –

(a) be in the approved form; and

(b) include –

(i) the full legal name and address of the nominated official; and

(ii) a legible copy of the nominated official's signature; and

(c) be accompanied by –

(i) a current passport size and style photograph of the nominated official (the accompanying photograph); and

(ii) evidence that the nominated official has completed appropriate training about the rights and responsibilities of an authorised representative; and

(d) have attached to it the particulars approved by the Chief Commissioner from time to time.

(3) If requested by the Commission, the application must also be accompanied by a document called a National Police Certificate that –

(a) relates to the nominated official; and

(b) is issued by the Australian Federal Police or the Police Force of Western Australia not more than 30 days before the application is made.

(4) The secretary must certify that the person in the accompanying photograph is the nominated official.

(5) If the accompanying photograph is in printed form, the certification mentioned in subregulation (4) must be made on the back of the accompanying photograph.

(6) The Commission may, before it considers the application, publish all of the following on the Commission's website –

(a) the name of –

(i) the organisation that is applying for the right of entry permit; and

(ii) the nominated official for the application;

(b) a statement that the organisation has applied for the right of entry permit to be issued to the nominated official;

(c) a statement that submissions may be made to the Commission, within a specified time, as to whether the nominated official is a fit and proper person to be issued the right of entry permit.

10 I am satisfied that the application complies with the requirements in reg 77E(2)–(6), for the following reasons:

(a) The Form 16 application is in the approved form and includes:

(i) Mr Joshua's address.

(ii) Mr Joshua's statutory declaration made at Perth on 25 September 2025, declaring that he has provided a recent full-face, passport-size photograph of himself to Mr Buchan and shown his driver's licence which contains his signature to Mr Buchan, that the information contained in the Form 16 application is true and correct and that he has disclosed all relevant matters that may arise under s 49P.

(iii) A copy of Mr Joshua's photograph, and a legible copy of Mr Joshua's signature, certified by Mr Buchan on 25 September 2025, as a true photograph of Mr Joshua and a true representation of Mr Joshua's signature.

(iv) Mr Buchan's statutory declaration made at Perth on 25 September 2025, declaring that he has made proper enquiries of the matters under s 49P, and having made those enquiries he is satisfied that Mr Joshua meets the permit qualification matters in s 49P(2) and has disclosed any matters that might be relevant under s 49P(1)(b).

(v) A Certificate of Satisfactory Completion of the 'WA Right of Entry Permit Holder' course, dated 26 May 2025, issued to Mr Joshua, by Training Manager, Michael Jez, of Unity Training Services.

(b) At the request of the Commission, the CFMEUW filed a National Police Certificate issued by the Police Force of Western Australia that relates to Mr Joshua, valid as at 3 November 2025.

(c) On 8 October 2025, the Commission published a notice in accordance with reg 77E(6) on the Commission's website. No submissions were received by the Commission in response to that notice.

(d) At the request of the Commission, the CFMEUW filed a replacement Form 16 application which includes Mr Joshua's full legal name, and in relation to question 3.4 of the Form 16 application removes a duplicated disclosure and clarifies the penalty imposed in ***Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union*** [2017] FCAFC 53 (***Perth Airport Appeal decision***) by reference to the Orders made by that court.

**Section 49O(3) – Current suspension or disqualification**

11 Before turning to the fit and proper person assessment under s 49P, it is necessary to consider whether either of the prohibitions in s 49O(3) applies. The Commission cannot issue a permit if, at the time the application is decided, a right of entry Mr Joshua holds under an industrial law or work health and safety law is suspended, or Mr Joshua is disqualified under such a law from exercising, or applying for, a right of entry under that law.

12 There is no material before me indicating that any right of entry held by Mr Joshua under an industrial law or work health and safety law is presently suspended. Nor is there material indicating that Mr Joshua is presently disqualified under an industrial law or work health and safety law from exercising, or applying for, a right of entry.

13 I am therefore satisfied that s 49O(3) does not prevent the issuing of a permit.

**Section 49P(2)(a) – Appropriate Training**

14 In answer to question 3.1 of the Form 16 application, which Mr Joshua declared by statutory declaration made on 25 September 2025 is true and correct, Mr Joshua states that he received appropriate training about the rights and responsibilities of an authorised representative.

15 As outlined at [10(a)(v)] above, attached to the Form 16 application is a Certificate of Satisfactory Completion of the 'WA Right of Entry Permit Holder' course, dated 26 May 2025, issued to Mr Joshua, by Training Manager, Michael Jez, of Unity Training Services.

16 Unity Training Services are approved by the Commission to provide the course 'WA Right of Entry Permit Holder'.

17 I am satisfied that Mr Joshua has received appropriate training about the rights and responsibilities of an authorised representative. Section 49P(2)(a) weighs in favour of a permit issuing.

**Section 49P(2)(b) – Convictions for an offence against an industrial law**

18 In answer to question 3.2 of the Form 16 application, which Mr Joshua declared by statutory declaration made on 25 September 2025 is true and correct, Mr Joshua states that he has never been convicted of an offence against an industrial law.

19 I am satisfied that s 49P(2)(b) does not weigh against a permit issuing.

**Section 49P(2)(c) – Convictions for an offence against a law involving entry onto premises, etc**

20 In answer to question 3.3 of the Form 16 application, which Mr Joshua declared by statutory declaration made on 25 September 2025 is true and correct, Mr Joshua states that he has three convictions:

(a) On 29 April 2002, he was convicted of stealing, resulting in a 3-month conditional release order and a $200 fine. That conviction has since been spent.

(b) On 2 July 2002, he was convicted of damage to an ATM, resulting in a fine of $2,000.

(c) On 13 May 2004, he was convicted of damage to a rental property, resulting in a 9-month community-based order and orders to complete 120 hours of community service and an anger management course.

21 As outlined at [10(b)] above, at the request of the Commission, the CFMEUW filed a National Police Certificate issued by the Police Force of Western Australia, valid as at 3 November 2025. The certificate discloses no convictions. Accordingly, despite Mr Joshua's disclosure in the Form 16 application only referring to one conviction as spent, it appears that all three convictions are spent.

22 At the hearing of the application, Mr Joshua gave the following evidence:

(a) The April 2002 conviction occurred after he and some friends were asked to leave the Clink nightclub in Fremantle. He was resting on a bin outside the rear of Benny's restaurant when a person from Benny's asked him to move on. The person was wearing reading glasses. Mr Joshua took the person's glasses, put them down the front of his pants, and walked to the other side of the main strip in Fremantle. Police then attended with the person. Mr Joshua returned the glasses and was arrested. The offending occurred at about 2:00am or 3:00am. He attended court the next day, pleaded guilty, and was convicted of stealing.

(b) The damage to the ATM in 2002 occurred when he and his friend were returning home from Fremantle in a taxi, tried to access an ATM, but due to intoxication messed up the entry of his pin number, and damaged the ATM.

(c) The damage to the rental property in 2004 occurred during an argument he had with his ex-wife and he threw a pot through a window.

(d) As a consequence of the 2004 offence, he undertook an anger management course, and did not drink for the following 10 years, because he 'didn't like being out of control'.

23 I am satisfied that s 49P(2)(c) weighs against a permit issuing.

**Section 49P(2)(d) – Penalties under an industrial law**

24 A mandatory consideration under s 49P(2)(d) is whether Mr Joshua, or another person, has ever been ordered to pay a penalty under an industrial law in relation to Mr Joshua's actions.

25 Section 49G(1) defines an 'industrial law' as including the FW Act. The material before me discloses that Mr Joshua and the CFMEU have been ordered to pay penalties under the FW Act in relation to the actions of Mr Joshua in the following matter.

26 In ***Director of the Fair Work Building Industry Inspectorate v Construction, Forestry, Mining and Energy Union*** [2016] FCA 616 (***Perth Airport first instance decision***), Mr Joshua was ordered to pay a penalty of $2,000 for contravening s 348 of the FW Act on 22 October 2013, by organising and participating in a blockade, with about 100 other persons, of the entrances to the Terminal 1 work site at the Perth international airport so as to prevent workers having access to the work site, with the

intent to coerce one or more of Perth Airport Pty Ltd (**Airport**), Broad Construction Services (WA) Pty Ltd (**Broad**) and Concealed Interiors and Exteriors Pty Ltd (**Concealed Interiors**) to comply with the lawful request of the CFMEU to pay the outstanding wages and contractual entitlements then due to some employees of Concealed Interiors.

27 This decision was appealed, and in the ***Perth Airport Appeal decision*** (at [10(d)] above), Mr Joshua was ordered to pay a $5,000 penalty in lieu of the $2,000 penalty. Dowsett and Rares JJ stated at [78]:

> 78 In other words, the CFMEU and at least Mr Buchan, but we would infer all of the respondents, intended the blockade to affect, and so to injure, a wide range of persons quite apart from Concealed Interiors. As Mr Buchan said, 'we don't care where it comes from'. That statement reflected the reality of the blockade as industrial bullying. It indiscriminately targeted all persons and businesses associated with the construction work at the site, regardless of their possible responsibility for what was only a 'reasonable belief' of the respondents that Concealed Interiors was in default of paying its, or some of its, employees their entitlements. Similarly, in the agreed facts (at [23] that North J has quoted in [15] of his reasons), Mr Joshua approached Broad's site supervisor, David Lewis, and said words to the effect:
>
> > **You guys need to sort out your CA's** as Concealed are a shower of shit. They need to make it happen and pull the pin on them [sic]. **We are doing exactly the same thing as we did with them six months ago.** (emphasis added)

28 The CFMEU was also ordered to pay penalties in relation to Mr Joshua's actions.

29 At the hearing of the application, Mr Joshua gave evidence that:

(a) At the time, he did not personally agree with the action that was taken.

(b) As a permit holder, he should have interjected.

(c) He believed there were other ways of seeking to recover the money said to be owing, particularly because he had dealt with Concealed Interiors on other projects and considered that he had a sufficient relationship with them to raise the issue directly, or to seek to progress the matter with Broad or the Airport, before any picket line was established.

(d) At the time, he was young, had held his permit for just over a year, and did not have the confidence to speak up.

(e) His conduct was wrong and lawful avenues were available which could have been pursued.

30 The penalties imposed on Mr Joshua, and on the CFMEU in relation to his actions, are an adverse consideration under s 49P(2)(d). I am satisfied that s 49P(2)(d) weighs against a permit issuing.

**Section 49P(2)(e) – Revocation, suspension or conditions on right of entry permit**

31 Section 49P(2)(e) requires the Commission to consider whether a right of entry permit issued to Mr Joshua has been revoked, suspended or made subject to conditions. The term 'right of entry permit' is defined in s 49G(1) to mean a permit issued by the Commission under Subdivision 3.

32 Mr Joshua presently holds right of entry permit ROE 21/2019, which expires on 30 June 2026.

33 The replacement Form 16 application states that in addition to his current permit, Mr Joshua held permits ROE 00970 and ROE 437/2014. The Commission's records indicate that both of these permits were revoked at the request of the Secretary of the CFMEUW.

34 While those permits were revoked at the request of the CFMEUW, there is no material before me indicating that the revocations arose from any misconduct by Mr Joshua, or from any concern regarding his fitness to hold a State right of entry permit. There is also no material before me indicating that Mr Joshua has ever had a State right of entry permit suspended or made subject to conditions.

35 In those circumstances, although I have taken the revocations into account, I give them no adverse weight. I am satisfied that s 49P(2)(e) does not weigh against a permit issuing.

**Section 49P(2)(f) – Revocation, suspension or conditions on right of entry under an industrial law or a work health and safety law**

36 Section 49P(2)(f) requires the Commission to consider whether a right of entry for industrial or work health and safety purposes Mr Joshua had under an industrial law or a work health and safety law has ever been revoked, suspended or had conditions imposed on it.

37 Section 49G(1) defines an 'industrial law' as including the FW Act. The *Fair Work (Transitional Provisions and Consequential Amendments Act 2009* (Cth) provides in Schedule 14 – Right of entry, that:

(a) A permit issued under the *Workplace Relations Act 1996* (Cth) (**WR Act**) has effect as if it were a permit issued under the FW Act.

(b) A reference in s 510(1)(d) of the FW Act to a pecuniary penalty ordered under the FW Act includes a reference to a pecuniary penalty ordered under the WR Act.

(c) Any suspension or revocation of, or imposition of conditions on, an entry permit under the WR Act is taken to have been done under the FW Act.

38 Accordingly, the federal permits held by Mr Joshua are a right of entry for industrial purposes under an industrial law. Therefore, it is necessary to consider the conditions imposed on those federal permits.

39 Firstly, a federal permit held by Mr Joshua was subject to a condition imposed pursuant to consent orders in ***Radisich v***

***Buchan and Others*** [2008] AIRC 896. The condition restricted Mr Joshua from entering or remaining on construction sites in the company of, or in concert with, Joseph McDonald, except in specified circumstances. The material before me indicates that this was a generic condition imposed on CFMEU permit holders. I give this matter limited adverse weight.

40 Secondly, Mr Joshua's federal permit is subject to the condition that Mr Joshua does not exercise rights under Subdivision AA of Division 2 of Part 3-4 of the FW Act until he completes appropriate training in relation to that subdivision and files a copy of the training completion certificate in the FWC. The material before me indicates that this is a standard condition imposed on CFMEU permits, which has practical application to the Manufacturing Division of the CFMEU. I give this matter limited adverse weight.

41 The conditions imposed on Mr Joshua's federal permits are generic or standard conditions, rather than conditions directed specifically to conduct by Mr Joshua. I give these matters limited adverse weight. Overall, I am satisfied that s 49P(2)(f) weighs minimally against a permit issuing.

**Section 49P(2)(g) – Disqualification under an industrial law or a work health and safety law**

42 There is no material before me indicating that Mr Joshua has ever been disqualified under an industrial law or a work health and safety law from exercising, or applying for, a right of entry for industrial or work health and safety purposes under that law.

43 I am satisfied that s 49P(2)(g) does not weigh against a permit issuing.

**Section 49P(1)(b) – Any other matters the Commission considers relevant**

44 The CFMEUW relies on the fact that Mr Joshua has previously been assessed by the FWC as a fit and proper person to hold a federal right of entry permit.

45 The Form 16 application refers to a decision dated 5 July 2019, being ***Construction, Forestry, Maritime, Mining and Energy Union-Construction and General Division, WA Divisional Branch*** [2019] FWC 4270.

46 In answer to question 2.3 of the Form 16 application, which Mr Joshua declared by a statutory declaration made on 25 September 2025 is true and correct, Mr Joshua states that he held the following permits under s 512 of the FW Act:

(a) RE2014/1426;

(b) RE2014/1887;

(c) RE2019/382;

(d) RE2022/486; and

(e) RE2025/509.

47 The FWC decisions, including those to renew Mr Joshua's federal permits without publishing reasons, are relevant, but they are not determinative. Sections 49O and 49P of the IR Act require the Commission to undertake its own assessment, and ***Margjini*** [75] makes clear that the Division 2G permit process must be applied with rigour.

48 The adverse matters in this application are the three spent convictions falling within s 49P(2)(c), the penalty imposed in the ***Perth Airport Appeal decision*** for contravening s 348 of the FW Act falling within s 49P(2)(d), and the conditions imposed on his federal permits falling within s 49P(2)(f).

49 The three convictions under s 49P(2)(c) are now spent, and the National Police Certificate, valid as at 3 November 2025, discloses no convictions. Although s 49G(1) requires spent convictions to be considered, the weight given to them is reduced for the following reasons.

50 The stealing conviction involved dishonesty, and the two damage convictions involved intentional damage to property. Each is relevant to the assessment required by s 49P(2)(c). However, their present weight is reduced by their age and by the absence of any comparable offending over more than two decades.

51 I also take into account Mr Joshua's candid evidence at the hearing about each matter. He did not seek to minimise his conduct and gave evidence of the steps he has taken following the 2004 offence, including completing an anger management course and abstaining from alcohol consumption for approximately 10 years, because he did not like being out of control. That evidence demonstrates insight, and a sustained behavioural response to the conduct that gave rise to the convictions.

52 The contravention in the ***Perth Airport Appeal decision*** involved Mr Joshua organising and participating in a blockade of the entrances to a work site with about 100 other persons, with intent to coerce one or more of the Airport, Broad and Concealed Interiors to comply with the CFMEU's request concerning outstanding wages and contractual entitlements. The Full Court characterised the blockade as 'industrial bullying' that indiscriminately targeted all persons and businesses associated with construction work at the site. Conduct of that kind is inconsistent with the lawful and responsible exercise of statutory powers conferred by a right of entry permit, and I give it significant adverse weight.

53 Nonetheless, a number of matters reduce its present weight. The contravention occurred on 22 October 2013, more than 12 years ago. It was a single contravention, and the material before me does not disclose any further contravention of an industrial law by Mr Joshua in the intervening period. The penalty imposed on Mr Joshua was fixed on appeal at $5,000. At the hearing of the application, Mr Joshua accepted that his conduct was wrong, that lawful alternatives were available to recover the entitlements in question, and that, as a permit holder with knowledge of the relevant contractor and an existing relationship with it, he should have interjected rather than participated. He attributed his failure to do so to his relative inexperience and lack of confidence at the time, having held his permit for just over a year. I accept that evidence as a candid acknowledgment of wrongdoing, accompanied by a coherent account of the circumstances and of how he would now act differently.

54 The conditions imposed on Mr Joshua's federal permits, addressed under s 49P(2)(f), were not conditions imposed because of

conduct specific to Mr Joshua, but are generic conditions of limited subject matter, to which I have given limited adverse weight for the reasons already stated.

55 A fit and proper person for the purposes of s 49O is not necessarily a person with an unblemished record. The question is whether, having regard to the statutory criteria and any other relevant matters, the Commission is presently satisfied that the nominated official is a fit and proper person to hold and exercise the powers conferred by a right of entry permit.

56 That assessment is to be made as at the date of determination, and against the whole of the evidence, including the age of the adverse matters, the absence of comparable misconduct over a substantial period, Mr Joshua's training, his candour and evidence of insight and remorse.

57 I also take into account that Mr Joshua has held federal right of entry permits over a substantial period. The material before me indicates that he has held federal permits under s 512 of the FW Act, including RE2014/1426, RE2014/1887, RE2019/382, RE2022/486 and RE2025/509. The FWC's decision in **[2019] FWC 4270**, and the subsequent renewal of his federal permit in 2022 and 2025, are relevant because they indicate that Mr Joshua has been assessed as fit and proper to hold a federal permit after the penalty for the contravention was imposed in the ***Perth Airport first instance decision*** delivered on 30 May 2016, and increased on appeal in the ***Perth Airport Appeal decision*** delivered on 29 March 2017.

58 I have considered whether to issue the permit subject to conditions under s 49O(2). In particular, I have considered whether conditions directed to further training, supervision, reporting, or restrictions on the exercise of entry rights would be appropriate.

59 I am not satisfied that imposing conditions is necessary in the circumstances. The contravention in the ***Perth Airport Appeal decision*** occurred more than 12 years ago, was a single contravention by Mr Joshua, and there has been no comparable misconduct since. The spent convictions are older still. Mr Joshua has completed the WA Right of Entry Permit Holder training course and has demonstrated insight into both his contravention of an industrial law and the personal conduct underlying his spent convictions. In those circumstances, the statutory obligations applying to authorised representatives, together with the consequences that would follow from any future misuse of entry rights, are sufficient to serve the protective purposes of the right of entry scheme identified in ***Margjini*** [73] (at [4(h)] above). I am not satisfied that any additional condition would materially advance those purposes.

**Conclusion**

60 The fit and proper person criteria point in different directions. Section 49P(2)(a) weighs in favour of a permit issuing. Sections 49P(2)(b) and (g) do not weigh against a permit issuing. Section 49P(2)(e) does not weigh against a permit issuing because the revocations of Mr Joshua's earlier State permits occurred at the request of the CFMEUW and there is no material indicating that they arose from any concern regarding Mr Joshua's conduct or fitness. Section 49P(2)(f) weighs minimally against a permit issuing, given the limited nature of the generic or standard conditions imposed on Mr Joshua's federal permits.

61 Sections 49P(2)(c) and (d) weigh against a permit issuing. The convictions disclosed by Mr Joshua fall within s 49P(2)(c), although they are spent and old. The penalty imposed in relation to Mr Joshua's contravention of s 348 of the FW Act is also an adverse matter. However, for the reasons given above, the present weight of those matters is reduced by the age of the conduct, the absence of comparable misconduct over a substantial period, the training undertaken, Mr Joshua's evidence at the hearing of the application accepting that lawful alternatives were available, and the FWC decisions and subsequent permit renewals.

62 Having considered each of the fit and proper person criteria in s 49P(2), and the other matters I consider relevant under s 49P(1)(b), and applying the rigour required by ***Margjini***, I am satisfied that Mr Joshua is a fit and proper person to hold a right of entry permit.

63 I have considered whether the permit should issue subject to conditions under s 49O(2). For the reasons given above, I am not satisfied that imposing conditions is necessary.

64 The application is granted.

65 As Mr Joshua's current right of entry permit ROE 21/2019 expires on 30 June 2026, I will order that a right of entry permit issue to Mr Joshua on and from 1 July 2026.

[redacted]

**2026 WAIRC 00436**

**APPLICATION TO ISSUE PETER DAVID JOSHUA WITH A RIGHT OF ENTRY PERMIT**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | THE CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION OF WORKERS |
| | **APPLICANT** |
| | **-v-** |
| | (NOT APPLICABLE) |
| | **RESPONDENT** |
| **CORAM** | COMMISSIONER C TSANG |
| **DATE** | MONDAY, 29 JUNE 2026 |
| **FILE NO.** | ROE 129 OF 2025 |
| **CITATION NO.** | 2026 WAIRC 00436 |

| | |
|---|---|
| **Result** | Order issued |
| **Representation** | |
| **Applicant** | Mr D Rafferty (of counsel) |
| **Respondent** | Not applicable |

*Order*

HAVING heard from Mr D Rafferty (of counsel) on behalf of the applicant, and Reasons for Decision ([2026] WAIRC 00429) having been delivered on 26 June 2026, the Commission, pursuant to powers conferred under the *Industrial Relations Act 1979* (WA), hereby orders –

THAT a right of entry permit be issued to Peter David Joshua on and from 1 July 2026.

(Sgd.) C TSANG,
[L.S.] Commissioner.

**2026 WAIRC 00426**

**APPLICATION TO ISSUE BRADLEY JOHN HENLEY UPTON WITH A RIGHT OF ENTRY PERMIT**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | | |
|---|---|---|
| **CITATION** | **:** | 2026 WAIRC 00426 |
| **CORAM** | **:** | COMMISSIONER C TSANG |
| **HEARD** | **:** | TUESDAY, 16 JUNE 2026 |
| **DELIVERED** | **:** | FRIDAY, 26 JUNE 2026 |
| **FILE NO.** | **:** | ROE 187 OF 2025 |
| **BETWEEN** | **:** | THE CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION OF WORKERS<br>Applicant<br>AND<br>(NOT APPLICABLE)<br>Respondent |

| | | |
|---|---|---|
| CatchWords | **:** | Industrial law (WA) – Application for a right of entry permit – Fit and proper person criteria – Whether the official, or another person, has ever been ordered to pay a penalty under an industrial law in relation to the actions of the official – Whether a right of entry for industrial purposes the official had under an industrial law has ever been revoked, suspended or had conditions imposed on it – Other matters the Commission considers relevant – Interim restraining order |
| Legislation | **:** | *Industrial Relations Act 1979* (WA)<br>*Industrial Relations Commission Regulations 2005* (WA)<br>*Restraining Orders Act 1997* (WA)<br>*Spent Convictions Act 1988* (WA)<br>*Fair Work Act 2009* (Cth)<br>*Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)<br>*Workplace Relations Act 1996* (Cth) |
| Result | **:** | Application granted; right of entry permit to issue on and from 1 July 2026 |
| **Representation:** | | |
| Applicant | **:** | Mr D Rafferty (of counsel) |
| Respondent | **:** | |

**Cases referred to in reasons:**

*Application by Construction, Forestry, Maritime, Mining and Energy Union-Construction and General Division, WA Divisional Branch* [2023] FWC 728

*Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union (Perth Childrens' Hospital Contraventions Case)* [2017] FCA 491

*Australian Building and Construction Commissioner v Upton (The Gorgon Project Case)* [2017] FCA 847

*Australian Building and Construction Commissioner v Upton (The Gorgon Project Case) (No 2)* [2018] FCA 897

*Bechtel (Western Australia) Pty Ltd v Construction, Forestry, Mining and Energy Union-Western Australian Branch* [2013] FWC 2498

*CFMEU, Construction and General Division, Western Australia Divisional Branch* [2026] FWC 1683

*Construction, Forestry, Mining and Energy Union-Construction and General Division, WA Divisional Branch* [2017] FWC 5824

*Director of the Fair Work Building Industry Inspectorate v Upton* [2015] FCA 672

*Radisich v Buchan and Others* [2008] AIRC 896

*Registrar, Western Australian Industrial Relations Commission v Margjini and Another* [2026] WAIRC 00314

*Reasons for Decision*

1 On 11 November 2025, the Secretary of the Construction, Forestry, Mining and Energy Union of Workers (**CFMEUW**) filed a *Form 16 – Application to Issue a Right of Entry Permit* for Bradley John Henley Upton (**Mr Upton**) under Division 2G of Part II of the *Industrial Relations Act 1979* (WA) (**IR Act**).

2 The CFMEU, Construction and General Division, Western Australia Divisional Branch (**CFMEU**) is the federal counterpart of the CFMEUW.

3 The application is to be determined under Division 2G of Part II of the IR Act:

**Division 2G – Right of entry and inspection by authorised representatives**

**Subdivision 1 – Preliminary**

**49G. Terms used**

(1) In this Division –

***authorised representative***, of an organisation of employees, means an officer or employee of the organisation who holds a right of entry permit;

***conviction*** –

(a) means a finding of guilt by a court, or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded; and

(b) includes –

(i) a spent conviction as defined in the *Spent Convictions Act 1988* section 3(1), regardless of sections 13 and 25 to 27 of that Act; and

(ii) a conviction against a law of another jurisdiction if, under a law of that jurisdiction, the person concerned is permitted not to disclose the fact that the person was convicted or found guilty of the offence;

***expiry day***, of a right of entry permit, has the meaning given in section 49Q(3);

***federal counterpart***, in relation to an organisation, means a federal organisation that is –

(a) a federal counterpart (as defined in the FW (Registered Organisations) Act section 9A) of the organisation; or

(b) prescribed to be a federal counterpart of the organisation by regulations made by the Governor;

***fit and proper person criteria*** has the meaning given in section 49P(2);

***industrial law*** means the following –

(a) this Act, the LSL Act and the MCE Act;

(b) the FW Act and the FW (Registered Organisations) Act;

(c) another law of the Commonwealth, or a law of another State or a Territory, prescribed to be an industrial law by regulations made by the Governor;

***nominated official***, in relation to an application under section 49N(1), has the meaning given in section 49N(3);

***relevant employee***, when used in connection with the exercise of a power by an authorised representative of an organisation, means an employee who is a member of the organisation or who is eligible to become a member of the organisation;

***right of entry permit*** means a permit issued by the Commission under Subdivision 3;

***work health and safety law*** means –

(a) the *Work Health and Safety Act 2020*; or

(b) a law of the Commonwealth, another State or a Territory prescribed to be a work health and safety law by regulations made by the Governor.

(2) In this Division, a reference to an officer or employee of an organisation includes a reference to an officer or employee of a federal counterpart of the organisation.

…

**Subdivision 3 – Right of entry permits**

**49N. Application for right of entry permit**

(1) The secretary of an organisation of employees may apply to the Commission for an officer or employee of the organisation to be issued a right of entry permit.

(2) The application must comply with any requirements prescribed by the regulations.

(3) The officer or employee named in the application is the ***nominated official***.

**49O. Commission may issue right of entry permit**

(1) The Commission may, on an application under section 49N, issue a right of entry permit to the nominated official if satisfied that the official is a fit and proper person to hold the permit.

(2) The Commission may decide to issue a right of entry permit subject to conditions.

(3) The Commission cannot issue a right of entry permit to the nominated official if, when the Commission is deciding the application –

(a) a right of entry the official had under an industrial law or work health and safety law is suspended under that law; or

(b) the official is disqualified under an industrial law or work health and safety law from exercising, or applying for, a right of entry under that law.

**49P. Deciding whether nominated representative is fit and proper person**

(1) In deciding whether a nominated official is a fit and proper person to hold a right of entry permit, the Commission –

(a) must consider the fit and proper person criteria in relation to the official; and

(b) may consider any other matters the Commission considers relevant.

(2) The following matters are the ***fit and proper person criteria*** in relation to a nominated official –

(a) whether the official has received appropriate training about the rights and responsibilities of an authorised representative;

(b) whether the official has ever been convicted of an offence against an industrial law;

(c) whether the official has ever been convicted of an offence against a law of the Commonwealth, a State, a Territory or a foreign country involving –

(i) entry onto premises; or

(ii) fraud or dishonesty; or

(iii) the intentional use of violence against another person; or

(iv) the intentional damage or destruction of property;

(d) whether the official, or another person, has ever been ordered to pay a penalty under an industrial law in relation to the actions of the official;

(e) whether a right of entry permit issued to the official has been revoked, suspended or made subject to conditions;

(f) whether a right of entry for industrial or work health and safety purposes the official had under an industrial law or a work health and safety law has ever been revoked, suspended or had conditions imposed on it;

(g) whether the official has ever been disqualified under an industrial law or a work health and safety law from exercising, or applying for, a right of entry for industrial or work health and safety purposes under that law.

4 In ***Registrar, Western Australian Industrial Relations Commission v Margjini and Another*** [2026] WAIRC 00314 (***Margjini***), the Commission in Court Session considered the proper approach to the fit and proper person assessment under Division 2G of Part II of the IR Act. The following principles are relevant to this application:

(a) Although ss 49O(1) and 49P(2) of the IR Act are based on ss 512 and 513 of the *Fair Work Act 2009 (Cth)* (**FW Act**), the provisions are not identical. Under s 513(1)(g) of the FW Act, the Fair Work Commission (**FWC**) *must* take into account any other matters it considers relevant. By contrast, under s 49P(1)(b) of the IR Act, the Commission *may* consider any other matters it considers relevant: ***Margjini*** [75].

(b) Section 49P(1)(b) confers a broad discretion on the Commission as to the additional matters it may consider when deciding whether a nominated official is a fit and proper person to hold a right of entry permit: ***Margjini*** [55].

(c) Matters of character and reputation may be considered under s 49P(1)(b), provided those matters are directed to the purpose of holding and exercising a right of entry permit and to the rights conferred by Division 2G: ***Margjini*** [56].

(d) The fit and proper person criteria in ss 49P(2)(a)–(g) are not to be read restrictively. In particular, matters falling within s 49P(2)(c) may be taken into account in assessing a person's character and integrity, provided they are considered in the context of the powers and purposes effected by Division 2G, read with the objects of the IR Act: ***Margjini*** [62].

(e) The weight given to each of the criterion in s 49P(2) is a matter for the Commission. The assessment requires a balancing of the criteria and any other matters: ***Margjini*** [64].

(f) The provisions of Division 2G have a combination of protective purposes, for both permit holders and employers and occupiers; in the interpretation of the relevant provisions of the right of entry scheme, these dual purposes must be kept in mind: ***Margjini*** [73].

(g) Division 2G requires the permit process to be applied with rigour, and all relevant considerations are to be taken into account: ***Margjini*** [75].

5 In addition to the matter identified at [4(a)] above, the IR Act treats spent convictions differently from the FW Act. Section 49G(1) defines 'conviction' to include a spent conviction as defined in s 3(1) of the *Spent Convictions Act 1988* (WA), regardless of ss 13 and 25–27 of that Act. It also includes certain convictions in other jurisdictions even if, under the law of that jurisdiction, the person is permitted not to disclose the conviction. Accordingly, if a nominated official has a spent conviction falling within ss 49P(2)(b) or (c), that spent conviction remains a matter the Commission must consider.

**Consideration**

**Section 49N(1) and (2) requirements**

6 Section 49N(1) states that a secretary of an organisation of employees may apply to the Commission for an officer or employee of the organisation to be issued a right of entry permit.

7 I am satisfied that each of the requirements in s 49N(1) has been met, as:

(a) The application was made by Michael Buchan (**Mr Buchan**).

(b) Mr Buchan is the Secretary of the CFMEUW.

(c) The CFMEUW is an organisation of employees.

(d) The Form 16 application states that Mr Upton is an officer of the CFMEUW, holding the office of Assistant Secretary.

8 Section 49N(2) states that the application must comply with any requirements prescribed by the regulations.

9 Regulations 77E(2)–(6) of the *Industrial Relations Commission Regulations 2005* (WA), state:

(2) The application must –

(a) be in the approved form; and

(b) include –

(i) the full legal name and address of the nominated official; and

(ii) a legible copy of the nominated official's signature; and

(c) be accompanied by –

(i) a current passport size and style photograph of the nominated official (the accompanying photograph); and

(ii) evidence that the nominated official has completed appropriate training about the rights and responsibilities of an authorised representative; and

(d) have attached to it the particulars approved by the Chief Commissioner from time to time.

(3) If requested by the Commission, the application must also be accompanied by a document called a National Police Certificate that –

(a) relates to the nominated official; and

(b) is issued by the Australian Federal Police or the Police Force of Western Australia not more than 30 days before the application is made.

(4) The secretary must certify that the person in the accompanying photograph is the nominated official.

(5) If the accompanying photograph is in printed form, the certification mentioned in subregulation (4) must be made on the back of the accompanying photograph.

(6) The Commission may, before it considers the application, publish all of the following on the Commission's website –

(a) the name of –

(i) the organisation that is applying for the right of entry permit; and

(ii) the nominated official for the application;

(b) a statement that the organisation has applied for the right of entry permit to be issued to the nominated official;

(c) a statement that submissions may be made to the Commission, within a specified time, as to whether the nominated official is a fit and proper person to be issued the right of entry permit.

10 I am satisfied that the application complies with the requirements in reg 77E(2)–(6), for the following reasons:

(a) The Form 16 application is in the approved form and includes:

(i) Mr Upton's full legal name and address.

(ii) Mr Upton's statutory declaration made at Perth on 10 November 2025, declaring that he has provided a

recent full-face, passport-size photograph of himself to Mr Buchan and shown his driver's licence which contains his signature to Mr Buchan, that the information contained in the Form 16 application is true and correct and that he has disclosed all relevant matters that may arise under s 49P.

(iii) Mr Buchan's statutory declaration made at Perth on 10 November 2025, declaring that he has made proper enquiries of the matters under s 49P, and having made those enquiries he is satisfied that Mr Upton meets the permit qualification matters in s 49P(2) and has disclosed any matters that might be relevant under s 49P(1)(b).

(iv) A Certificate of Satisfactory Completion of the 'WA Right of Entry Permit Holder' course, dated 26 May 2025, issued to Mr Upton, by Training Manager, Michael Jez, of Unity Training Services.

(b) The first iteration of the application (submitted on 6 November 2025), which remains before the Commission and is treated as forming part of, or incorporated into, the Form 16 application, includes a copy of Mr Upton's photograph, and a legible copy of Mr Upton's signature, certified by Mr Buchan on 6 November 2025, as a true photograph of Mr Upton and a true representation of Mr Upton's signature.

(c) At the request of the Commission, the CFMEUW filed a National Police Certificate issued by the Police Force of Western Australia that relates to Mr Upton, valid as at 10 December 2025.

(d) On 24 November 2025, the Commission published a notice in accordance with reg 77E(6) on the Commission's website. No submissions were received by the Commission in response to that notice.

**Section 49O(3) – Current suspension or disqualification**

11 Before turning to the fit and proper person assessment under s 49P, it is necessary to consider whether either of the prohibitions in s 49O(3) applies. The Commission cannot issue a permit if, at the time the application is decided, a right of entry Mr Upton holds under an industrial law or work health and safety law is suspended, or Mr Upton is disqualified under such a law from exercising, or applying for, a right of entry under that law.

12 At the hearing of the application, Mr Upton stated under affirmation that he does not have a right of entry under an industrial law or work health and safety law that is presently suspended, and is not presently disqualified under such a law from exercising, or applying for, a right of entry.

13 I am therefore satisfied that s 49O(3) does not prevent the issuing of a permit.

**Section 49P(2)(a) – Appropriate Training**

14 On 16 January 2026, the CFMEUW filed a Supplementary Statutory Declaration of Mr Upton. At paragraphs 35–40, Mr Upton states:

35 I returned my federal permit to the [FWC] on 15 November 2017. My recollection is that it had expired and I did not apply for a new federal permit after the Gorgon Project contraventions. After that I had no federal permit for more than 5 years [sic] since I have had a permit.

36. In 2021, l undertook training with Barclays as part of the CFMEU leadership's exploration of a more 'human' and strategic path forward. Going into these sessions, I was sceptical about the effectiveness of psychological analysis. However, I found it to be quite helpful in assisting me in my approach to my role as a senior union official, as well as in my everyday life. Through these sessions, I learnt practical strategies about how I could deal with conflict diplomatically and developed my oral communication and interpersonal skills. They also opened me up and helped me to talk about more of the effects of deaths and suicides on sites that I had witnessed or had to deal with the aftermath of. Annexed and marked **BJHU-1** is a reference letter related to this training.

37. I undertook right of entry training on 22 November 2022 via an online ACTU training course. I successfully completed this course. I understand that this course is a course approved by the [FWC].

38. Shortly before this, on 10 October 2022, I attended in-person training with Brian Lacy AO, which I found immensely informative and valuable.

39. Mr Lacy took me through the contraventions I had previously engaged in which I have described above. We went through why my conduct breached the law and what I needed to do to make sure I did not engage in similar conduct again or conduct which breached industrial law. I found the session with Mr Lacy incredibly useful. It included practical scenario-based questions and answers to which Mr Lacy provided suggestions for dealing with difficult scenarios I had not considered. Annexed and marked **BJHU-2** is a copy of Mr Lacy's report from this training.

40. As detailed in the Form 16 application, I undertook state [sic] right of entry training on 26 May 2025 via an in-person Unity Training Services training course. I successfully completed this course. I understand that this course is a course approved by the [Commission].

15 I am satisfied that Mr Upton has received appropriate training about the rights and responsibilities of an authorised representative. Section 49P(2)(a) weighs in favour of a permit issuing.

**Section 49P(2)(b) – Convictions for an offence against an industrial law**

16 In answer to question 3.2 of the Form 16 application, which Mr Upton declared by statutory declaration made on 10 November 2025 is true and correct, Mr Upton states that he has never been convicted of an offence against an industrial law.

17 The National Police Certificate that the CFMEUW filed at the Commission's request, valid as at 10 December 2025, discloses no convictions.

18 The definition of 'conviction' in s 49G(1) extends to spent convictions. At the hearing of the application, counsel for the

CFMEUW stated that the Form 16 application was completed with Mr Upton's full knowledge that the definition of 'conviction' included spent convictions.

19 Accordingly, having regard to the above matters, I am satisfied that there is no conviction, including any spent conviction, of the kind referred to in s 49P(2)(b). Section 49P(2)(b) does not weigh against a permit issuing.

**Section 49P(2)(c) – Convictions for an offence against a law involving entry onto premises, etc**

20 In answer to question 3.3 of the Form 16 application, which Mr Upton declared by statutory declaration made on 10 November 2025 is true and correct, Mr Upton states that he has never been convicted of an offence against a law of the Commonwealth, a State, a Territory or a foreign country involving entry onto premises, fraud or dishonesty, the intentional use of violence against another person, or the intentional damage or destruction of property.

21 Having regard to Mr Upton's declaration, the National Police Certificate, and counsel for the CFMEUW's assurance that Mr Upton's declaration included spent convictions, I am satisfied that there is no conviction, including any spent conviction, of the kind referred to in s 49P(2)(c). Section 49P(2)(c) does not weigh against a permit issuing.

**Section 49P(2)(d) – Penalties under an industrial law**

22 A mandatory consideration under s 49P(2)(d) is whether Mr Upton, or another person, has ever been ordered to pay a penalty under an industrial law in relation to Mr Upton's actions.

23 Section 49G(1) defines an 'industrial law' as including the FW Act. The material before me discloses that Mr Upton and the CFMEU have been ordered to pay penalties under the FW Act in relation to the actions of Mr Upton in the following three matters.

24 Firstly, in ***Director of the Fair Work Building Industry Inspectorate v Upton*** [2015] FCA 672 (***Wheatstone Case***), Mr Upton was ordered to pay penalties of $3,000 and $1,000 for two contraventions of s 500 of the FW Act. The CFMEU was also ordered to pay penalties in relation to conduct arising from Mr Upton's actions of $15,000 and $5,000 respectively.

25 Secondly, in ***Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union (Perth Childrens' Hospital Contraventions Case)*** [2017] FCA 491 (***PCH Case***), Mr Upton was ordered to pay a penalty of $3,500 for contravening s 340 of the FW Act. The CFMEU was also ordered to pay a penalty of $22,000 in relation to that conduct.

26 Thirdly, in ***Australian Building and Construction Commissioner v Upton (The Gorgon Project Case) (No 2)*** [2018] FCA 897 (***Gorgon Penalty Case***), Mr Upton was ordered to pay a penalty of $8,100 for contravening s 348 of the FW Act. The CFMEU was also ordered to pay a penalty of $43,200 in relation to conduct arising from Mr Upton's actions.

27 At paragraphs 17–34 of Mr Upton's Supplementary Statutory Declaration, he states:

> 17. During late 2012 and early 2013, the Wheatstone Project near Onslow was kicking off and l was visiting the site on a regular basis to represent CFMEU members and employees who were eligible to be members of the CFMEU. I had ongoing issues with the principal contractor at the site providing adequate facilities for me to have meetings with workers.
>
> 18. On 8 October 2012, I allowed my frustration about this issue to get the better of me and used language that was not appropriate, particularly for a permit holder exercising right of entry and of which I am embarrassed and ashamed.
>
> 19. I admitted to two contraventions of s 500 of the FW Act in [the ***Wheatstone Case***] as a result of me acting in an improper manner by using inappropriate language on 8 October 2012 and entering a residential part of a premises on 13 February 2013. The Federal Court imposed a penalties [sic] of $4,000 on me for my two contraventions of s 500; and $20,000 on the CFMEU for contraventions which it committed as a result of my conduct. I apologised for my conduct to the Court. I understand that the Federal Court accepted my apology.
>
> 20. l also understand that the Federal Court concluded that:
>
> a. my language on 8 October 2012 was deplorable, aggressive, racially tainted and abusive;
>
> b. whilst my concerns about what was occurring on the site related to circumstances that did exist and caused me frustration and anger, these circumstances did not excuse my behaviour.
>
> 21. I agree with the Federal Court's characterisation of my conduct. It was unacceptable and improper. I regret it. It is conduct that I am committed to never repeating.
>
> 22. If an issue ever arose again about the provision of adequate facilities by a contractor for me to have discussions with workers at a site while exercising right of entry, I would seek to engage with the contractor about these. If these discussions did not resolve the matter, I would contact CFMEU legal and industrial officers and ask them to commence dispute resolution proceedings in the Commission under what I understand is the Commission's power to deal with right of entry disputes between unions and occupiers and employers.
>
> 23. In relation to my conduct on 13 February 2013, I understand that the Federal Court found that:
>
> a. l went into the 'wet mess' area of the site, which was mainly used for residential purposes;
>
> b. this contravention was not premeditated, but the result of carelessness on my part;
>
> c. if I had known that the area was used mainly for residential purposes, I would not have gone there.
>
> 24. I accept my conduct was improper and unlawful. I regret it. I understand that it is essential as a permit holder exercising rights to not go into areas which are residential in nature.
>
> 25. Also as a result of this conduct, in ***Bechtel (Western Australia) Pty Ltd v Construction, Forestry, Mining and***

***Energy Union***[-***Western Australian***] ***Branch*** [2013] FWC 2498 [(***Permit Conditions Case***)], the [FWC] imposed a condition on my permit that I would not be permitted to exercise right of entry at the Project for the balance of the 2013 calendar year, and that clear obligations be placed on me if I chose to exercise right of entry from 1 January 2014 until the conclusion of the Project. My understanding is that the [FWC] also expressed a concern in that matter that the employer had alleged that on 20 and 21 March 2013 at the same Project a plumber and a boilermaker attended discussions I conducted when they were not eligible to be members of the CFMEU. I complied with those conditions.

26. In May 2017, in [the ***PCH Case***], the Federal Court ordered that I pay a penalty of $3,500 and the CFMEU a penalty of $22,000 for a contravention I committed on 30 January 2013 at a John Holland controlled building site at the Perth Children's Hospital. My contravening was of s 340 of the FW Act by taking adverse action against John Holland. The contravening was the result of me attending a safety meeting of employees on the site with other CFMEU officials where safety issues were raised and then discouraging employees from re-entering site after attending the meeting to start work at their rostered start times.

27. My conduct was not acceptable. I regret it. Discouraging employees from attending for work was not lawful and not an acceptable or appropriate way to deal with safety issues that had been raised. I am committed to not repeating this conduct.

28. If a similar situation arose in the future, I would use dispute resolution processes available under applicable enterprise agreements or employ the issue resolution procedure applicable under the *Work Health and Safety Act 2020* (WA) (**WHS Act**). Alternatively, I would contact the regulator under the WHS Act to seek to get their assistance in resolving the issue. If I had any difficulties or concerns, I would contact the CFMEU's legal and industrial officers for advice.

29. In September 2017, in ***Australian Building and Construction Commissioner v Upton (The Gorgon Project Case)*** [2017] FCA 847, the Federal Court found that while exercising rights on Barrow Island on the Gorgon Project on 3 December 2015, that I:

    a. contravened s 346(a) of the FW Act by threatening to take adverse action against non-union members and taking adverse action against non-union employees (at least one of whose employment was prejudiced because he felt intimidated by the threat) who were present in a crib room with other employees whom I had addressed;

    b. contravened s 348 by making an unconscionable threat to non-union employees with intent to coerce them by threatening to put their names on the back of toilet doors, subject them to standover tactics and telling other workers who the non-union employees 'fucking dog cunts are';

    c. contravened s 500 by acting improperly by engaging in the conduct described above.

30. On 6 November 2017, in ***Construction, Forestry, Mining and Energy Union-Construction and General Division, WA Divisional Branch*** [2017] FWC 5824, Deputy President Binet refused to issue me with a new federal permit, as a direct result of the contraventions detailed in paragraph 19, 26 and 29 above.

31. In March 2018, in [the ***Gorgon Penalty Case***], the Federal Court imposed a penalty of $8,100 on me for my conduct and $43,200 on the CFMEU for its contraventions which were caused by my conduct.

32. I understand that the Federal Court set out that:

    a. the language used was foul and calculated to send a strong message to all employees that continued membership of a union was essential [sic] obtaining continued employment at sites like the Gorgon Project;

    b. the language I used was intended to intimidate employees into accepting that they needed to be union members if they wanted to work;

    c. my conduct in telling employees their names might be put on the back of toilet doors was particularly intimidatory;

    d. my conduct breached the standards expected of a union organiser and there was no warrant or excuse for what I did;

    e. my conduct was in the middle range and above of objective seriousness.

33. I regret my conduct. It was unacceptable. I should never have said what I said. There was no excuse for my actions. I understand that freedom of association is important and my comments at the meeting were contrary to freedom of association and unlawful.

34. No similar conduct has occurred in the 10 years that have passed between then and now. I am committed to ensuring that this kind of conduct never occurs again. I have learnt a great deal in the intervening period.

28 The penalties imposed on Mr Upton, and on the CFMEU in relation to his actions, are a significant adverse consideration under s 49P(2)(d). I am satisfied that s 49P(2)(d) weighs against a permit issuing.

**Section 49P(2)(e) – Revocation, suspension or conditions on right of entry permit**

29 Section 49P(2)(e) requires the Commission to consider whether a right of entry permit issued to Mr Upton has been revoked, suspended or made subject to conditions. The term 'right of entry permit' is defined in s 49G(1) to mean a permit issued by the Commission under Subdivision 3.

30 Mr Upton presently holds right of entry permit ROE 79/2014, which expires on 30 June 2026.

31 At paragraph 44 of Mr Upton's Supplementary Statutory Declaration, he states:

> 44. I have also been an 'authorised representative', issued with an authority by the Registrar under the [IR Act] since 2008. The authority issued to me by the Registrar has not been revoked, made the subject of conditions or otherwise had any action taken against it.

32 I am satisfied that s 49P(2)(e) does not weigh against a permit issuing.

**Section 49P(2)(f) – Revocation, suspension or conditions on right of entry under an industrial law or a work health and safety law**

33 Section 49P(2)(f) requires the Commission to consider whether a right of entry for industrial or work health and safety purposes Mr Upton had under an industrial law or a work health and safety law has ever been revoked, suspended or had conditions imposed on it.

34 Section 49G(1) defines an 'industrial law' as including the FW Act. The *Fair Work (Transitional Provisions and Consequential Amendments Act 2009* (Cth) provides in Schedule 14 – Right of entry, that:

(a) A permit issued under the *Workplace Relations Act 1996* (Cth) (**WR Act**) has effect as if it were a permit issued under the FW Act.

(b) A reference in s 510(1)(d) of the FW Act to a pecuniary penalty ordered under the FW Act includes a reference to a pecuniary penalty ordered under the WR Act.

(c) Any suspension or revocation of, or imposition of conditions on, an entry permit under the WR Act is taken to have been done under the FW Act.

35 Accordingly, the federal permits held by Mr Upton are a right of entry for industrial purposes under an industrial law. Therefore, it is necessary to consider the conditions imposed on those federal permits.

36 Firstly, a federal permit held by Mr Upton was subject to a condition imposed pursuant to consent orders in ***Radisich v Buchan and Others*** [2008] AIRC 896. The condition restricted Mr Upton from entering or remaining on construction sites in the company of, or in concert with, Joseph McDonald, except in specified circumstances. The material before me indicates that this was a generic condition imposed on CFMEU permit holders. I give this matter limited adverse weight.

37 Secondly, in the ***Permit Conditions Case***, the FWC imposed conditions on Mr Upton's federal permit. Those conditions prevented Mr Upton from exercising right of entry at the Wheatstone Project for the balance of the 2013 calendar year and imposed further obligations if he exercised right of entry at that project from 1 January 2014 until the conclusion of construction. Those conditions arose from conduct connected with Mr Upton's exercise of entry rights. I give this matter significant adverse weight.

38 Thirdly, Mr Upton's federal permits (**[2023] FWC 728** and **[2026] FWC 1683** at [44]–[45] below) are subject to the condition that Mr Upton does not exercise rights under Subdivision AA of Division 2 of Part 3-4 of the FW Act until he completes appropriate training in relation to that subdivision and files a copy of the training completion certificate in the FWC. The material before me indicates that this is a standard condition imposed on CFMEU permits, which has practical application to the Manufacturing Division of the CFMEU. I give this matter limited adverse weight.

39 Overall, I am satisfied that s 49P(2)(f) weighs against a permit issuing.

**Section 49P(2)(g) – Disqualification under an industrial law or a work health and safety law**

40 There is no material before me indicating that Mr Upton has ever been disqualified under an industrial law or a work health and safety law from exercising, or applying for, a right of entry for industrial or work health and safety purposes under that law.

41 The FWC's refusal to issue Mr Upton with a federal right of entry permit (**[2017] FWC 5824** (at paragraph 30 of Mr Upton's Supplementary Statutory Declaration at [27] above)), is an adverse matter. However, the material before me does not indicate that it was a disqualification of the kind referred to in s 49P(2)(g). I consider that refusal under s 49P(1)(b).

42 I am satisfied that s 49P(2)(g) does not weigh against a permit issuing.

**Section 49P(1)(b) – Any other matters the Commission considers relevant**

43 The CFMEUW relies on the fact that Mr Upton has previously been assessed by the FWC as a fit and proper person to hold a federal right of entry permit.

44 The Form 16 application refers to a decision dated 24 April 2023, being ***Application by Construction, Forestry, Maritime, Mining and Energy Union-Construction and General Division, WA Divisional Branch*** [2023] FWC 728.

45 By a letter dated 15 May 2026, the CFMEUW advised the Commission that, on 11 May 2026, the FWC issued reasons for decision ordering that Mr Upton be issued with a federal right of entry permit on the basis that he was fit and proper to hold such a permit: ***CFMEU, Construction and General Division, Western Australia Divisional Branch*** [2026] FWC 1683.

46 The FWC decisions are relevant, but they are not determinative. Sections 49O and 49P of the IR Act require the Commission to undertake its own assessment, and ***Margjini*** [75] makes clear that the Division 2G permit process must be applied with rigour.

47 The material provided to the FWC also disclosed that Mr Upton had been the subject of an interim restraining order made under the *Restraining Orders Act 1997* (WA). The material before me indicates that the order was made in Mr Upton's absence, arose from allegations made by an Employee Relations Officer with whom Mr Upton had interacted in the course of work, was denied by Mr Upton, and was subsequently cancelled after the complainant withdrew her application. There was no conviction or final finding against Mr Upton arising from that matter.

48 I do not consider that the interim restraining order is required to be disclosed under s 49P(2)(c). However, given the breadth of s 49P(1)(b), I have considered whether it is otherwise relevant to Mr Upton's character, reputation, or fitness to hold a permit. In circumstances where the order made was interim, made in Mr Upton's absence, denied by Mr Upton, withdrawn, cancelled, and did not result in any conviction or finding of wrongdoing, I give it no adverse weight.

49 The adverse matters are significant. Mr Upton has been ordered to pay penalties under the FW Act for conduct connected with industrial activity and, in some instances, with the exercise of rights as a permit holder. The conduct included improper conduct while exercising entry rights, entry into an area found to be residential in nature, adverse action against an employer, and coercive and intimidating conduct directed at non-union employees. The language used in one instance was found to be abusive, threatening and racially tainted. The conduct in the ***Gorgon Penalty Case*** was inconsistent with freedom of association. These matters weigh against a finding that Mr Upton is a fit and proper person to hold a permit.

50 The federal permit conditions imposed in the ***Permit Conditions Case*** also weigh against a permit issuing because they arose from concerns about the exercise of right of entry powers. The FWC's refusal in **[2017] FWC 5824**, to issue Mr Upton a federal permit (at paragraph 30 of Mr Upton's Supplementary Statutory Declaration at [27] above), is also an adverse matter. These matters are directly relevant because a right of entry permit confers significant statutory powers and depends upon the holder exercising them lawfully and responsibly.

51 However, those adverse matters must be weighed against the whole of the evidence. The contravening conduct occurred between 2012 and 2015. The passage of time is not, by itself, determinative. Nor do I treat the absence of further contraventions as conclusive, particularly given Mr Upton's evidence that he did not hold a federal permit for a period of more than five years. Nevertheless, the absence of comparable misconduct over a substantial period is a relevant matter.

52 Mr Upton has completed the WA Right of Entry Permit Holder training course and has also completed other training directed at conflict management, communication, and the lawful exercise of entry rights. He has acknowledged the wrongfulness of his past conduct in specific terms, accepted the findings made against him, expressed remorse, and identified lawful alternative courses he would take if similar issues arose in the future. I give that evidence weight.

53 A fit and proper person for the purposes of s 49O is not necessarily a person with an unblemished record. The question is whether, having regard to the statutory criteria and any other relevant matters, the Commission is presently satisfied that the nominated official is a fit and proper person to hold and exercise the powers conferred by a right of entry permit.

54 In this case, the seriousness of Mr Upton's past conduct weighs against a permit issuing. However, the age of the conduct, the absence of comparable misconduct over a substantial period, the training undertaken, the evidence of insight and remorse, and the recent federal permit decisions together persuade me that Mr Upton is presently a fit and proper person to hold a right of entry permit.

55 I have considered whether the permit should be issued subject to conditions under s 49O(2). In particular, I have considered whether conditions directed to further training, supervision, reporting or restrictions on the exercise of entry rights at particular sites are appropriate.

56 Although Mr Upton's past conduct was serious, I am not satisfied that imposing conditions is necessary in the circumstances. The contravening conduct occurred between 2012 and 2015, and there has been no comparable misconduct over a substantial period. I distinguish this application from one in which the most recent contravention is more proximate, or in which the permit history includes an actual suspension. Mr Upton has undertaken targeted training directed to right of entry obligations, conflict management and lawful alternatives to the conduct previously found to contravene an industrial law. He has accepted the findings made against him, expressed remorse in specific terms and identified lawful courses he would take if similar circumstances arose in the future. I also give weight to the recent FWC decisions assessing him as fit and proper to hold a federal right of entry permit. In those circumstances, the statutory obligations applying to authorised representatives, together with the consequences that would follow from any future misuse of entry rights, are sufficient to serve the protective purposes of the right of entry scheme identified in ***Margjini*** [73] (at [4(f)] above). I am not satisfied that any additional condition would materially advance those purposes.

**Conclusion**

57 The fit and proper person criteria point in different directions. Section 49P(2)(a) weighs in favour of a permit issuing. Sections 49P(2)(b), (c), (e) and (g) do not weigh against a permit issuing. Sections 49P(2)(d) and (f) weigh against a permit issuing, given the penalties imposed in relation to Mr Upton's actions and the conditions imposed on his federal right of entry permits. However, for the reasons given above, the weight of those adverse matters is reduced by the age of the conduct, the absence of comparable misconduct over a substantial period, the training undertaken, Mr Upton's evidence of insight and remorse, and the recent FWC decisions.

58 Having considered each of the fit and proper person criteria in s 49P(2), and the other matters I consider relevant under s 49P(1)(b), I am satisfied that Mr Upton is a fit and proper person to hold a right of entry permit.

59 I have considered whether the permit should issue subject to conditions under s 49O(2). For the reasons given above, I am not satisfied that imposing conditions is necessary.

60 The application is granted.

61 As Mr Upton's current right of entry permit ROE 79/2014 expires on 30 June 2026, I will order that a right of entry permit issue to Mr Upton on and from 1 July 2026.

[redacted]

**2026 WAIRC 00438**

**APPLICATION TO ISSUE BRADLEY JOHN HENLEY UPTON WITH A RIGHT OF ENTRY PERMIT**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | THE CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION OF WORKERS |
| | **APPLICANT** |
| | **-v-** |
| | (NOT APPLICABLE) |
| | **RESPONDENT** |
| **CORAM** | COMMISSIONER C TSANG |
| **DATE** | MONDAY, 29 JUNE 2026 |
| **FILE NO.** | ROE 187 OF 2025 |
| **CITATION NO.** | 2026 WAIRC 00438 |

| | |
|---|---|
| **Result** | Order issued |
| **Representation** | |
| **Applicant** | Mr D Rafferty (of counsel) |
| **Respondent** | Not applicable |

*Order*

HAVING heard from Mr D Rafferty (of counsel) on behalf of the applicant, and Reasons for Decision ([2026] WAIRC 00426) having been delivered on 26 June 2026, the Commission, pursuant to powers conferred under the *Industrial Relations Act 1979* (WA), hereby orders –

THAT a right of entry permit be issued to Bradley John Henley Upton on and from 1 July 2026.

(Sgd.) C TSANG,
Commissioner.

[L.S.]

**2026 WAIRC 00430**

**APPLICATION TO ISSUE WALTER VINICIO MOLINA WITH A RIGHT OF ENTRY PERMIT**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | | |
|---|---|---|
| **CITATION** | **:** | 2026 WAIRC 00430 |
| **CORAM** | **:** | COMMISSIONER C TSANG |
| **HEARD** | **:** | TUESDAY, 16 JUNE 2026 |
| **DELIVERED** | **:** | FRIDAY, 26 JUNE 2026 |
| **FILE NO.** | **:** | ROE 182 OF 2025 |
| **BETWEEN** | **:** | THE CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION OF WORKERS<br>Applicant<br>AND<br>(NOT APPLICABLE)<br>Respondent |

| | | |
|---|---|---|
| CatchWords | **:** | Industrial law (WA) – Application for a right of entry permit – Fit and proper person criteria – Whether the official, or another person, has ever been ordered to pay a penalty under an industrial law in relation to the actions of the official – Whether a right of entry for industrial purposes the official had under an industrial law has ever been revoked, suspended or had conditions imposed on it – Other matters the Commission considers relevant – Quashed conviction – Non-disclosure of prior suspensions |
| Legislation | **:** | *Industrial Relations Act 1979* (WA)<br>*Industrial Relations Commission Regulations 2005* (WA)<br>*Industrial Relations (General) Regulations 1997* (WA)<br>*Police Act 1892* (WA)<br>*Spent Convictions Act 1988* (WA) |

| | | |
|---|---|---|
| | | *Building and Construction Industry (Improving Productivity) Act 2016* (Cth) |
| | | *Fair Work Act 2009* (Cth) |
| | | *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) |
| | | *Workplace Relations Act 1996* (Cth) |
| Result | : | Application granted; right of entry permit to issue on and from 1 July 2026 subject to conditions |

**Representation:**

| | | |
|---|---|---|
| Applicant | : | Mr D Rafferty (of counsel) |
| Respondent | : | |

**Cases referred to in reasons:**

*Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union* [2017] FCAFC 53

*Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union & Ors* [2020] FCA 1662

*Brookfield Multiplex Engineering and Infrastructure Pty Ltd v McDonald & Anor* [2014] FCA 389

*Construction, Forestry, Maritime, Mining and Energy Union-Construction and General Division, WA Divisional Branch* [2021] FWC 3419

*Construction, Forestry, Maritime, Mining and Energy Union-Construction and General Division, WA Divisional Branch* [2023] FWC 1551

*Construction, Forestry, Maritime, Mining and Energy Union-Construction and General Division, WA Divisional Branch* [2018] FWC 2817

*Commissioner for Railways (NSW) v Cavanough* [1935] HCA 45

*Easterday v The State of Western Australia* [2005] WASCA 105

*Molina v Zaknich* [2000] WASCA 390

*Molina v Zaknich* [2001] WASCA 337

*Radisich v Buchan and Others* [2008] AIRC 896

*Radisich v Molina (No 2)* [2011] FMCA 66

*Radisich v Molina & Ors (No 3)* [2012] FMCA 419

*Registrar, Western Australian Industrial Relations Commission v Margjini and Another* [2026] WAIRC 00314

*Reasons for Decision*

1 On 31 October 2025, the Secretary of the Construction, Forestry, Mining and Energy Union of Workers (**CFMEUW**) filed a *Form 16 – Application to Issue a Right of Entry Permit* for Walter Vinicio Molina (**Mr Molina**) under Division 2G of Part II of the *Industrial Relations Act 1979* (WA) (**IR Act**).

2 The CFMEU, Construction and General Division, Western Australia Divisional Branch (**CFMEU**) is the federal counterpart of the CFMEUW.

3 The application is to be determined under Division 2G of Part II of the IR Act:

> **Division 2G – Right of entry and inspection by authorised representatives**
>
> **Subdivision 1 – Preliminary**
>
> **49G. Terms used**
>
> (1) In this Division –
>
> ***authorised representative***, of an organisation of employees, means an officer or employee of the organisation who holds a right of entry permit;
>
> ***conviction*** –
>
> (a) means a finding of guilt by a court, or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded; and
>
> (b) includes –
>
> (i) a spent conviction as defined in the *Spent Convictions Act 1988* section 3(1), regardless of sections 13 and 25 to 27 of that Act; and
>
> (ii) a conviction against a law of another jurisdiction if, under a law of that jurisdiction, the person concerned is permitted not to disclose the fact that the person was convicted or found guilty of the offence;
>
> ***expiry day***, of a right of entry permit, has the meaning given in section 49Q(3);
>
> ***federal counterpart***, in relation to an organisation, means a federal organisation that is –

(a) a federal counterpart (as defined in the FW (Registered Organisations) Act section 9A) of the organisation; or

(b) prescribed to be a federal counterpart of the organisation by regulations made by the Governor;

***fit and proper person criteria*** has the meaning given in section 49P(2);

***industrial law*** means the following –

(a) this Act, the LSL Act and the MCE Act;

(b) the FW Act and the FW (Registered Organisations) Act;

(c) another law of the Commonwealth, or a law of another State or a Territory, prescribed to be an industrial law by regulations made by the Governor;

***nominated official***, in relation to an application under section 49N(1), has the meaning given in section 49N(3);

***relevant employee***, when used in connection with the exercise of a power by an authorised representative of an organisation, means an employee who is a member of the organisation or who is eligible to become a member of the organisation;

***right of entry permit*** means a permit issued by the Commission under Subdivision 3;

***work health and safety law*** means –

(a) the *Work Health and Safety Act 2020*; or

(b) a law of the Commonwealth, another State or a Territory prescribed to be a work health and safety law by regulations made by the Governor.

(2) In this Division, a reference to an officer or employee of an organisation includes a reference to an officer or employee of a federal counterpart of the organisation.

…

**Subdivision 3 – Right of entry permits**

**49N. Application for right of entry permit**

(1) The secretary of an organisation of employees may apply to the Commission for an officer or employee of the organisation to be issued a right of entry permit.

(2) The application must comply with any requirements prescribed by the regulations.

(3) The officer or employee named in the application is the ***nominated official***.

**49O. Commission may issue right of entry permit**

(1) The Commission may, on an application under section 49N, issue a right of entry permit to the nominated official if satisfied that the official is a fit and proper person to hold the permit.

(2) The Commission may decide to issue a right of entry permit subject to conditions.

(3) The Commission cannot issue a right of entry permit to the nominated official if, when the Commission is deciding the application –

(a) a right of entry the official had under an industrial law or work health and safety law is suspended under that law; or

(b) the official is disqualified under an industrial law or work health and safety law from exercising, or applying for, a right of entry under that law.

**49P. Deciding whether nominated representative is fit and proper person**

(1) In deciding whether a nominated official is a fit and proper person to hold a right of entry permit, the Commission –

(a) must consider the fit and proper person criteria in relation to the official; and

(b) may consider any other matters the Commission considers relevant.

(2) The following matters are the ***fit and proper person criteria*** in relation to a nominated official –

(a) whether the official has received appropriate training about the rights and responsibilities of an authorised representative;

(b) whether the official has ever been convicted of an offence against an industrial law;

(c) whether the official has ever been convicted of an offence against a law of the Commonwealth, a State, a Territory or a foreign country involving –

(i) entry onto premises; or

(ii) fraud or dishonesty; or

(iii) the intentional use of violence against another person; or

(iv) the intentional damage or destruction of property;

(d) whether the official, or another person, has ever been ordered to pay a penalty under an industrial law in relation to the actions of the official;

(e) whether a right of entry permit issued to the official has been revoked, suspended or made subject to

conditions;

(f) whether a right of entry for industrial or work health and safety purposes the official had under an industrial law or a work health and safety law has ever been revoked, suspended or had conditions imposed on it;

(g) whether the official has ever been disqualified under an industrial law or a work health and safety law from exercising, or applying for, a right of entry for industrial or work health and safety purposes under that law.

4 In ***Registrar, Western Australian Industrial Relations Commission v Margjini and Another*** [2026] WAIRC 00314 (***Margjini***), the Commission in Court Session considered the proper approach to the fit and proper person assessment under Division 2G of Part II of the IR Act. The following principles are relevant to this application:

(a) Although ss 49O(1) and 49P(2) of the IR Act are based on ss 512 and 513 of the *Fair Work Act 2009 (Cth)* (**FW Act**), the provisions are not identical. Under s 513(1)(g) of the FW Act, the Fair Work Commission (**FWC**) *must* take into account any other matters it considers relevant. By contrast, under s 49P(1)(b) of the IR Act, the Commission *may* consider any other matters it considers relevant: ***Margjini*** [75].

(b) Section 49P(1)(b) confers a broad discretion on the Commission as to the additional matters it may consider when deciding whether a nominated official is a fit and proper person to hold a right of entry permit: ***Margjini*** [55].

(c) Matters of character and reputation may be considered under s 49P(1)(b), provided those matters are directed to the purpose of holding and exercising a right of entry permit and to the rights conferred by Division 2G: ***Margjini*** [56].

(d) The fit and proper person criteria in ss 49P(2)(a)–(g) are not to be read restrictively. In particular, matters falling within s 49P(2)(c) may be taken into account in assessing a person's character and integrity, provided they are considered in the context of Division 2G and the objects of the IR Act: ***Margjini*** [62].

(e) The weight given to each of the criterion in s 49P(2) is a matter for the Commission. The assessment requires a balancing of the criteria and any other matters: ***Margjini*** [64].

(f) The provisions of Division 2G have a combination of protective purposes, for both permit holders and employers and occupiers; in the interpretation of the relevant provisions of the right of entry scheme, these dual purposes must be kept in mind: ***Margjini*** [73].

(g) Division 2G requires the permit process to be applied with rigour, and all relevant considerations are to be taken into account: ***Margjini*** [75].

5 In addition to the matter identified at [4(a)] above, the IR Act treats spent convictions differently from the FW Act. Section 49G(1) defines 'conviction' to include a spent conviction as defined in s 3(1) of the *Spent Convictions Act 1988* (WA), regardless of ss 13 and 25–27 of that Act. It also includes certain convictions in other jurisdictions even if, under the law of that jurisdiction, the person is permitted not to disclose the conviction. Accordingly, if a nominated official has a spent conviction falling within ss 49P(2)(b) or (c), that spent conviction remains a matter the Commission must consider.

**Consideration**

**Section 49N(1) and (2) requirements**

6 Section 49N(1) states that a secretary of an organisation of employees may apply to the Commission for an officer or employee of the organisation to be issued a right of entry permit.

7 I am satisfied that each of the requirements in s 49N(1) has been met, as:

(a) The application was made by Michael Buchan (**Mr Buchan**).

(b) Mr Buchan is the Secretary of the CFMEUW.

(c) The CFMEUW is an organisation of employees.

(d) The Form 16 application states that Mr Molina is an employee of the CFMEUW, employed as an Organiser.

8 Section 49N(2) states that the application must comply with the requirements prescribed by the regulations.

9 Regulations 77E(2)–(6) of the *Industrial Relations Commission Regulations 2005* (WA), state:

(2) The application must –

(a) be in the approved form; and

(b) include –

(i) the full legal name and address of the nominated official; and

(ii) a legible copy of the nominated official's signature; and

(c) be accompanied by –

(i) a current passport size and style photograph of the nominated official (the accompanying photograph); and

(ii) evidence that the nominated official has completed appropriate training about the rights and responsibilities of an authorised representative; and

(d) have attached to it the particulars approved by the Chief Commissioner from time to time.

(3) If requested by the Commission, the application must also be accompanied by a document called a National Police Certificate that –

(a) relates to the nominated official; and

(b) is issued by the Australian Federal Police or the Police Force of Western Australia not more than 30 days before the application is made.

(4) The secretary must certify that the person in the accompanying photograph is the nominated official.

(5) If the accompanying photograph is in printed form, the certification mentioned in subregulation (4) must be made on the back of the accompanying photograph.

(6) The Commission may, before it considers the application, publish all of the following on the Commission's website –

(a) the name of –

(i) the organisation that is applying for the right of entry permit; and

(ii) the nominated official for the application;

(b) a statement that the organisation has applied for the right of entry permit to be issued to the nominated official;

(c) a statement that submissions may be made to the Commission, within a specified time, as to whether the nominated official is a fit and proper person to be issued the right of entry permit.

10 I am satisfied that the application complies with the requirements in reg 77E(2)–(6), for the following reasons:

(a) The Form 16 application is in the approved form and includes:

(i) Mr Molina's full legal name and address.

(ii) Mr Molina's statutory declaration made at Perth on 31 October 2025, declaring that he has provided a recent full-face, passport-size photograph of himself to Mr Buchan and shown his driver's licence which contains his signature to Mr Buchan, that the information contained in the Form 16 application is true and correct and that he has disclosed all relevant matters that may arise under s 49P.

(iii) A copy of Mr Molina's photograph, and a legible copy of Mr Molina's signature, certified by Mr Buchan on 31 October 2025, as a true photograph of Mr Molina and a true representation of Mr Molina's signature.

(iv) Mr Buchan's statutory declaration made at Perth on 31 October 2025, declaring that he has made proper enquiries of the matters under s 49P, and having made those enquiries he is satisfied that Mr Molina meets the permit qualification matters in s 49P(2) and has disclosed any matters that might be relevant under s 49P(1)(b).

(v) A Certificate of Satisfactory Completion of the 'WA Right of Entry Permit Holder' course, dated 26 May 2025, issued to Mr Molina, by Training Manager, Michael Jez, of Unity Training Services.

(b) At the request of the Commission, the CFMEUW filed a National Police Certificate issued by the Police Force of Western Australia that relates to Mr Molina, valid as at 3 December 2025.

(c) On 11 November 2025, the Commission published a notice in accordance with reg 77E(6) on the Commission's website. No submissions were received by the Commission in response to that notice.

(d) At the request of the Commission, the CFMEUW produced a replacement certification by Mr Buchan of Mr Molina's signature on 29 January 2026, due to the Commission identifying a difference between the signature of Mr Molina on his statutory declaration (at [10(a)(ii)] above) to the signature certified by Mr Buchan as being a true representation of Mr Molina's signature (at [10(a)(iii)] above).

11 I am satisfied that the discrepancy concerning Mr Molina's signature (at [10(d)] above) has been satisfactorily rectified by the replacement certification provided on 29 January 2026. I do not treat that matter as bearing adversely on Mr Molina's fitness to hold a permit. However, it reinforces the need for care in future applications.

**Section 49O(3) – Current suspension or disqualification**

12 Before turning to the fit and proper person assessment under s 49P, it is necessary to consider whether either of the prohibitions in s 49O(3) applies. The Commission cannot issue a permit if, at the time the application is decided, a right of entry Mr Molina holds under an industrial law or work health and safety law is suspended, or Mr Molina is disqualified under such a law from exercising, or applying for, a right of entry under that law.

13 At the hearing of the application, Mr Molina stated under affirmation that he does not have a right of entry under an industrial law or work health and safety law that is presently suspended, and is not presently disqualified under such a law from exercising, or applying for, a right of entry.

14 I am therefore satisfied that s 49O(3) does not prevent the issuing of a permit.

**Section 49P(2)(a) – Appropriate Training**

15 On 13 January 2026, the CFMEUW filed a Supplementary Statutory Declaration of Mr Molina. At paragraphs 78–86, Mr Molina states:

78. On 17 August 2018, I undertook training entitled 'Leading with Emotional Intelligence' conducted by Konnect Learning which was expressly approved by the [FWC] for the purpose of compliance with the condition on my federal permit RE2018/141. This training was valuable because before the training many of my contraventions involved me acting without stopping to think. I learnt some strategies and skills to stop, think, be objective and empathetically identify parties' interests in the workplace. The training taught me that there are many ways to fix issues by simply building relationships. This, I learned, brings about better results in the long run beyond the

immediate dispute. I now see that it is possible to find a happy medium with employers and have learnt the value of compromise. I have also found the emotional training improved my ability to recruit. Rather than getting angry or sucked into arguments with workers that are sceptical of the union, I lead with understanding. This has helped me build rapport which ultimately increases membership and my ability to get outcomes for members.

79. However, I accept that I did not put in place the strategies and things I learned at this training on 10 December 2018 when I encouraged the Salini workers to continue their strike.

80. I have ensured that I have done so ever since this time, including because as a direct result of my involvement in the Salini case as detailed at paragraphs 69 to 72 above, on 18 August 2021, Deputy President Binet refused to issue me with a new federal permit in [***Construction, Forestry, Maritime, Mining and Energy Union-Construction and General Division, WA Divisional Branch*** [2021] FWC 3419].

81. I undertook right of entry training on 7 September 2022 via an online ACTU training course. I successfully completed this course. I understand that this course is a course approved by the [FWC].

82. Shortly after this, on 29 September 2022, I attended in-person training with Brian Lacy AO, which I found immensely informative and valuable.

83. During that training, I discussed my previous contraventions with Mr Lacy, who then explained why my conduct constituted contraventions and how I can ensure I avoid breaching the law in the future. I also went through some scenario-based case studies with Mr Lacy, where [sic] discussed options for resolving complex or difficult issues that, I must admit, I hadn't even considered. I feel this session helped me build upon a framework for dealing with difficult problems in ways which were safely within the requirements of the law. A copy of Mr Lacy's report is annexed to this statement **WVM-1**. I note that Mr Lacy was a member of the Australian Industrial Relations Commission who determined that my permit should be suspended back in 2008. We discussed this and I told him I appreciated why the Commission took this action and that I was committed to complying with my obligations if I was issued a new permit.

84. I have a good knowledge of my rights and responsibilities as a permit holder. I have held a permit issued under the [FW Act] and before that the *Workplace Relations Act* [*1996* (Cth) (**WR Act**)] from 1998 to 18 August 2021, and then again since July 2023. I have always complied with my obligations whilst exercising entry rights. I am committed to adhering to my obligations as a permit holder and intend to continue to do so.

85. I have also been an 'authorised representative', issued with an authority by the Registrar under the [IR Act] since 1998. The authority issued to me by the Registrar has not been revoked, made the subject of conditions or otherwise had any action taken against it.

86. As detailed in the Form 16 application, I undertook state [sic] right of entry training on 26 May 2025 via an in-person Unity Training Services training course. I successfully completed this course. I understand that this course is a course approved by the [Commission].

16 I am satisfied that Mr Molina has received appropriate training about the rights and responsibilities of an authorised representative. Section 49P(2)(a) weighs in favour of a permit issuing.

**Section 49P(2)(b) – Convictions for an offence against an industrial law**

17 At the hearing of the application, Mr Molina stated under affirmation that he has never been convicted of an offence against an industrial law, including any conviction that is now spent.

18 The National Police Certificate that the CFMEUW filed at the Commission's request, valid as at 3 December 2025, discloses no convictions.

19 I am satisfied that s 49P(2)(b) does not weigh against a permit issuing.

**Section 49P(2)(c) – Convictions for an offence against a law involving entry onto premises, etc**

20 At the hearing of the application, Mr Molina stated under affirmation that he has never been convicted of an offence, including a conviction that is now spent, against a law of the Commonwealth, a State, a Territory or a foreign country involving entry onto premises, fraud or dishonesty, the intentional use of violence against another person, or the intentional damage or destruction of property.

21 The National Police Certificate, valid as at 3 December 2025, discloses no convictions.

22 I have considered ***Molina v Zaknich*** [2001] WASCA 337 (***Molina 2001***). While that matter involved an offence concerning remaining on premises, the conviction was quashed by the Full Court of the Supreme Court of Western Australia. While s 49G(1) defines a 'conviction' as a finding of guilt by a court 'whether or not a conviction is recorded', I am satisfied that because of the effect of quashing a conviction (addressed later in these reasons), there is no conviction to be taken into account for the purposes of s 49P(2)(c).

23 I am satisfied that s 49P(2)(c) does not weigh against a permit issuing.

**Section 49P(2)(d) – Penalties under an industrial law**

24 A mandatory consideration under s 49P(2)(d) is whether Mr Molina, or another person, has ever been ordered to pay a penalty under an industrial law in relation to Mr Molina's actions.

25 Section 49G(1) defines an 'industrial law' as including the FW Act. The *Fair Work (Transitional Provisions and Consequential Amendments Act 2009* (Cth) provides in Schedule 14 – Right of entry, that:

(a) A permit issued under the WR Act has effect as if it were a permit issued under the FW Act.

(b) A reference in s 510(1)(d) of the FW Act to a pecuniary penalty ordered under the FW Act includes a reference to a pecuniary penalty ordered under the WR Act.

(c) Any suspension or revocation of, or imposition of conditions on, an entry permit under the WR Act is taken to have been done under the FW Act.

26 The material before me discloses that Mr Molina, and in some instances the CFMEUW and CFMEU, have been ordered to pay penalties under the WR Act and the FW Act in relation to the actions of Mr Molina in the following matters.

27 Firstly, in ***Radisich v Molina & Ors (No 3)*** [2012] FMCA 419 (***Perth Airport Case***), Mr Molina was ordered to pay a penalty of $660 for one contravention of s 790(1)(a) of the WR Act for conduct occurring on 19 March 2008. The CFMEUW and CFMEU were also ordered to pay penalties in relation to conduct arising from Mr Molina's actions of $3,960 and $4,620 respectively.

28 Secondly, in ***Brookfield Multiplex Engineering and Infrastructure Pty Ltd v McDonald & Anor*** [2014] FCA 389 (***Mundaring Water Treatment Case***), Mr Molina was ordered to pay $7,000 for six contraventions of s 348 of the FW Act and three contraventions of s 417 of the FW Act for conduct occurring between 23 March 2013 and 27 March 2013. The then Assistant Secretary was ordered to pay $21,000, and the CFMEU was ordered to pay a penalty of $95,000 in relation to the conduct of both the Assistant Secretary and Mr Molina.

29 Thirdly, in ***Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union*** [2017] FCAFC 53 (***Broad Airport Case***), Mr Molina was ordered to pay a penalty of $9,000 for one contravention of s 348 of the FW Act for conduct occurring on 22 October 2013. The CFMEU was also ordered to pay a penalty of $40,000 in relation to conduct arising from Mr Molina's actions.

30 In ***Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union & Ors*** [2020] FCA 1662 (***Salini Case***), Mr Molina was ordered to pay $20,000 for one contravention of s 46 of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth) (**BCIIP Act**) for conduct occurring on 10 December 2018. The CFMEU was also ordered to pay penalties in relation to Mr Molina's conduct.

31 Section 49G(1) defines an 'industrial law' as including 'another law of the Commonwealth, or a law of another State or Territory, prescribed to be an industrial law by regulations made by the Governor'. Regulation 17 of the *Industrial Relations (General) Regulations 1997* (WA) prescribes certain State laws to be industrial laws for the purposes of s 49G(1) but does not prescribe any Commonwealth laws to be industrial laws. Accordingly, the BCIIP Act does not constitute an 'industrial law' for the purposes of s 49P(2)(d), and the ***Salini Case*** is not a mandatory consideration under s 49P(2)(d).

32 However, the classification of the BCIIP Act affects only whether consideration of the ***Salini Case*** is mandatory under s 49P(2)(d). It does not prevent the Commission from considering the ***Salini Case*** under s 49P(1)(b), nor does it diminish the weight that the underlying conduct may carry in the overall assessment. I therefore consider the ***Salini Case*** under s 49P(1)(b), together with the matters that fall within s 49P(2)(d).

33 At paragraphs 25–77 of Mr Molina's Supplementary Statutory Declaration, he states:

**Contraventions of industrial law**

25. I have committed contraventions of industrial law on four separate occasions in my role as a union organiser over my 25-year career. I have not been convicted of any criminal offence against industrial law, nor of any other criminal offence.

26. I regret these contraventions. My last contravention of industrial law occurred over 7-years ago. I particularly regret this contravention. It should not have occurred and my conduct on this occasion was not appropriate.

27. I have reflected on these contraventions. I am committed to complying with my obligations under industrial law and have made a significant effort since my last contravention to do so. I have not breached industrial law since.

28. The following are details of my contraventions of industrial law over the years and my reflections on my conduct.

**Contravention on 19 March 2008**

29. On 19 March 2008, I was on site at the Coles-Myer Distribution centre at Perth Airport.

30. During a conversation with some of the workers at the site, I made statements to the effect that there was a requirement to join the union. I was prosecuted for making those statements and for other allegations. I disputed the allegations. I understand the Court determined in ***Radisich v Molina (No 2)*** [2011] FMCA 66, that I had contravened s 790 of the [WR Act] by making a false and misleading statement about the obligation of workers to join the Union. The Court imposed a penalty of $660 on me for my contravention in [the ***Perth Airport Case***]. The Court also imposed penalties of $3960 and $4620 to CFMEUW and CFMEU respectively for their contraventions which were committed as a result of my conduct.

31. I have read the Court's judgments in these matters again before preparing this statement.

32. The contravention occurred during a lunchtime debate about Union membership.

33. I should not have said what I said. I later, as the Court found, told the workers that they were free to join or not join the union.

34. I regret my conduct.

35. I understand that freedom of association (that is, to join or not join, or to participate or not participate in a union or other industrial association, or to engage in lawful union activities or to not engage in unlawful union activities) is very important. I regret that my conduct was in breach of provisions of the [WR Act] which were designed to

protect freedom of association.

36. I understand that the [FW Act] protects freedom of association by:

    a. prohibiting adverse action because someone is or is not a member of a union or other industrial association;

    b. prohibiting adverse action because someone has engaged or proposed to engage in lawful industrial activity. I understand that lawful industrial activity includes:

        (i) becoming or not becoming, or remaining or ceasing to be an officer or member of a union or other industrial association;

        (ii) being or not being involved in establishing a union or other industrial association;

        (iii) organising or promoting (or not organising or promoting) a lawful activity for or on behalf of a union or other industrial association;

        (iv) encouraging or participating (or not encouraging or participating in) a lawful activity organised or promoted by a union or other industrial association;

        (v) complying (or not complying) with a lawful request made by or a requirement of a union or other industrial association;

        (vi) representing or advancing (or not representing or advancing) claims or interests of a union or other industrial association;

        (vii) paying or not paying a fee to a union or other industrial association;

        (viii) seeking to be represented or not represented by a union or other industrial association;

    c. prohibiting adverse action because someone has engaged or has not proposed to engage in unlawful industrial activity. I understand that unlawful industrial activity includes:

        (i) organising or promoting an unlawful activity of a union or other industrial association;

        (ii) encouraging or participating in an unlawful activity organised or promoted by a union or other industrial association;

        (iii) complying or not complying with an unlawful request by or requirement of a union or other industrial association;

        (iv) participating or not participating in unlawful industrial action;

        (v) making (or not making) a payment for industrial action that is unlawful;

    d. taking action or organising action or threatening to take action to coerce a person to get them to engage in industrial activity;

    e. making false or misleading representations about someone's obligation to engage in industrial activity (which I understand includes being a union member) or their obligation to disclose their union membership.

37. I am, of course, committed to advocating for the benefits of union membership for all workers and to convincing workers of the benefits of being in the union. However, I understand and will ensure that workers have a choice to be members. I understand that conduct that involves adverse action against workers because they are not members or have not engaged in industrial activity, or coercion or misrepresentation about these matters is unlawful and contrary to the [FW Act's] protection of freedom of association. I am conscious about ensuring that I do nothing as an organiser that is contrary to freedom of association.

38. My experience since this contravention has taught me that I should make sure I do not make any false or misleading statements. As a unionist, I believe in winning hearts and minds by lawfully advocating for unionism and for workers to join unions. This is something I am committed to and passionate about.

39. I also understand the importance of freedom of association in ensuring that employees are free to join unions and that employers cannot take action against them or discriminate against them if they join or become involved in a union. The protection is a very important one so far as I am concerned, particularly in light of my experiences in Guatemala. I understand that any conduct that undermines freedom of association is not only unlawful but undermines a system designed to ensure freedom of choice about union membership.

**Suspension on 20 November 2008**

40. In ***Radisich v Buchan and Ors*** [2008] AIRC 896 [(***Permit Suspension Case***)], I was the subject of proceedings in the Australian Industrial Relations Commission relating to the federal permit I held under the [WR Act]. In that proceeding, the Australian Building and Construction Inspector alleged that I had on 14 February 2007 abused my entry rights in the manner set out in paragraph [8] of that decision.

41. My recollection is that proceeding was resolved by consent orders. As part of those consent orders, I agreed to be subject to an immediate suspension of my permit for two months and for other conditions on my permit that involved a suspended suspension. The suspended suspension was to the effect that if I breached what was then Part 15 of the [WR Act] in the 12 months from the date of the consent order, I was to be subject to a further suspension of one month. I complied with the immediate two month suspension and the conditions imposed on my permit, which meant that I was not required to serve the suspended one month suspension.

42. In that proceeding, a further condition was imposed on all permit holders of the CFMEU for the next two years. This condition prevented us from entering or remaining on premises in the company of, or in concert with, Joseph

McDonald (the then Assistant Secretary of the Western Australian Branch) except where he had been invited in advance on to those premises by an owner and a written direction was given to Mr McDonald by a duly authorised officer of the CFMEU that he not purport to rely on any right of entry under the [WR Act] in order to facilitate access to constructions sites when he in fact held no right of entry permit. I complied with this order as well.

43. I have been advised by Tom Meagher of the CFMEU, who was involved in preparing the Form 16 application in this matter that the Commission has raised a concern that the suspension detailed in paragraph 41 above was not disclosed in response to question 3.5 in the Form 16 application. I have also been advised by Tom that the failure to disclose that suspension was inadvertent and an administrative oversight. For my own part, when I had reviewed the Form 16 application, I did not realise that the suspension had been omitted. I believe it had been disclosed to the [FWC] in my application for a federal permit in RE2023/79, because Deputy President Binet discussed that matter at [65] to [67] of her decision to issue me with a federal right of entry permit in [2023] FWC 1551. This decision was included with the Form 16 application.

**Contraventions on 25-27 March 2013**

44. In 2014, the Federal Court of Australia in [the ***Mundaring Water Treatment Case***] ordered I pay $7,000 for six contraventions of s 348 and three contraventions of s 417 of the FW Act. The conduct which was the subject of the contraventions occurred between 25 March 2013 and 27 March 2013 at the Mundaring Water Treatment Plant. Joseph McDonald (the then Assistant Secretary of the Western Australian Branch), admitted to eight s 348 contraventions, two contraventions of s 346 and six contraventions of s 417. The CFMEU was penalised $95,000 in relation to both Mr McDonald and my contraventions.

45. The contraventions arose in circumstances where a serious safety incident had occurred on the Mundaring Water Treatment Plant, when a water cart lost its ability to [brake] and uncontrollably went through the work front. I admitted to organising and encouraging industrial action to coerce Brookfield Multiplex to enable a safety inspection to occur and for work not to take place until that safety inspection had happened.

46. I regret this contravening. I regret it as it contributed to loss to Multiplex, with the CFMEU having to pay $250,000 in compensation to Multiplex. I regret that the union's resources were given for this purpose. I also regret that the union was penalised for my actions.

47. I understand that it is not appropriate or lawful for an official to organise industrial action during the term of an enterprise agreement, as this is prohibited by s 417 of the [FW Act]. I also understand that it is unlawful to organise industrial action to coerce an employer or other person to engage in industrial activity.

48. I have been through Justice North's decision. I understand that:

    a. industrial action is unlawful unless it is protected industrial action;

    b. industrial action can be taken lawfully by employees where it is: (i) authorised by the employer; or (ii) is based on a reasonable concern by the employee about an imminent risk to their health or safety and the employee does not unreasonably fail to comply with a direction of the employer to perform other available work that is safe and appropriate to perform.

49. I also understand that if another person, (including another union official) is engaged in contravening conduct and I do not dissociate myself from that conduct then I am liable as an accessory for the other official's contravention.

50. I am committed to ensuring that I comply with the law and not organising any unprotected industrial action. I am also committed to ensuring that if someone else is contravening the law, I do not associate myself with their actions. I will do my best to discourage it and cause them to stop. I am committed to training younger officials about this by drawing on my experiences and the regret I feel that I engaged in this conduct. I believe that my errors can be a lesson for them to learn from.

51. As detailed above, I have a good understanding of the protections of the [FW Act] in relation to freedom of association. I understand my contravening here involved breaches of s 348 which protects freedom of association in relation to industrial activity.

52. Again, I regret these breaches and am committed to ensuring that I comply with my obligations concerning freedom of association. I have also come to understand, through reflecting on my own history of political and industrial activity (particularly in Guatemala), the importance of people being able to engage politically and industrially how they desire. I believe I have become a better organiser as a result of furthering my understanding and respecting some of the reasons why people may not want to join. My purpose is, obviously, to convince them otherwise. But I will always respect their decision not to join.

53. I also know that if a contractor refuses to perform a safety inspection or if I have concerns about safety at a site that are not being addressed by the contractor, I can use dispute resolution processes available under the applicable enterprise agreement or employ the issue resolution procedure applicable under the *Work Health and Safety Act 2020* (WA).

54. Alternatively, I am able to contact the regulator under the WHS Act to seek to get their assistance in resolving the issue.

55. If I had any difficulties or concerns, I would contact the CFMEU's Industrial/Legal team for advice.

56. I now understand that my experiences with industrial deaths in the past has informed my response to safety issues in a way that is not entirely rational. I responded emotionally to issues like the one that occurred at the Mundaring Water Treatment Plant. I know now that my response on this occasion was not appropriate, lawful or effective. I

know now that the legal avenues for resolving these disputes are actually more effective in the long run as they assist in developing harmonious relations with employers which prevents disputes from getting personal. I have been able to effectively implement this approach in my organising and have found both members and employers are more willing to engage when the laws around industrial action are respected and relations are friendly.

**Contravention on 22 October 2013**

57. In 2017, in [the ***Broad Airport Case***], the Full Court of the Federal Court ordered that I pay $9,000 in penalties for a contravention of s 348 of the FW Act that occurred on 22 October 2013 where I was involved in arranging a blockade at the entrance to the Perth International Airport.

58. I admitted this contravention.

59. I organised and participated in the blockade with another 100 persons with intent to coerce either of Perth Airport, Broad Construction Services and Concealed Interiors to pay outstanding wages and contractual entitlements due to Concealed Interiors' employees and its sub-contractors of Concealed Interiors.

60. Other officials and I established and maintained a blockade including by occupying the entrance to the site, organising protestors to occupy entrances to the site and preventing and dissuading workers from entering the site to perform work.

61. This conduct was unlawful and I regret it.

62. My purpose was to ensure that workers from Concealed Interiors who had not been paid for a considerable period were paid what they were due. I was very distressed and concerned about these workers being unpaid. My action was designed to make sure they got paid. Again, I let my emotions get the better of me. There were lawful and more effective ways of dealing with this issue than engaging in the conduct that I did.

63. I have read the judgment of Justices Dowsett and Rares in the Full Court. I note that they say the following about my contravening and the contravening of the other officials.

> *Trade unions are recognised by statute and have privileges and responsibilities associated with such recognition. Generally, trade unions and their members abide by the law. Indeed, as history has shown, trade unions can play a significant role in exposing and reforming inadequate or inappropriate terms and conditions of employees in not only a particular employer's workforce but in an industry. Ordinarily, trade unions have achieved such results by acting within, and respecting, the law that regulates the conduct of all participants involved in the employer-employee relationship.*
>
> *The conduct of the CFMEU seen in this case brings the trade union movement into disrepute and cannot be tolerated.*
>
> *In a liberal democracy, it is assumed that citizens, corporations and other organisations will comply with the law. Such compliance is not a matter of choice. The community does not accept that a citizen, corporation or other organisation may choose to break the law and simply pay the penalty. The courts certainly do not accept that proposition. Such acceptance would pose a serious threat to the rule of law upon which our society is based. It would undermine the authority of Parliament and could lead to the public perception that the judiciary is involved in a process which is pointless, if not ridiculous.*

64. I regret that my conduct led to the Court saying these things about the CFMEU.

65. My conduct was unlawful and unacceptable.

66. I have reflected on it and I am now convinced, including after reading what Justices Dowsett and Rares said, that the ends cannot justify the means and did not do so on that occasion. I understand that using an unlawful means to achieve a lawful end has a tendency to undermine the pursuit of the lawful end.

67. I am committed to not engaging in conduct like this ever again. I am embarrassed that I acted in this way and believe I am a much stronger and patient person today. I realise now that I can more effectively further workers' interests by being willing to listen and totally avoid extreme and unlawful conduct.

68. If ever I am faced with workers being underpaid or sub-contractors not being paid by a principal contractor, I will seek to pursue these through lawful means. These could include speaking to the CFMEU legal department to institute legal proceedings in either the [FWC] or in a Court that has jurisdiction to deal with the matter. It could also include peaceful protest and advocacy that does not involve coercion, unlawful adverse action or unlawful industrial action.

**10 December 2018 contravention**

69. On 18 November 2020, in [the ***Salini Case***] the Federal Court ordered I pay $20,000 for one contravention of s 46 of the [BCIIP Act].

70. I admitted that I had contravened s 46 of the BCIIP Act by organising industrial action by Salini Australia Pty Ltd employees on 10 December 2018 by encouraging employees who had walked off the job in the morning of that day of their own volition at a meeting held in a carpark at 12:30PM to continue with their strike.

71. I regret this conduct. The employees were very concerned at the time about not being paid redundancy and had walked off the job. Myself and two other officials, Mr Buchan and Mr Pallot addressed them at a meeting in a carpark outside the Salini offices. In addressing them, we did not discourage them from stopping their strike. Instead, we encouraged the continuation of the strike.

72. My conduct was inappropriate and unlawful.

73. I understand the Court considered whether I expressed remorse for that conduct. It is too late to give evidence of my regret in that matter, however I express my remorse for engaging in unlawful conduct here.

74. My involvement in the unlawful action at Salini is a black mark on my otherwise clean record since 2013. Since that time, I have reflected upon my role as a representative of workers. I understand my conduct in this instance was unacceptable, particularly where lawful avenues were available to agitate the issue of redundancy. I should have continued engaging with Salini managers and told the workers that they should not continue with their strike and that the union would take legal action if appropriate and necessary to deal with the issue. Again, I was passionate and upset about the predicament of the workers and let my emotions dictate how I dealt with the matter.

75. In the future, I will not encourage unlawful industrial action and will do my best to discourage it as I know from my experience in this case that it exposes workers to fines. A significant number of Salini workers were fined by Justice Colvin in these proceedings for withdrawing their labour. I will take steps in future to make sure that workers are told about their rights to take (or not take) industrial action so they are not liable for penalties.

76. I also understand that the only way I am able to continue to represent workers is to conduct myself firmly within the bounds of the law. If I am unsure about anything, I will speak to the union's legal officers and get their advice and defer to it.

77. As an organiser, I am in a position of authority and understand the law better than most members. Consequently, I know I have a responsibility to be a lot more assertive in using my influence to encourage workers to comply with the law and outlining the consequences of breaches of the law for them.

34 The penalties imposed in relation to Mr Molina's actions are serious. They involved repeated contraventions over a number of years, including contraventions concerning coercion, unlawful industrial action, false or misleading statements about union membership, and organising or encouraging industrial action.

35 I am satisfied that s 49P(2)(d) weighs against a permit issuing in relation to the ***Perth Airport Case***, the ***Mundaring Water Treatment Case*** and the ***Broad Airport Case***. I am also satisfied that the ***Salini Case***, considered under s 49P(1)(b), weighs against a permit issuing.

**Section 49P(2)(e) – Revocation, suspension or conditions on right of entry permit**

36 Section 49P(2)(e) requires the Commission to consider whether a right of entry permit issued to Mr Molina has been revoked, suspended or made subject to conditions. The term 'right of entry permit' is defined in s 49G(1) to mean a permit issued by the Commission under Subdivision 3.

37 Mr Molina presently holds right of entry permit ROE 5/2014, which expires on 30 June 2026.

38 At paragraph 85 of Mr Molina's Supplementary Statutory Declaration, he states:

85. I have also been an 'authorised representative', issued with an authority by the Registrar under the [IR Act] since 1998. The authority issued to me by the Registrar has not been revoked, made the subject of conditions or otherwise had any action taken against it.

39 I am satisfied that s 49P(2)(e) does not weigh against a permit issuing.

**Section 49P(2)(f) – Revocation, suspension or conditions on right of entry under an industrial law or a work health and safety law**

40 Section 49P(2)(f) requires the Commission to consider whether a right of entry for industrial or work health and safety purposes Mr Molina had under an industrial law or a work health and safety law has ever been revoked, suspended or had conditions imposed on it.

41 Section 49G(1) defines an 'industrial law' as including the FW Act. For the reasons outlined at [25] above in relation to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth), the federal permits held by Mr Molina under the WR Act and the FW Act are a right of entry for industrial purposes under an industrial law. Therefore, it is necessary to consider the suspensions and conditions imposed on those federal permits.

42 Firstly, in the ***Permit Suspension Case***, Mr Molina's federal permit was, by consent:

(a) Immediately suspended for two months;

(b) Suspended for a further one-month on conditions; and

(c) Subject to a condition restricting him from entering or remaining on construction sites in the company of, or in concert with, Joseph McDonald, except in specified circumstances. The material before me indicates that this was a generic condition imposed on CFMEU permit holders, rather than a condition directed specifically to Mr Molina alone.

43 Secondly, in ***Construction, Forestry, Maritime, Mining and Energy Union-Construction and General Division, WA Divisional Branch*** [2018] FWC 2817, the FWC imposed conditions on Mr Molina's federal permit. Those conditions require Mr Molina to undertake a specified program of training and to report promptly to the FWC if particular circumstances arose, including findings made or penalties relevant to matters mentioned in s 510(1) of the FW Act.

44 Thirdly, Mr Molina's federal permit is subject to the condition that Mr Molina does not exercise rights under Subdivision AA of Division 2 of Part 3-4 of the FW Act until he completes appropriate training in relation to that subdivision and files a copy of the training completion certificate in the FWC. The material before me indicates that this is a standard condition imposed on CFMEU permits, which has practical application to the Manufacturing Division of the CFMEU.

45 The suspensions imposed in the ***Permit Suspension Case*** (at [42(a) and (b)] above), and the conditions imposed in **[2018]**

**FWC 2817** (at [43] above), weigh against a permit issuing.

46 The generic conditions imposed in the ***Permit Suspension Case*** (at [42(c)] above) and at [44] above, carry limited adverse weight, given their standard form.

47 Overall, I am satisfied that s 49P(2)(f) weighs against a permit issuing.

**Section 49P(2)(g) – Disqualification under an industrial law or a work health and safety law**

48 There is no material before me indicating that Mr Molina has ever been disqualified under an industrial law or a work health and safety law from exercising, or applying for, a right of entry for industrial or work health and safety purposes under that law.

49 The FWC's refusal to issue Mr Molina a federal right of entry permit (**[2021] FWC 3419** (at paragraph 80 of Mr Molina's Supplementary Statutory Declaration at [15] above)), is an adverse matter. However, the material before me does not indicate that it was a disqualification of the kind referred to in s 49P(2)(g). I consider that refusal under s 49P(1)(b).

50 I am satisfied that s 49P(2)(g) does not weigh against a permit issuing.

**Section 49P(1)(b) – Any other matters the Commission considers relevant**

51 The CFMEUW relies on the fact that Mr Molina has previously been assessed by the FWC as a fit and proper person to hold a federal right of entry permit.

52 The Form 16 application refers to a decision dated 17 July 2023, being ***Construction, Forestry, Maritime, Mining and Energy Union-Construction and General Division, WA Divisional Branch*** [2023] FWC 1551.

53 By a letter dated 15 May 2026, the CFMEUW advised the Commission that, on 13 May 2026, it lodged an application in the FWC to renew Mr Molina's federal entry permit. The CFMEUW further advised that the application disclosed that Mr Molina had been convicted in 2000 of the offence of remaining on premises without lawful authority, that the Full Court of the Supreme Court later quashed that conviction, and that the matter had not been disclosed in previous applications.

54 By an email dated 29 May 2026, the CFMEUW advised the Commission that the FWC issued directions on 29 May 2026 requiring Mr Molina to make an affidavit or statutory declaration to, amongst other things, provide a brief account of the incident which resulted in the initial conviction, and of his understanding of why that matter was not disclosed in subsequent applications for right of entry permits.

55 On 12 June 2026, the CFMEUW filed a copy of Mr Molina's affidavit made on 9 June 2026, in which he states:

> **Brief account of the incident that led to initial conviction**
>
> 2. When the CFMEU was preparing the current [FWC] renewal application, I notified the CFMEU's legal team of a historical conviction quashed in 2001.
>
> 3. The background to those proceedings arose from an incident on 10 August 1999, when I attended a construction site at Canning Vale Prison. I had been contacted by a CFMEU member employed by a subcontractor on-site who raised complaints about unworkable weather conditions and other safety issues on site.
>
> 4. At that time, the principal contractor, BGC, did not directly employ CFMEU members and during my attendance at the site asserted that I had no right to enter or remain on the premises.
>
> 5. The subcontractors on site did employ CFMEU members. I had understood that under the Building Trades (Construction) Award 1987 I was entitled to be on site to deal with the safety complaint by a CFMEU member employed by the sub-contractor.
>
> 6. I refused to leave the site, and I was charged and subsequently convicted in the Court of Petty Sessions of unlawfully remaining on premises under section 82B(1) of the *Police Act 1892* (WA).
>
> 7. The CFMEU and I fought the charge and maintained that an organiser must be legally permitted to access workers employed by subcontractors, even if the head contractor is non-union. The Union supported appeals all the way to the Full Court of the Supreme Court of Western Australia as a crucial legal 'test case' to establish and clarify right of entry protections in Western Australia.
>
> 8. On 2 November 2001, the Full Court unanimously allowed my appeal and quashed the conviction and determined that I possessed valid lawful authority to be on the premises.
>
> **My understanding why matter not disclosed in later applications for permits**
>
> 9. To the best of my knowledge and belief, prior to this application, the quashed conviction was never disclosed in right of entry permit applications relating to me. It has always been my understanding, and I had always understood it to be the CFMEU's understanding, that the quashed conviction did not need to be disclosed because it was quashed and therefore there was no wrongdoing or conviction to declare.
>
> 10. In about early May 2026, I was contacted by Thomas Meagher, who is employed as a Lawyer by the CFMEU, [Construction and General] Division, WA Divisional Branch. Thomas told me he was assisting with the preparation of this [FWC] application and conducting searches for any adverse decisions about me, and asked me if there were any matters that might be relevant to be disclosed that had not been disclosed. Since 2001, there has been a great deal of changeover in the leadership of the CFMEU and its legal team. I thought the current people would have either forgotten about, or in Thomas' case not been aware of, the quashed conviction or the circumstances surrounding it, and so I mentioned it to Thomas in response to his query.

56 On 12 June 2026, the CFMEUW filed 'Short Submissions on Quashed Conviction', stating that they read and rely on Mr Molina's affidavit, and adopt their submissions filed in the FWC *mutatis mutandis*. The CFMEUW says that, but for the

quashing of the conviction, ***Molina 2001*** may have had relevance to s 49P(2)(c)(i) of the IR Act. The CFMEUW says:

> **D. Historical quashed conviction**
>
> 27. On 31 May 2000, Mr Bromfield SM in a Court of Petty Sessions at Perth found Mr Molina guilty of the charge of unlawfully remaining on premises on 10 August 1999 pursuant to the then section 82B(1) of the *Police Act 1892* (WA).
>
> 28. Mr Molina was supported by the CFMEU to appeal the decision, to a single Judge of the Supreme Court where the appeal was dismissed (***Molina v Zaknich*** [2000] WASCA 390) and then to the Full Court of the Supreme Court of Western Australia where on 2 November 2001, the appeal was upheld, the conviction quashed, and no retrial ordered: [***Molina 2001***].
>
> …
>
> 31. The quashed conviction is irrelevant to the [FWC's] determination of this application because the effect of the quashing of the conviction was that it was voided *ab initio* with the effect that there had not been any conviction at all: see eg. ***Easterday v The State of Western Australia*** [2005] WASCA 105 at [22]-[25] citing ***Commissioner for Railways (NSW) v Cavanough*** [[1935] HCA 45]. If that matter has any relevance, it is that the Court of Appeal concluded that Mr Molina had on 10 August 1999 lawful authority to be on the premises: [***Molina 2001***] at [57].

57 I accept the CFMEUW's submission that the quashed conviction in ***Molina 2001*** is not a conviction for the purposes of s 49P(2)(c). While s 49G(1) defines a 'conviction' as 'a finding of guilt by a court, or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded', the effect of quashing the conviction was to render it void *ab initio*, such that in law there was no conviction: ***Easterday v The State of Western Australia*** [2005] WASCA 105 at [22]–[25] citing ***Commissioner for Railways (NSW) v Cavanough*** [1935] HCA 45. That conclusion applies not only to the recorded conviction, but also to the finding of guilt on which it was based. Once the Full Court quashed the conviction and no retrial was ordered, there was no subsisting finding of guilt capable of constituting a 'conviction' under s 49G(1).

58 Nor does the underlying conduct weigh against Mr Molina under s 49P(1)(b). The Full Court concluded that Mr Molina had lawful authority to be on the premises on 10 August 1999: ***Molina 2001*** [57].

59 The more relevant question is whether the previous non-disclosure of the quashed conviction bears upon Mr Molina's candour. I am not satisfied that it does. I accept Mr Molina's evidence that he understood there was no conviction to disclose because the conviction had been quashed. That understanding was legally correct. I also accept that Mr Molina volunteered the matter to the CFMEU's lawyer during the preparation of the current federal renewal application. That conduct is inconsistent with an intention to conceal the matter. To the contrary, it supports a conclusion that Mr Molina was prepared to disclose historical matters even where he understood there was no legal obligation to do so.

60 I have also considered the fact that the suspensions imposed in the ***Permit Suspension Case*** (at [42(a) and (b)] above) were not disclosed in answer to question 3.5 of the Form 16 application. The omission is regrettable. The permit regime requires full and careful disclosure, and the process must be applied with the rigour identified in ***Margjini*** [75] (at [4(g)] above).

61 However, I accept that the omission was inadvertent rather than deliberate. The suspensions were discussed by the FWC in **[2023] FWC 1551** [65] (at [52] above), and that decision was included with the Form 16 application. If there had been an intention to conceal the suspensions, it is unlikely that the CFMEUW would have annexed a decision expressly referring to them. I therefore do not treat the omission as weighing against Mr Molina's fitness, although it reinforces the need for care in future applications.

62 I also take into account that, on 18 August 2021, the FWC refused to issue Mr Molina a federal right of entry permit in **[2021] FWC 3419** (at paragraph 80 of Mr Molina's Supplementary Statutory Declaration at [15] above). That refusal arose as a consequence of Mr Molina's involvement in the ***Salini Case***. It is a relevant matter under s 49P(1)(b) because it concerns the same broad question of fitness to hold and exercise statutory entry rights.

63 The weight of the FWC's 2021 refusal in **[2021] FWC 3419** is reduced by later events. In particular, in **[2023] FWC 1551** (at [52] above), the FWC subsequently assessed Mr Molina as a fit and proper person to hold a federal right of entry permit. That later decision post-dated the 2021 refusal, the contravention in the ***Salini Case***, Mr Molina's further training, and his evidence of reflection and insight.

64 The FWC's decision in **[2023] FWC 1551** (at [52] above) is relevant, but not determinative. Sections 49O and 49P of the IR Act require the Commission to undertake its own assessment, and ***Margjini*** [75] makes clear that the Division 2G permit process must be applied with rigour.

65 The ***Salini Case*** is also relevant under s 49P(1)(b). Although the BCIIP Act is not an 'industrial law' for the purposes of s 49P(2)(d), the conduct in the ***Salini Case*** concerned Mr Molina encouraging the continuation of industrial action and resulted in a penalty being imposed on him, and on the CFMEU, as a result of his conduct. That matter weighs against a permit issuing. I also take into account that that conduct occurred on 10 December 2018, there is no material before me indicating any further contravention since that time, and Mr Molina gave evidence acknowledging the wrongfulness of his conduct and identifying lawful alternatives he would pursue in future.

66 Taking the matters under s 49P(1)(b) together, I am satisfied that they do not weigh sufficiently against the issue of a permit. The ***Salini Case*** and the FWC's refusal to issue Mr Molina a permit in **[2021] FWC 3419** are relevant and adverse. However, their present weight is reduced by the absence of further contraventions, the FWC's later decision in **[2023] FWC 1551**, and the material now before me. The quashed conviction does not constitute a conviction and the underlying conduct was held to be lawful. The two non-disclosure issues do not demonstrate a lack of candour.

67 A fit and proper person for the purposes of s 49O is not necessarily a person with an unblemished record. The question is whether, having regard to the statutory criteria and any other relevant matters, the Commission is presently satisfied that the

nominated official is a fit and proper person to hold and exercise the powers conferred by a right of entry permit. For the reasons given above, and in the conclusion below, I am satisfied that Mr Molina is presently a fit and proper person to hold a right of entry permit. However, the number and nature of the adverse matters make a limited reporting condition appropriate.

**Conclusion**

68 The fit and proper person criteria point in different directions.

69 Section 49P(2)(a) weighs in favour of a permit issuing. Mr Molina has undertaken appropriate training about the rights and responsibilities of an authorised representative, including State right of entry training on 26 May 2025. He has also undertaken further training directed to federal right of entry obligations and to the behavioural issues that contributed to his earlier contraventions.

70 Sections 49P(2)(b), (c), (e) and (g) do not weigh against a permit issuing. I am satisfied that Mr Molina has not been convicted of an offence of the kind referred to in ss 49P(2)(b) and (c), including any conviction now spent. I am also satisfied that a State right of entry permit issued to Mr Molina has not been revoked, suspended or made subject to conditions. There is no material before me indicating that Mr Molina has ever been disqualified under an industrial law or a work health and safety law from exercising, or applying for, a right of entry for industrial or work health and safety purposes.

71 Sections 49P(2)(d) and (f) weigh against a permit issuing. The penalties imposed in relation to Mr Molina's actions are serious. The suspensions imposed in the ***Permit Suspension Case*** and the conditions imposed on his federal permits are also relevant adverse matters. Those matters cannot be minimised. They involved conduct inconsistent with the standard expected of a person entrusted with statutory entry rights.

72 However, the present weight of those adverse matters is reduced by the age of most of the contraventions, the absence of any further contravention since 10 December 2018, Mr Molina's compliance with prior conditions, his completion of relevant training, and his evidence of insight and remorse.

73 I also give weight to the FWC's later assessment in **[2023] FWC 1551** that Mr Molina was a fit and proper person to hold a federal right of entry permit.

74 I have considered the quashed conviction in ***Molina 2001*** and the circumstances of its disclosure. For the reasons given above, that matter does not weigh against a permit issuing. I have also considered the omission of the suspensions imposed in the ***Permit Suspension Case*** from the Form 16 application. I accept that the omission was inadvertent and do not treat it as demonstrating a lack of candour.

75 Balancing all of the fit and proper person criteria and the other matters I consider relevant under s 49P(1)(b), and applying the rigour required by ***Margjini***, I am satisfied that Mr Molina is a fit and proper person to hold a right of entry permit.

76 The application is granted.

77 I have considered whether to issue the permit subject to conditions under s 49O(2). The number and seriousness of Mr Molina's contraventions falling within s 49P(2)(d), the contravention in the ***Salini Case***, the suspensions imposed in the ***Permit Suspension Case***, the conditions imposed on his federal permits, and the FWC's refusal in **[2021] FWC 3419**, distinguish this application from one in which the adverse matters are older or more limited. In particular, Mr Molina's most recent contravention occurred on 10 December 2018, and his federal permit has previously been suspended rather than merely made subject to conditions. In that context, a limited reporting condition is appropriate. The condition is not punitive. It is directed at ensuring the prompt disclosure of any future matter relevant to Mr Molina's continued fitness to hold the permit.

78 I note the undertaking given by the CFMEUW and Mr Molina at the hearing of the application:

> The CFMEUW and Mr Molina undertake that they will notify the Commission in writing if any findings are made or penalties imposed on Mr Molina that are relevant to the permit qualification matters at ss 49P(2)(a)–(g) of the IR Act, or proceedings commenced that may lead to findings or the imposition of penalties that are relevant to the permit qualification matters in ss 49P(2)(a)–(g) of the IR Act in relation to Mr Molina within 2 weeks of the finding being made, the penalty being imposed or the proceeding commenced.

79 Although the undertaking refers to ss 49P(2)(a)–(g), I will impose a condition confined to ss 49P(2)(b)–(g), because those are the criteria capable of being affected by findings, penalties and proceedings of the kind referred to in the undertaking.

80 I will issue Mr Molina a right of entry permit under s 49O(1), subject to the following condition:

> During the term of the permit, the CFMEUW and Mr Molina must notify the Registrar in writing within 14 days after either of them becomes aware of:
>
> (1) The commencement of any proceeding in a court or tribunal involving Mr Molina that may lead to a finding, order or other outcome relevant to a matter under ss 49P(2)(b) to (g) of the *Industrial Relations Act 1979* (WA).
>
> (2) Any finding, order or other outcome of a court or tribunal involving Mr Molina that is relevant to a matter under ss 49P(2)(b) to (g) of the *Industrial Relations Act 1979* (WA).

81 As Mr Molina's current right of entry permit ROE 5/2014 expires on 30 June 2026, I will order that a right of entry permit issue to Mr Molina on and from 1 July 2026, subject to the condition set out above.

**2026 WAIRC 00437**

**APPLICATION TO ISSUE WALTER VINICIO MOLINA WITH A RIGHT OF ENTRY PERMIT**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | THE CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION OF WORKERS |
| | **APPLICANT** |
| | **-v-** |
| | (NOT APPLICABLE) |
| | **RESPONDENT** |
| **CORAM** | COMMISSIONER C TSANG |
| **DATE** | MONDAY, 29 JUNE 2026 |
| **FILE NO.** | ROE 182 OF 2025 |
| **CITATION NO.** | 2026 WAIRC 00437 |

| | |
|---|---|
| **Result** | Order issued |
| **Representation** | |
| **Applicant** | Mr D Rafferty (of counsel) |
| **Respondent** | Not applicable |

*Order*

HAVING heard from Mr D Rafferty (of counsel) on behalf of the applicant, and Reasons for Decision ([2026] WAIRC 00430) having been delivered on 26 June 2026, the Commission, pursuant to powers conferred under the *Industrial Relations Act 1979* (WA), hereby orders –

THAT a right of entry permit be issued to Walter Vinicio Molina on and from 1 July 2026, subject to the following conditions:

During the term of the permit, the applicant and Mr Molina must notify the Registrar in writing within 14 days after either of them becomes aware of:

(1) The commencement of any proceeding in a court or tribunal involving Mr Molina that may lead to a finding, order or other outcome relevant to a matter under ss 49P(2)(b) to (g) of the *Industrial Relations Act 1979* (WA).

(2) Any finding, order or other outcome of a court or tribunal involving Mr Molina that is relevant to a matter under ss 49P(2)(b) to (g) of the *Industrial Relations Act 1979* (WA).

(Sgd.) C TSANG,
Commissioner.

[L.S.]

**2026 WAIRC 00405**

**APPLICATION TO ISSUE NATHAN NEIL FISHER WITH A RIGHT OF ENTRY PERMIT**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | | |
|---|---|---|
| **CITATION** | **:** | 2026 WAIRC 00405 |
| **CORAM** | **:** | COMMISSIONER T B WALKINGTON |
| **HEARD** | **:** | WEDNESDAY, 18 FEBRUARY 2026 |
| **DELIVERED** | **:** | FRIDAY, 19 JUNE 2026 |
| **FILE NO.** | **:** | ROE 212 OF 2025 |
| **BETWEEN** | **:** | THE CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION OF WORKERS |
| | | Applicant |
| | | AND |
| | | (NOT APPLICABLE) |
| | | Respondent |

| | | |
|---|---|---|
| CatchWords | **:** | Industrial Law (WA) - Application for a right of entry permit - Application not opposed - Fit and proper person criteria - Serious criminal offending - Consideration of right of entry training - Consideration of rehabilitation - Whether nominated official is a fit and proper person to hold a right of entry permit - Fit and proper person criteria protective rather than punitive - Right of entry permit issued |

| | | |
|---|---|---|
| Legislation | : | *Industrial Relations Act 1979* (WA) |
| | | *Industrial Relations Commission Regulations 2005* (WA) |
| Result | : | Right of entry permit issued |
| **Representation:** | | |
| Applicant | : | Mr D Rafferty (of counsel) |

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

*Construction, Forestry and Maritime Employees Union* [2025] FWC 1486

*The Construction, Forestry, Mining and Energy Union of Workers* [2025] WAIRC 00727; (2025) 105 WAIG 2241

*The Construction, Forestry, Mining and Energy Union of Workers* [2026] WAIRC 00229; (2026) 106 WAIG 798

*Construction, Forestry, Mining and Energy Union of Workers* [2026] WAIRC 00372

*Electrical Trades Union WA* [2026] WAIRC 00221; (2026) 106 WAIG 790

*The Plumbers and Gasfitters Employees' Union of Australia, West Australian Branch, Industrial Union of Workers (PGEU*) [2026] WAIRC 00237; (2026) 106 WAIG 805

*Registrar, Western Australian Industrial Relations Commission v Edmond Margjini, the Construction, Forestry, Mining and Energy Union of Workers* [2026] WAIRC 00314

*United Workers Union (WA)* [2025] WAIRC 00842; (2025) 105 WAIG 2603

*Reasons for Decision*

1 On 27 November 2025, the Construction, Forestry, Mining and Energy Union of Workers (**CFMEUW**) applied under s 49N(1) of the *Industrial Relations Act 1979* (WA) (**the Act**) for the Western Australian Industrial Relations Commission (**Commission**) to issue a right of entry permit to Mr Nathan Neil **Fisher**.

2 The CFMEUW is a registered organisation of employees under Division IV of Part II of the Act.

3 Mr Fisher is a current holder of a right of entry permit since 16 September 2022. I note that the Commission has determined a later expiry date under s 49S of the Act for the purposes of hearing and determining this matter. Mr Fisher's current permit expires on 30 June 2026.

**Relevant background**

4 The Secretary of the CFMEUW has applied for the Commission to issue a permit to Mr Fisher, an employee of the organisation.

5 The application complied with regulation 77E of the *Industrial Relations Commission Regulations 2005* (WA) (**Regulations**) and included the following materials:

(1) the full legal name and address of the nominated official, Mr Fisher;

(2) a legible copy of Mr Fisher's signature;

(3) a current passport size and style photograph of the nominated official;

(4) a statement by Mr Fisher certifying that the signature was made by, and the photograph was of, Mr Fisher;

(5) evidence that Mr Fisher has completed appropriate training about the rights and responsibilities of an authorised representative by way of a copy of a Certificate of Completion by Mr Fisher of 'WA Right of Entry Permit Holder' training dated 26 May 2025;

(6) particulars relating to the nominated official's fitness and propriety for the purpose of s 49P of the Act by way of:

i. a Statutory Declaration of Mick Buchan dated 27 November 2025; and

ii. a Statutory Declaration of Mr Fisher dated 27 November 2025

6 The CFMEUW provided two statutory declarations of Mr Fisher dated 27 November 2025 and 10 February 2026, in which he discloses a range of matters relevant under s 49P of the Act.

**Legislation and principles**

7 The statutory framework of industrial regulation in Western Australia, as set out in the Act, provides officers and employees of registered organisations (**an official**) are permitted to enter premises for the purposes of conducting their roles provided they are able to produce a right of entry permit.

8 Section 49O(1) of the Act provides that the Commission may issue an official with a right of entry permit, if the Commission is satisfied that the nominated official is a 'fit and proper person' to hold the right of entry permit.

9 Section 49P of the Act sets out the criteria the Commission must apply in assessing whether the nominated official is a 'fit and proper person':

**49P. Deciding whether nominated representative is fit and proper person**

(1) In deciding whether a nominated official is a fit and proper person to hold a right of entry permit, the Commission —

(a) must consider the fit and proper person criteria in relation to the official; and

(b) may consider any other matters the Commission considers relevant.

(2) The following matters are the fit and proper person criteria in relation to a nominated official —

(a) whether the official has received appropriate training about the rights and responsibilities of an authorised representative;

(b) whether the official has ever been convicted of an offence against an industrial law;

(c) whether the official has ever been convicted of an offence against a law of the Commonwealth, a State, a Territory or a foreign country involving —

(i) entry onto premises; or

(ii) fraud or dishonesty; or

(iii) the intentional use of violence against another person; or

(iv) the intentional damage or destruction of property;

(d) whether the official, or another person, has ever been ordered to pay a penalty under an industrial law in relation to the actions of the official;

(e) whether a right of entry permit issued to the official has been revoked, suspended or made subject to conditions;

(f) whether a right of entry for industrial or work health and safety purposes the official had under an industrial law or a work health and safety law has ever been revoked, suspended or had conditions imposed on it;

(g) whether the official has ever been disqualified under an industrial law or a work health and safety law from exercising, or applying for, a right of entry for industrial or work health and safety purposes under that law.

10 I must decide whether Mr Fisher is a fit and proper person for the purposes of holding a right of entry permit.

11 In a recent decision, the Commission in Court Session observed that the right of entry provisions in Division 2G of the Act, require the Commission to balance the interests of organisations in representing their members, and the rights of employers and occupiers of premises to conduct their business without undue interference: ***Registrar, Western Australian Industrial Relations Commission v Edmond Margjini, the Construction, Forestry, Mining and Energy Union of Workers*** [2026] WAIRC 00314 (***Margjini***) [2] and [71] - [73]:

> A right of entry permit is important. It enables a holder to enter premises to hold discussions with employees and to investigate certain breaches of legislation, including the *Work Health and Safety Act 2020* (WA) in relation to safety issues. Authorised representatives have substantial powers to request the production of employment records from an employer, and to gather evidence in relation to a suspected breach. A right of entry permit provides a lawful basis to enter and remain on premises where relevant employees work, that would otherwise constitute a trespass at common law: ***Molina v Zaknich*** [2000] WASCA 390 per Hasluck J at [50] referring to ***Coco v R*** (1994) 179 CLR 427 [2].
>
> …
>
> There is no counterpart in Division 2G of the Act to s 480 of the *FW Act*. Section 480 sets out the objects of the Part of the *FW Act* dealing with entry rights under that legislation. The Full Court in ***Maritime Union of Australia*** commented on the objects of the *FW Act* provisions dealing with rights of entry at [13]-[17] of the decision. In particular, at [15]-[16] the Full Court observed:
>
> [15] Section 480, extracted at [8] above, sets out that the object of Part 3-4 is to establish a framework that *balances* the right of organisations to represent their members, the right of employees to receive information and representation, and the right of occupiers of premises and employers to go about their business without undue inconvenience. The rights conferred by Part 3-4, including to enter premises and interview persons about suspected contraventions and to hold discussions with employees, have thus been assessed by the legislature as an appropriate balance between the rights of organisations, employees and occupiers. The rights conferred, however, are not "untrammelled" and are subject to both express and implied constraints: *Australasian Meat Industry Employees' Union v Fair Work Australia* [2012] FCAFC 85 at [56], (2012) 203 FCR 389 at 405 per Flick J (Tracey J agreeing). The exercise of rights conferred upon a "permit holder" renders lawful that which would otherwise be unlawful: cf. *Federal Commissioner of Taxation v Australia and New Zealand Banking Group Limited* (1979) 143 CLR 499 at 540 per Mason J.
>
> [16] It is thus not surprising that the legislature has confined the category of persons who may be clothed with such powers to those persons who are "*fit and proper*".
>
> In particular, in the extract above at [15], the Full Court noted the balancing of the interests of both organisations in representing their members, and the rights of employers and occupiers of premises to conduct their business without undue interference. In this context, the Full Court observed that the right of entry provisions in the *FW Act* strike a balance between the interests and rights of employees, organisations and occupiers of premises. In recognition of the powers that the right of entry provisions confers on those who possess a permit, the Full Court expressly recognised that those exercising right of entry must be fit and proper persons.
>
> Similarly, we consider that Division 2G should be viewed in the same way. This is evident from not only the objects of the *Act* in s 6(d), the entry powers in ss 49H and 49I, but also the protective provisions in ss 49L, 49M(3), 49O(3), and the powers of the Commission under subdivision 4, including s 49T. Considering these provisions of the *Act* together, leads to the conclusion that the right of entry provisions of the *Act* have a combination of protective purposes, for both permit holders and employers and occupiers, and are not just in aid of the object in s 6(d). To conclude to the contrary would be

to fail to consider the evident balance that the Parliament has struck in the scheme it has enacted. In the interpretation of the relevant provisions of the right of entry scheme, these dual purposes must be kept in mind [71] – [73].

12 In ***The Construction, Forestry, Mining and Energy Union of Workers*** [2025] WAIRC 00727; (2025) 105 WAIG 2241 at [24], Emmanuel C summarised the relevant considerations as follows:

> Vice President Hatcher (as he was then) set out the principles to be applied by the FWC when assessing whether a person is a fit and proper person for the purpose of s 512 and 513 of the FW Act in ***Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia*** [2015] FWC 1522 at [32]:
>
> > The proper approach to the assessment of whether a person is a fit and proper person to hold an entry permit for the purpose of the s.512 of the Act has been set out in a number of decisions including *The Maritime Union of Australia*, *CEPU v Director of the Fair Work Building Industry Inspectorate, Director of the Fair Work Building Industry Inspectorate v CFMEU*, *Construction, Forestry, Mining and Energy Union*, *Director of the Fair Work Building Industry Inspectorate v Construction, Forestry, Mining and Energy Industrial Union of Employees, Queensland* and *Construction, Forestry, Mining and Energy Union v Director of the Fair Work Building Industry Inspectorate*. The relevant principles maybe summarised as follows:
> >
> > - A "fit and proper" standard, generally speaking, involves assessing the relevant personal characteristics of the individual concerned in relation to the activities for which satisfaction of the standard is required.
> > - The expression "fit and proper person" in s.512, read in its context, is to be applied by reference to the suitability of the relevant official to hold an entry permit.
> > - The permit qualifications matters are not matters to be considered at large without reference to the question that needs to be answered in s.512. They are not matters to be considered to determine whether a person is a "fit and proper person" per se, but rather whether an official of an applicant organisation is a fit and proper person to hold the entry permit that has been applied for by the organisation.
> > - The question of whether an official is a fit and proper person to hold an entry permit will therefore necessarily require a consideration of the rights the holder of an entry permit may exercise, the limitations on and conditions attaching to the exercise of those rights, and the responsibilities that must be discharged in the exercise of those rights.
> > - The requirement to take the permit qualification matters into account means that the consideration of them must be treated as a central element in the deliberative process and that each matter must be given proper, genuine and realistic consideration and appropriate weight.
> > - The permit qualification matters are all concerned with matters personal to the official for whom the issue of an entry permit is sought.
> > - While each of the permit qualification matters are to be evaluated and given due weight, there is no statutory indication that any particular permit qualification matter should be given more weight than any other. In such circumstances it will generally be a matter for the first instance decision maker to determine the appropriate weight to be given to each of the matters which are required to be taken into account in exercising the power in s.513(1).
> > - Relevance referred to in s.513(1)(g) is relevance to the question of whether the particular official concerned is a fit and proper person to hold an entry permit, so that for a matter to be considered relevant, the Commission must form the view that it relates to those personal characteristics of the official in question which are pertinent to the discharge of the functions and the exercise of the rights and privileges associated with the holding of an entry permit. (footnotes omitted)

13 The principles in ***The Construction, Forestry, Mining and Energy Union of Workers*** [2025] WAIRC 00727; (2025) 105 WAIG 2241 have also been adopted in recent decisions of the Commission in ***Construction, Forestry, Mining and Energy Union of Workers*** [2026] WAIRC 00372; ***The Plumbers and Gasfitters Employees' Union of Australia, West Australian Branch, Industrial Union of Workers (PGEU)*** [2026] WAIRC 00237; (2026) 106 WAIG 805; ***The Construction, Forestry, Mining and Energy Union of Workers*** [2026] WAIRC 00229; (2026) 106 WAIG 798; ***Electrical Trades Union WA*** [2026] WAIRC 00221; (2026) 106 WAIG 790; and ***United Workers Union (WA)*** [2025] WAIRC 00842; (2025) 105 WAIG 2603. I will also adopt these principles in this matter.

**Consideration**

14 The application has been validly made by the Secretary of the CFMEUW under s 49N(1) of the Act and is compliant with the requirements set out in regulation 77E of the Regulations pursuant to s 49N(2) of the Act.

15 Notice of the application was given by the Registrar on 12 December 2025.

16 The Commission has not received any objection to Mr Fisher being issued with a right of entry permit and the application is not opposed.

17 I now turn to the consideration of the criteria set out in s 49P of the Act.

**Section 49P(2)(a) – Right of entry training**

18 Mr Fisher has completed extensive right of entry training and submitted a copy of a WA Right of Entry Training Certificate issued to him on 26 May 2025.

19 In addition, Mr Fisher has undertaken relevant right of entry training with Mr Brian Lacy, former Australian Industrial Relations Commission Senior Deputy President, covering the rights and obligations of right of entry permit holders and detailed and practical advice concerning compliance with his obligations. Furthermore, Mr Fisher has undertaken relevant training courses through the Australian Council of Trade Unions and with the CFMEUW's national office.

20 I consider the requirements of s 49P(2)(a) are well satisfied.

**Section 49P(2)(b), (d), (e) (f) and (g) - Offences against industrial laws**

21 Mr Fisher has not been convicted of any offence under or against an industrial law. Mr Fisher has not had a penalty imposed on his right of entry permit, nor has it ever been revoked, suspended or conditions imposed upon it under industrial or work, health and safety legislation. This weighs in Mr Fisher's favour.

22 Mr Fisher has not been disqualified under an industrial law or work health and safety law from exercising, or applying for, a right of entry for industrial or work health and safety purposes under the law.

**Section 49P(2)(c) - Offences against other laws**

23 Mr Fisher has been convicted of several serious criminal offences. Mr Fisher provided extensive details of the convictions, the circumstances in which he offended and the steps he has taken to ensure he does not commit such offences again. I have considered this material in depth.

24 The CFMEUW accept that Mr Fisher's serious criminal offending weighs against a finding that he is a fit and proper person to hold a right of entry permit.

25 However, the CFMEUW submits that other mandatory criteria weigh in favour of a positive assessment of Mr Fisher's eligibility to hold a permit under the Act and therefore should be granted.

26 The CFMEUW says there is evidence before the Commission in these proceedings that Mr Fisher has reformed himself, conducted himself professionally, and understands his obligations as a permit holder. This, the CFMEUW says, goes directly to the concepts of 'character' and 'reputation' as expressed by the Commission in Court Session in ***Margjini*** [56], for the purposes of s 49P(1)(b) of the Act. The CFMEUW submits Mr Fisher has provided evidence of his reform, and it should be given weight.

***2005 to 2014 – Criminal offending during period of methamphetamine addiction***

27 Mr Fisher gave evidence in his supplementary statutory declaration sworn and filed on 10 February 2026, that he was first introduced to methamphetamines in 2004. Mr Fisher says that his addiction to methamphetamines developed between 2005 and 2013, and that it has contributed to making poor choices.

28 Mr Fisher has been convicted of offences against laws involving trespass, dishonesty and the intentional use of violence against another person. At the direction of the Commission, and pursuant to regulation 77E(3) of the Regulations, the CFMEUW provided a National Police Certificate for Mr Fisher.

29 Mr Fisher has been convicted of a number of criminal offences from 2009 to 2021. Notably, on 10 November 2014, Mr Fisher was convicted of six counts of armed robbery, which involved committing a series of robberies on 5 May 2014 and 6 May 2014 for which he was subsequently sentenced to five years imprisonment.

30 Mr Fisher has also been convicted of a number of other offences. These include assaulting a public officer and obstructing a police officer in 2007, assaulting occasioning bodily harm against another person in 2009, obstructing a police officer and trespassing in 2013 and driving without a license and in excess of the speed limit in 2014.

***2014 to 2022 – Rehabilitation and reform***

31 Mr Fisher's evidence is that prison 'saved him' and facilitated an opportunity for him to address his methamphetamine addiction, rebuild relationships with his family and improve himself on a personal level. In his evidence, Mr Fisher did not seek to minimize his conduct. Mr Fisher was granted parole and released early from prison in May 2017.

32 After his release from prison, Mr Fisher began working in the construction industry for various companies. Throughout his time in the construction industry, Mr Fisher has held site representative positions for the CFMEUW and has been a health and safety representative at the places he was employed. He gave evidence that these roles have given him 'great amount of pride'.

33 Mr Fisher commenced employment with the CFMEUW as an organiser in October 2022.

34 Mr Fisher gave evidence that his position as an organiser places him in good stead to assist construction workers who go through similar situations to himself. He says that his role provides opportunities for him to offer insights into pathways for people to resolve their issues and to give workers' confidence.

35 Mr Fisher disclosed that he has been issued with three police orders since his release from prison. In January 2020 and June 2021, Mr Fisher failed to comply with police orders, and he was convicted of breaching police orders on both occasions. Mr Fisher pleaded guilty and was fined $800.00 for both breaches. More recently, on 29 November 2025, Mr Fisher received a police order for which he complied with the terms.

36 The police orders concerned circumstances of unsocial conduct in a domestic setting. None of the police orders concerned conduct that involved intentional violence towards another person nor, intentional damage or destruction of property. I consider they do not weigh against him for the purposes of the assessment of whether Mr Fisher is a 'fit and proper person' to hold a right of entry permit.

**Any other 'relevant matters' under s 49P(1)(b)**

37 As observed by the Commission in Court Session, the 'relevant matters' are other matters that the Commission considers relevant which are viewed through the lens of the objects of the Act and the purposes to be achieved by the operation of Part II Division G of the Act: ***Margiini*** [192].

38 On 30 May 2025, the Fair Work Commission issued Mr Fisher a permit following consideration of whether Mr Fisher was a fit and proper person. In doing so, Deputy President Colman observed that Mr Fisher was a 'credible witness' and that he 'continued to be a responsible and productive member of society': ***Construction, Forestry and Maritime Employees Union*** [2025] FWC 1486 [7].

**Findings and conclusions**

39 Mr Fisher has completed the appropriate and required training. Mr Fisher has also undertaken additional tailored training. I am satisfied that Mr Fisher well understands the entitlement to exercise right of entry and the responsibilities this carries and will exercise his rights appropriately.

40 The Commission in Court Session described the right of entry provisions as being 'protective' and having a combination of protective purposes for both the permit holder and employers and occupiers: ***Margjini*** [73]. That is, the purpose of the fit and proper person test is not to punish Mr Fisher for his past offending, but to ensure he will comply with his obligations as a permit holder in the future.

41 Mr Fisher has not been convicted of any offence against an industrial law.

42 Mr Fisher's serious criminal offending would weigh against him if I were not satisfied that Mr Fisher has addressed the causes of his past criminal offending behaviour and is committed to continuing to be a responsible person capable of observing his obligations and responsibilities as a member of our community and as a right of entry permit holder.

43 I am satisfied on the evidence before me that Mr Fisher is a fit and proper person to hold a right of entry permit and there is no reason for the imposition of any conditions.

44 Mr Fishers' current right of entry permit in ROE 116 of 2022 expires on 30 June 2026. Accordingly, I will order that a right of entry permit be issued to Mr Fisher on and from 1 July 2026.

**2026 WAIRC 00406**

**APPLICATION TO ISSUE NATHAN NEIL FISHER WITH A RIGHT OF ENTRY PERMIT**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | THE CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION OF WORKERS |
| | **APPLICANT** |
| | **-v-** |
| | (NOT APPLICABLE) |
| | **RESPONDENT** |
| **CORAM** | COMMISSIONER T B WALKINGTON |
| **DATE** | FRIDAY, 19 JUNE 2026 |
| **FILE NO/S** | ROE 212 OF 2025 |
| **CITATION NO.** | 2026 WAIRC 00406 |

| | |
|---|---|
| **Result** | Right of entry permit issued |
| **Representation** | |
| **Applicant** | Mr D Rafferty (of counsel) |

*Order*

HAVING heard from Mr D Rafferty (of counsel) on behalf of the applicant and its nominated official, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA) hereby orders –

THAT a right of entry permit be issued to Nathan Neil Fisher as the applicant's nominated official on and from 1 July 2026.

(Sgd.) T B WALKINGTON,
[L.S.] Commissioner.

# UNFAIR DISMISSAL/CONTRACTUAL ENTITLEMENTS—

**2026 WAIRC 00463**

**UNFAIR DISMISSAL APPLICATION**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | | |
|---|---|---|
| **CITATION** | **:** | 2026 WAIRC 00463 |
| **CORAM** | **:** | COMMISSIONER T B WALKINGTON |
| **HEARD** | **:** | THURSDAY, 2 JULY 2026 |
| **DELIVERED** | **:** | MONDAY, 6 JULY 2026 |
| **FILE NO.** | **:** | U 6 OF 2026 |
| **BETWEEN** | **:** | KELETSO NARE<br>Applicant<br>AND<br>CIVMEC<br>Respondent |

| | | |
|---|---|---|
| CatchWords | : | Industrial Law (WA) - Termination of employment - Insufficient interest - Relevant principles applied - Application dismissed for want of prosecution |
| Legislation | : | *Industrial Relations Act 1979* (WA) |
| | | *Industrial Relations Commission Regulations 2005* (WA) |
| | | *Fair Work Act 2009* (Cth) |
| Result | : | Application dismissed for want of prosecution |
| **Representation:** | | |
| Applicant | : | No Appearance |
| Respondent | : | No Appearance |

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

*Acosta v Daring Holdings Pty Ltd trading as AllBend Engineering* [2005] WAIRC 03111; 85 WAIG 03111

*The Australian Workers' Union, West Australian Branch, Industrial Union of Workers v Barminco Pty Ltd – Plutonic Project* (2000) 80 WAIG 3162

*Reasons for Decision*

1 On 31 December 2025, Keletso Nare (**applicant**) lodged an unfair dismissal application with the Western Australian Industrial Relations Commission, claiming they had been unfairly dismissed by Civmec Limited (**respondent**) on 2 December 2025.

2 In accordance with regulation 7(3A) of the *Industrial Relations Commission Regulations 2005* (WA) (**Regulations**), the application was taken to be filed by the Commission's Registry on 5 January 2026.

3 The applicant says they were told that the reason for their dismissal as 'no longer needing my service due to poor work quality of work'. The applicant says they were not given a reasonable opportunity to address any concerns, nor given a proper warning, performance management process or support and consideration of their recent injury and absence from training.

4 The applicant seeks compensation of an unspecified amount.

5 The respondent objects to the application because they contend the applicant was not and has never been employed by Civmec Limited or any of its associated entities. The applicant was engaged as an apprentice by Skill Hire WA, an external apprenticeship provider. The applicant performed work at Civmec's Henderson premises when employed by Skill Hire WA.

6 Prior to the service of the application, on 6 January 2026, the Commission's Registry emailed the applicant requesting they review their Form 2 – Unfair Dismissal Application because the respondent was listed as 'Civmec' with an ABN of 19 672 407 171. The Australian Business Register lists the entity as 'Civmec Limited', which is an Australian Public Company. The email informed the applicant that the Commission can only deal with unfair dismissals of state system employees, which includes those employed by sole traders, partnerships, some trusts and small charities. The email noted that it would be uncommon for the Commission to be able to deal with an Australian Public Company, as these usually fall within the national system and would be dealt with by the Fair Work Commission under the *Fair Work Act 2009* (Cth).

7 The applicant did not respond, and therefore the application was accepted and the named respondent was served on 8 January 2026.

8 The respondent filed their Form 2A – Employer Response to Unfair Dismissal Application on 14 January 2026 in which they objected to the application on the basis that they were not the employer.

9 On 30 January 2026, the Commission emailed the applicant seeking their views on the response and their views that the named respondent is likely a National System Employer covered by the *Fair Work Act 2009* (Cth), and therefore the Commission may not have jurisdiction to hear the application on this basis.

10 On 20 February 2026, the Commission emailed the applicant referring to the earlier email dated 30 January 2026, seeking a response to the matters raised in that email.

11 On 5 March 2026, the Commission attempted to contact the applicant by the telephone number provided in the application. The call was not answered and there was no option to leave a voicemail.

12 On 12 March 2026, the Commission emailed the applicant referring to the earlier emails of 30 January 2026 and 20 February 2026, noting the Commission had yet to receive a response. The Commission requested the applicant respond if they wished to proceed with the application. The Commission advised the applicant that they were able to discontinue their application and that if they failed to advise the Commission as to how they wished to proceed, the matter would be listed for a hearing to hear from them on why the matter ought not be dismissed pursuant to s 27(1)(a) of the I*ndustrial Relations Act 1979* (WA) (**IR Act**). The applicant was advised that should they not attend the hearing an order may issue dismissing the application for want of prosecution.

13 On 8 April 2026 the parties were notified that a show cause hearing was listed for 2 July 2026.

14 The applicant did not attend the hearing.

15 I am satisfied the applicant was served notice of the hearing in accordance with regulation 24(2) of the Regulations by email on 8 April 2026.

16 Regulation 25(2) of the Regulations provides that service may be done by sending the notice of hearing attached to an email

sent to the email address that the applicant has provided to the Commission.

17 In these circumstances I am satisfied that this matter may be heard and determined despite the failure of the applicant to appear.

**Principles**

18 The Commission has the power to dismiss a matter under s 27(1)(a) of the IR Act:

> (1) Except as otherwise provided in this Act, the Commission may, in relation to any matter before it —
>
> (a) at any stage of the proceedings dismiss the matter or any part thereof or refrain from further hearing or determining the matter or part if it is satisfied —
>
> (i) that the matter or part thereof is trivial; or
>
> (ii) that further proceedings are not necessary or desirable in the public interest; or
>
> (iii) that the person who referred the matter to the Commission does not have a sufficient interest in the matter; or
>
> (iv) that for any other reason the matter or part should be dismissed or the hearing thereof discontinued, as the case may be;
>
> …

19 The Full Bench sets out the principles to consider when deciding whether to dismiss an application under s 27(1)(a)(iii) in ***The Australian Workers' Union, West Australian Branch, Industrial Union of Workers v Barminco Pty Ltd – Plutonic Project*** (2000) 80 WAIG 3162. The factors to consider include the length of the delay, the explanation for the delay, the hardship to the applicant if the application is dismissed, any prejudice to the respondent, and the conduct of the respondent in the litigation.

20 As canvassed by the Commission in ***Acosta v Daring Holdings Pty Ltd trading as AllBend Engineering*** [2005] WAIRC 03111; 85 WAIG 4036 [30], an applicant bears a responsibility to pursue and progress their application.

**Consideration**

21 The applicant was notified that the application may be dismissed if they did not attend the hearing. The applicant did not attend the hearing.

22 The applicant has not communicated with the Commission following the lodgement of the application through the Commission's online portal on 30 December 2025. There has been a six-month delay which is considerable in applications of this nature.

23 The applicant did not provide any reasons for failing to respond to requests from the Commission to provide their views on the respondent's jurisdictional objection, nor their views on whether the named respondent was a national system employer, nor did they advise how they wished to progress their application. There is no adequate explanation for the delay occasioned by the applicant's failure to respond to communications and progress their application.

24 It is the applicant's responsibility to progress their claim and in circumstances where they have failed to do so, despite repeated communications from the Commission, it cannot be said that the applicant will suffer any hardship should the Commission dismiss their application.

25 The respondent's conduct has not contributed to the lack of progress of the application.

26 Given the applicant's lack of response to communications from the Commission, their failure to appear at the hearing and their failure to progress their claim, I conclude that the applicant does not have sufficient interest in the matter.

27 For these reasons, an Order under s 27(1)(a)(iii) of the IR Act dismissing this matter will issue.

**2026 WAIRC 00464**

**UNFAIR DISMISSAL APPLICATION**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | KELETSO NARE |
| | **APPLICANT** |
| | **-v-** |
| | CIVMEC |
| | **RESPONDENT** |
| **CORAM** | COMMISSIONER T B WALKINGTON |
| **DATE** | MONDAY, 6 JULY 2026 |
| **FILE NO/S** | U 6 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00464 |

| | |
|---|---|
| **Result** | Application dismissed for want of prosecution |
| **Representation** | |

| | |
|---|---|
| **Applicant** | No Appearance |
| **Respondent** | No Appearance |

*Order*

HAVING convened a Show Cause Hearing on 2 July 2026, and there being no appearances on behalf of either party, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979* (WA), hereby orders –

THAT the application be, and by this order, is dismissed for want of prosecution.

(Sgd.) T B WALKINGTON,
[L.S.] Commissioner.

**2026 WAIRC 00441**

**UNFAIR DISMISSAL APPLICATION**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | | |
|---|---|---|
| **CITATION** | **:** | 2026 WAIRC 00441 |
| **CORAM** | **:** | COMMISSIONER C TSANG |
| **HEARD** | **:** | ON THE PAPERS.<br>WRITTEN SUBMISSIONS FILED ON FRIDAY, 5 JUNE 2026, FRIDAY, 12 JUNE 2026, FRIDAY, 19 JUNE 2026, FRIDAY, 26 JUNE 2026 |
| **DELIVERED** | **:** | TUESDAY, 30 JUNE 2026 |
| **FILE NO.** | **:** | U 10 OF 2026 |
| **BETWEEN** | **:** | TALIT MAHMOOD AHMED PAUL<br>Applicant<br>AND<br>DIRECTOR GENERAL, DEPARTMENT OF EDUCATION<br>Respondent |

| | | |
|---|---|---|
| CatchWords | **:** | INDUSTRIAL LAW (WA) – Unfair dismissal application filed out-of-time – Whether it would be unfair not to accept the applicant's referral out-of-time under s 29(3) – Constructive dismissal assessed for purpose of 'fairly rough and ready' merits assessment |
| Legislation | **:** | *Industrial Relations Act 1979* (WA), s 27, s 27(1)(a), s 29(1)(c), s 29(2)(a), s 29(3) |
| Result | **:** | Respondent's out-of-time objection upheld; Applicant's unfair dismissal application dismissed |
| **Representation:** | | |
| Applicant | **:** | In person |
| Respondent | **:** | Ms H Ticehurst (of counsel) |

**Cases referred to in reasons:**

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

*Jackamarra v Krakouer* [1998] HCA 27

*JL v Haydar Family Restaurants T/A McDonalds* [2003] WAIRC 09489

*Malik v Albert, Director General, Department of Education* [2004] WASCA 51

*O'Meara v Stanley Works Pty Ltd* [2006] AIRC 496

*Paul v Australian Islamic College* [2005] WAIRC 02432

*Paul v Director General, Department of Education* [2026] WAIRC 00365

*Paul v The Director, Australian Federation of Islamic Councils* [2006] WAIRC 05843

*Subrayan v Lynwood Christian Church* [2026] WAIRC 00408

*Reasons for Decision*

1 These reasons concern the respondent's application, objecting to the Commission hearing and determining the applicant's (**Mr Paul's**) *Form 2 – Unfair Dismissal Application* (**Form 2**), filed on 22 January 2026, on the following grounds:

The Respondent objects to [Mr Paul's Form 2] (**Application**) on the following two grounds:

**Objection One: [Mr Paul] was not dismissed**

1. [Mr Paul] was not dismissed from his employment.
2. [Mr Paul] voluntarily resigned from his employment, effective 29 August 2025, by way of a letter of resignation dated 14 August 2025, which was emailed to the Respondent on 6 August 2025 (**Attachment 1**).

**Objection Two: The Application was made out of time**

3. The Application was made 146 days after [Mr Paul's] resignation from his employment took effect. Section 29(2)(a) of the *Industrial Relations Act 1979* (WA) (**Act**) provides that applications for unfair dismissal must be filed within 28 days of the termination of employment. Therefore, the Application was filed 118 days beyond the prescribed time limit.

2 In ***Paul v Director General, Department of Education*** [2026] WAIRC 00365 (my reasons concerning Mr Paul's stay application), I made the following findings which are not in dispute between the parties:

(a) On Wednesday, 6 August 2025 at 1:19pm, Mr Paul sent an email attaching a letter of resignation addressed to the Principal, stating:

> Dear Mr Kennady [sic],
>
> Please accept this letter as formal notification that I am resigning from my position as teacher English/HASS at Southern Cross District High School with my last day being Friday 29 August 2025.
>
> Thank you for your understanding.
>
> Yours sincerely,
>
> Talit M A Paul

(b) Mr Paul's employment terminated on Friday, 29 August 2025.

(c) Mr Paul's Form 2 is filed pursuant to s 29(1)(c) of the Act.

(d) As Mr Paul filed his Form 2 on Thursday, 22 January 2026, ss 29(2)(a) and (3) of the Act apply.

(e) Section 29(2)(a) requires Mr Paul's Form 2 to be filed by Friday, 26 September 2025.

(f) Mr Paul filed his Form 2 118 days after Friday, 26 September 2025.

(g) Therefore, Mr Paul must satisfy the Commission pursuant to s 29(3) of the Act that it would be unfair for the Commission not to accept his Form 2 out-of-time.

(h) The principles to be considered in s 29(3) applications are well-settled, and outlined in ***Malik v Albert, Director General, Department of Education*** [2004] WASCA 51 as cited in ***Paul v The Director, Australian Federation of Islamic Councils*** [2006] WAIRC 05843 [4].

(i) The dispute between the parties is whether the resignation was given willingly (as the respondent contends) or was a 'forced' resignation amounting to constructive dismissal (as Mr Paul contends).

(j) Where an employee contends that a resignation was forced, the onus rests on the employee to establish that the employer forced their resignation. Accordingly, Mr Paul bears the onus of establishing that his resignation was forced and not given willingly.

**Consideration**

3 In ***Subrayan v Lynwood Christian Church*** [2026] WAIRC 00408 (***Subrayan***) [24], the Full Bench found that, until the Commission exercises the power to accept an application filed out-of-time under s 29(3) of the Act, there is no matter 'before it' in the required sense under s 27(1) of the Act upon which the Commission can exercise powers under s 27(1)(a).

4 Therefore, while the respondent raised two grounds of objection (at [1] above), these reasons address the second of the respondent's objections, namely, the objection to Mr Paul's Form 2 being accepted out-of-time under s 29(3) of the Act.

5 As outlined at [2(h)] above, the principles to be considered in a s 29(3) application are well-settled, and include the length of the delay, the reasons for the delay, action taken to contest the dismissal, the merits of the substantive application, prejudice to the respondent, and considerations of fairness between the applicant and others in a like position. These factors are considered in turn below.

***The length of the delay***

6 As outlined at [2(f)] above, Mr Paul's Form 2 was filed 118 days late.

7 The delay is substantial and weighs against granting an extension of time.

***The reasons for the delay***

8 By Directions ([2026] WAIRC 00280) issued on 7 May 2026, Mr Paul was directed to file an outline of submissions and any witness statements and other evidentiary material which he seeks to rely upon in response to the respondent's application.

9 Mr Paul did not file a witness statement. Mr Paul filed:

(a) A *Form 1A – Multipurpose Form* attaching a document titled 'Submission – Unfair / Constructive Dismissal', totalling 32 pages.

(b) A bundle of documents, totalling 308 pages.

(c) A *Form 1A – Multipurpose Form* attaching a document titled 'Final Supplementary Submission in reply to respondent's objection to out-of-time application', totalling 18 pages.

10 Mr Paul's submissions are lengthy, repetitive in places, and not always easy to follow. His bundle of documents contains duplicated documents, which also makes the bundle difficult to follow.

11 However, doing the best I can with Mr Paul's material, it appears that he relies on the following matters to explain the delay:

(a) His electronic access to his Departmental mailbox and records was withdrawn on his last day of employment (29 August 2025), which prevented him from having access to email correspondence which could prove his claims.

(b) On 19 August 2025, his uncle suddenly passed away, and as a devout Muslim he was under an 'absolute, non-discretionary spiritual and cultural obligation to attend the Janazah (funeral), participate in rites, and observe the Iddah period of mourning'.

(c) Immediately following the funeral (Document 21 states that the Janazah Prayer and Burial were held on Saturday, 23 August 2025), he was required to travel to Europe. Mr Paul states, under the heading 'Emergency Evacuation from War Zone':

- His family members were trapped in an active war zone in Ukraine
- One relative had severe physical disabilities and required urgent evacuation
- For over three months, the Applicant crossed borders through Slovakia, Poland, and Hungary, often under rocket alerts, curfews, and infrastructure collapse.

(d) Mr Paul submits that the stamps in his passport confirm his physical presence at the Ukraine/Slovakia border on 26 September 2025, the day his Form 2 was due to be filed within the 28-day filing period.

(e) On 4 September 2025, he received a notice from the respondent's Standards and Integrity Directorate (**SID**) informing him that they had received a complaint about his alleged misconduct on 20 June 2025, which required his attention.

(f) On 11 September 2025, he received a letter from the Teacher Registration Board of Western Australia (**TRBWA**) proposing to impose conditions on his teacher registration and inviting him to show cause, which also required his attention.

(g) The cumulative effect of management conduct, and the email account lockout on 29 August 2025 'caused a profound psychological and medical collapse' which 'directly impaired his capacity to take formal legal steps within the 28-day period.'

(h) He has ongoing medical conditions, as supported by Document 13.

12 **Firstly**, considering Mr Paul's purported reason **at [11(a)] above**, Mr Paul filed his Form 2 on 22 January 2026, and there is no evidence that his access to his Departmental mailbox had been restored by that time. This demonstrates that access to his Departmental mailbox and records was unnecessary for the purpose of lodging a Form 2. Furthermore, an applicant is not required to attach to a Form 2 all evidence proving the claim at the time the claim is lodged.

13 Mr Paul has previously filed at least two unfair dismissal claims, and a denied contractual benefits claim, in the Commission: ***Paul v Australian Islamic College*** [2005] WAIRC 02432; ***Paul v The Director, Australian Federation of Islamic Councils*** [2006] WAIRC 05843. In the latter matter, Commissioner Wood found that it was not unfair not to accept Mr Paul's application, which had been filed 67 weeks and 6 days out-of-time, in circumstances where Mr Paul had resigned and the employer was unaware of his dissatisfaction until his unfair dismissal application was lodged.

14 These prior proceedings support a finding that Mr Paul was familiar with the Commission as a forum for unfair dismissal claims and with the process of commencing such claims. In any event, Mr Paul's complaint of 2 September 2025 (discussed at [29]–[34] below), demonstrates that, within the statutory filing period, he had identified a possible constructive dismissal claim and knew that the Commission was the forum in which such a claim could be brought.

15 **Secondly**, considering Mr Paul's purported reason **at [11(b)] above**, the death on 19 August 2025 and the funeral on 23 August 2025 occurred before Mr Paul's employment ended on 29 August 2025, and before the 28-day filing period commenced. These events may provide contextual background, but without evidence explaining how they prevented lodgement during the period from 30 August 2025 to 26 September 2025, they do not provide an adequate explanation for the delay.

16 **Thirdly**, considering Mr Paul's purported reasons **at [11(c)]–[11(d)] above**, there is an apparent internal contradiction in Mr Paul's material. Mr Paul states that he attended his uncle's funeral, which Document 21 states was held on Saturday, 23 August 2025 in Morden in the United Kingdom. However, Mr Paul prepared the following table of his movements during the relevant period, and by this table, Mr Paul states that he departed Australia on 29 August 2025:

| **Date** | **Location / Border** | **Activity / Context** |
|---|---|---|
| **29 Aug 2025** | Perth → International Departure | **Digital Lockout 17:03** – all access terminated. Departed Australia. |
| **30 Aug – 4 Sep 2025** | United Kingdom | Transit; arrange war-zone travel; **no legal access**. |
| **5 Sep – 26 Sep 2025** | Ukraine / Slovakia | **Emergency Evacuation**; Disabled relative rescue; rocket fire, curfews. **26 Sep 2025 – ON EXPIRY DATE – present at border**. |
| **27 Sep – 31 Dec 2025** | Ukraine / EU | Regulatory notices sent to **vacated address**. Mandatory SID/TRBWA response. |
| **22 Jan 2026** | United Kingdom | Safe haven; Internet restored; **Application lodged**. |

17 These propositions cannot both be correct, and Mr Paul has not explained the inconsistency. Mr Paul has provided photographs

of stamped passport pages. However, he has not filed a witness statement verifying that the photographed pages are from his passport, nor has he otherwise authenticated the photographs. I therefore give that material limited weight.

18 In any event, even accepting that Mr Paul was outside Australia during the relevant period, that does not explain why he could not file a Form 2 between 30 August 2025 and 26 September 2025, or during the longer period before he filed the Form 2 on 22 January 2026, particularly given his demonstrated capacity to prepare and submit substantial correspondence during the same period, discussed further below.

19 **Fourthly**, considering Mr Paul's purported reasons **at [11(e)]–[11(f)] above**, Mr Paul's documentary evidence indicates that:

(a) On 11 September 2025, the TRBWA emailed Mr Paul a letter concerning the conditions it proposed imposing on his teacher registration (namely, that he advise the Board in writing within seven days of his current employment status, and advise the Board in writing within three days of receiving any future offer of employment as a teacher and before commencement in the position), and providing him with an opportunity to show cause as to why those conditions should not be imposed, within seven days of receipt of the letter.

(b) Mr Paul responded with a three-and-a-half-page letter dated 12 September 2025.

(c) On 15 September 2025, the TRBWA emailed Mr Paul a letter advising that, after considering Mr Paul's response, it had determined that the conditions remained relevant to ensuring his professional, competent and safe practice as a teacher, and that it would proceed to impose the conditions on his teacher registration. The letter advised Mr Paul that if he is aggrieved by the decision that he may apply to the State Administrative Tribunal for a review of the decision.

(d) On 15 September 2025, Mr Paul sent an email chain, comprising three emails, to the TRBWA in response to the TRBWA's letter.

(e) On 4 September 2025, the respondent's SID team emailed Mr Paul a letter informing him that they had received a complaint about his conduct on 20 June 2025 (that at Southern Cross District High School, he mocked, taunted and acted in an intimidating manner while verbally abusing a Year 8 student). The letter informed Mr Paul that full details of the complaint will be provided to him in due course, once further information has been gathered.

(f) On 25 September 2025, SID emailed the complaint letter to Mr Paul, outlining the complaint and providing Mr Paul with an opportunity to respond if he has information he considers relevant, or believes others have information relevant to the investigation, within 10 business days of receipt of the letter.

(g) Mr Paul responded by email the following day, with a three-page letter dated 25 September 2025, which letter also included 16 points of concern regarding SID's investigation.

(h) Mr Paul provided a further two responses to SID, in the form of a two-page letter dated 9 October 2025 and a one-page letter dated 11 November 2025.

(i) On 11 December 2025, Mr Paul was provided with SID's proposed outcome letter and SID's investigation report.

(j) Mr Paul provided a 15-page written response by letter dated 16 December 2025.

20 In addition, on 2 September 2025, Mr Paul sent a one-page email to the Director of Education, Wheatbelt Education Region (**Ms Panizza**), attaching a seven-page complaint against the Principal, dated 1 September 2025. This email demonstrates that, within days of Mr Paul's employment ending, he was able to prepare and submit a detailed written complaint concerning matters that occurred during his employment.

21 On 9 September 2025, Ms Panizza's executive assistant sent an email to Mr Paul attaching Ms Panizza's letter responding to his complaint.

22 On 10 September 2025, Mr Paul sent an email acknowledging Ms Panizza's letter. In this email, Mr Paul states 'the dates of my alleged absences are incorrect'.

23 On 10 September 2025, the Coordinator Regional Operations, Wheatbelt Education Region (**Mr Fergusson**) responded to Mr Paul's email, acknowledging that the reference in Ms Panizza's letter to Mr Paul being absent from the school between 21–29 August 2025 was incorrect, and stating that a review of the systems indicates that Mr Paul was absent from work between 22–29 August 2025.

24 Mr Paul responded to Mr Fergusson's email by sending a one-page email on 10 September 2025.

25 The evidence at [19]–[24] above, demonstrates that between 2 September 2025 and 16 December 2025, Mr Paul was able to prepare and submit substantial written material, including a detailed complaint and correspondence with the Department's Wheatbelt Education Region, and lengthy responses to the TRBWA and SID.

26 Given this, I do not accept that Mr Paul's location, which on his evidence varied between the United Kingdom, Ukraine, Slovakia and the EU during this time, and what he describes in the table at [16] above as his context for being in the location, or the activity he was undertaking in the location, prevented him from filing a Form 2 within time. Particularly, where he is not required to attach to the Form 2 all evidence which he intends to later rely upon.

27 **Fifthly**, considering Mr Paul's purported reasons **at [11(g)]–[11(h)] above**, I am not satisfied that he has provided a health-related explanation for the delay. The documents at Document 13 appear to record specialist treatment on 24 January 2025 and an ultrasound or sonographer appointment on 9 June 2025. They do not establish that Mr Paul was medically incapacitated from filing a Form 2 during the relevant period from 30 August 2025 to 26 September 2025, or during the longer period before he filed the Form 2 on 22 January 2026.

28 In all the circumstances, I am not persuaded that there is an adequate explanation for the delay. This weighs against granting an extension of time.

***Action taken to contest the dismissal***

29 Mr Paul's complaint to Ms Panizza of 2 September 2025 (at [20] above), is properly characterised as action taken to contest, or at least foreshadow contesting, the termination of his employment. Mr Paul states in the penultimate and final paragraphs of the complaint:

> Fortunately, on the 29 August I was able to read this email, because very soon after I read the email to respond to this and his demands, he BLOCKED my access to department emails!
>
> Probably I will take this matter to the West Australian Industrial Commission, as I feel I have been constructively dismissed. I would return to SCDHS but not with Principal Kennedy! He is not the kind of person you can work with, simply he has created 'US and Them' and he knows nothing of professional collegiality, he is driven by DATA and emails, he has absolutely no personality or anything which lends itself to being on his 'Team'!

30 That Mr Paul took action to contest, or at least foreshadow contesting, the termination of his employment weighs modestly in favour of granting an extension of time. However, for the reasons that follow, I give it limited weight.

31 The complaint demonstrates that, within four days of Mr Paul's employment ending and well within the 28-day filing period, Mr Paul had identified a possible constructive dismissal claim and was aware that the Commission was the forum in which such a claim could be brought.

32 Further, the complaint demonstrates Mr Paul's capacity at that time to prepare and submit detailed written material.

33 Mr Paul has not adequately explained why, having identified at that time that he may have a constructive dismissal claim, and having demonstrated the capacity to prepare and submit a detailed written complaint, he did not file his Form 2 until 22 January 2026.

34 Finally, Mr Paul's complaint was emailed on 2 September 2025, at a time when Mr Paul states that he was in the United Kingdom but arranging war-zone travel and thus unable to file a Form 2. However, Mr Paul's ability to prepare and submit a one-page email attaching a seven-page detailed complaint, directly contradicts his contention.

***Prejudice to the respondent***

35 The respondent contends that it has suffered and continues to suffer prejudice as a result of the delay, including:

(a) Reliance on Mr Paul's resignation in making operational and staffing decisions, including that, in the context of a new school year, Mr Paul's position has been filled.

(b) Loss of opportunity to meaningfully address any allegation of constructive dismissal at the relevant time.

(c) The passage of time affecting witness recollection.

(d) Mr Paul's failure to properly particularise his claim until well after filing.

(e) Mr Paul's late introduction of new matters in his submissions (including alleged injury, discrimination, and work health and safety breaches) further compounds the prejudice.

36 Mr Paul contends that the respondent is a large government department with extensive resources. All relevant documents have been preserved and produced, and all witnesses remain available. The respondent has already filed a detailed response, and his position was advertised before he left and his replacement has already been hired.

37 While the respondent is a large public-sector employer with access to records and resources, that does not eliminate prejudice.

38 I accept that Mr Paul raised constructive dismissal in general terms in his complaint of 2 September 2025. However, he did not file a Form 2 within the statutory period, and his claim was not particularised in proceedings before the Commission until significantly later.

39 The respondent was entitled to act on Mr Paul's unequivocal written resignation in making staffing decisions for the following school year, including filling his position. The delay also reduced the respondent's opportunity to investigate and respond to a properly formulated constructive dismissal claim while events were recent.

40 I am satisfied that there is some prejudice to the respondent if time were extended.

41 I am satisfied that the prejudice to the respondent weighs against granting an extension of time.

***Considerations of fairness between Mr Paul and others in a like position***

42 Neither party addressed the consideration of fairness between Mr Paul and others in a like position.

43 Accordingly, this consideration does not weigh for, or against, granting an extension of time.

***The merits of the substantive application***

44 It would not be unfair to refuse to accept an application filed out-of-time if the substantive claim is unlikely to succeed. For the purposes of s 29(3), I am not required to finally determine the substantive claim; the merits assessment need only be 'fairly rough and ready': ***Jackamarra v Krakouer*** [1998] HCA 27 [9] (per Brennan CJ & McHugh J).

45 Therefore, I assess the merits only to the extent necessary to decide whether it would be unfair not to accept Mr Paul's Form 2 out-of-time.

46 The Commission only has jurisdiction to hear and determine Mr Paul's unfair dismissal application if he was 'dismissed' within the meaning of s 29(1)(c) of the Act.

47 A resignation may constitute a dismissal where it is properly characterised as a constructive dismissal: ***Fedec v Minister for Corrective Services*** [2017] WAIRC 00828 (***Fedec***) [30]–[35].

48 The test is objective and causal. A resignation amounts to a dismissal where the employer's conduct was of such a nature that resignation was the probable result, or where that conduct left the employee with no effective or real choice but to resign: ***Fedec*** [35] citing ***O'Meara v Stanley Works Pty Ltd*** [2006] AIRC 496 [23]; ***JL v Haydar Family Restaurants T/A McDonalds*** [2003] WAIRC 09489 (***Haydar***) [60]–[67].

49 It follows that, if an employee has other options, other than to resign, and does resign, the employee will not be held to have been dismissed: ***Haydar*** [68].

50 Mr Paul contends his resignation was 'forced' given the conduct of the Principal in:

(a) Not processing his progression to the Senior Teacher Classification 2 (**ST2**) under cl 14.4 of the *School Education Act Employees (Teachers and Administrators) General Agreement 2023* (**Agreement**), when his eligibility was automatic.

(b) Forcing him to work while injured by requiring him to manage a school cross-country carnival on 28–30 May 2025, which required him to remain standing for hours when he sustained a severe hamstring tear on 26 May 2025.

(c) Denying him leave on 28 May 2025 'for cancer follow-up (ENT specialist); forced to use telephone consultation'.

(d) Cancelling his attendance at a CMS Workshop training on 4 June 2025.

(e) Unsafe workload allocation by requiring him to cover seven additional classes in the months of June and July 2025 whilst he was injured.

(f) Failing to address safety risks on 12 August 2025, by sending generic strategies in response to the risk arising from two new students with behavioural issues enrolling in the school.

(g) Denying his leave for Islamic funeral rites and harassing him during the bereavement period.

(h) Siding with a parent, in the period of 19–21 August 2025, when the parent queried the grade he assigned to a student. The parent also stated that they were aware he was leaving the school, which is a breach of his confidentiality.

(i) Engaging in retaliatory conduct after he completed the Departmental 'Personal Attributes for Leadership 360º Feedback' survey on 21 August 2025 in which he assessed the Principal with 'the lowest possible scores across virtually every competency domain'.

(j) Marking his absence as 'AWOL' when he submitted medical certificates for illness and injury for the period 22–29 August 2025.

(k) Permanently blocking his email, HRMIS and all Departmental access at 5:03pm on 29 August 2025.

(l) Sending an all-staff email in mid-August 2025, in which the Principal stated that he does not accept mediocrity, and openly commanded staff who challenged his authority to look for another school.

(m) Sending an email chain to another teacher in the period 25–28 August 2025 stating 'I am not trying to patronise you, and I do want you to understand I am trying to challenge your thinking and support you', which demonstrates that the Principal adopted a 'patronising, dismissive management' style 'broadly across the staff'.

51 The respondent contends:

(a) Mr Paul's resignation by email dated 6 August 2025 (at [2(a)] above) was unequivocal and communicated in writing.

(b) Mr Paul had, prior to sending the email on 6 August 2025, indicated an intention to leave his employment, including in correspondence to the Principal dated 14 May 2025 and 15 May 2025.

(c) There is no evidence that the respondent terminated Mr Paul's employment or otherwise repudiated his contract; nor is there evidence that Mr Paul had no real choice but to resign.

(d) Mr Paul did not express a desire to withdraw his resignation during the notice period. Mr Paul did not take any steps after resigning to inform the respondent that he planned to contest the cessation of his employment. To the contrary, Mr Paul expressly requested to depart quietly 'without any fanfare of any sorts, no morning tea, or any such gatherings'.

(e) Mr Paul's reliance on any post-resignation disciplinary or misconduct process, or information obtained through that process, does not establish constructive dismissal, because that process occurred after the employment relationship ended and had no causal connection to Mr Paul's decision to resign.

(f) Mr Paul's post-employment correspondence confirms that his intention at the relevant time was to resign and cease teaching. On 15 September 2025, Mr Paul requested the TRBWA to cancel his teacher registration on the basis that he had 'retired from teaching', stating he was 'of retirement age' and that he 'was intending to retire'. Mr Paul's statements to the TRBWA are wholly inconsistent with any suggestion that he was compelled to resign. Rather, they reinforce that his resignation reflected a voluntary and deliberate decision to leave his employment and the teaching profession.

(g) Mr Paul's case relies on asserting that his resignation was 'forced' due to cumulative conduct. That contention fails to meet the established legal threshold, namely that the employer's conduct must be the principal contributing factor to the termination of employment, and the employee must have had no effective or real choice but to resign: ***Fedec*** [35] citing ***O'Meara*** [23]; ***Haydar*** [60]–[63], [67].

(h) At their highest, Mr Paul's submissions reflect dissatisfaction with aspects of the workplace. Dissatisfaction, conflict, or workplace pressure, do not amount to constructive dismissal.

(i) Mr Paul advances numerous allegations concerning alleged injury, workload, management decisions, cultural issues, and professional conflict. Even taken at their highest, those matters do not meet the threshold for constructive dismissal. They do not individually or collectively establish conduct that left Mr Paul with no real choice but to resign.

(j) Mr Paul alleges that a workplace injury and failures of support (including matters said to arise in May to July 2025) contributed to his decision to resign from his employment. These allegations should be given little weight because they were not raised in his Form 2, were introduced for the first time in submissions as bases for constructive dismissal, have not been properly particularised, and were not matters the respondent had an opportunity to address at the relevant time. In any event, the respondent's position is that:

(i) Mr Paul did not make any workers compensation claim related to the alleged injury, despite being provided with information, forms, and guidance to pursue such a claim;

(ii) the respondent provided support and flexibility in relation to Mr Paul's alleged injury, including accommodating leave arrangements, granting leave without pay for personal matters, and working with Mr Paul to facilitate medical appointments; and

(iii) medical appointments were cancelled at Mr Paul's own election, with the respondent indicating a willingness to support rescheduling.

(k) These matters demonstrate that the respondent acted reasonably and supportively. Even if accepted at their highest, such matters fall well short of establishing conduct that could constitute repudiation of the employment contract or give rise to constructive dismissal.

(l) Allegations of breach of the *Work Health and Safety Act 2020* (WA) (**WHS Act**) are misconceived, unparticularised and unsupported by evidence. No breach of s 19 of the WHS Act is established, nor could such allegations, even if made out, convert a resignation months later into a dismissal.

(m) Allegations concerning workload allocation, leave refusals, training attendance, and event supervision reflect operational decisions within the ordinary scope of management. Such matters, whether or not disputed, do not constitute repudiatory conduct.

(n) Mr Paul's employment was covered by the *Teachers (Public Sector Primary and Secondary Education) Award 1993* (**Award**). Under clause 29 of the Award, an employee is eligible for up to five days bereavement leave on the death of a:

(i) partner of the employee;

(ii) child, step-child or grandchild of the employee;

(iii) parent, parent-in-law, step-parent or grandparent of the employee;

(iv) brother, sister, step-brother or step-sister of the employee; or

(v) any other person who, immediately before that person's death, lived with the employee as a member of the employee's household.

(o) It is the responsibility of the employee to provide evidence of their entitlement to any such bereavement leave, but Mr Paul did not do so. Based on Mr Paul's own submissions, he was ineligible for bereavement leave as the deceased was his uncle and did not fall within the categories listed under clause 29(1) of the Award.

(p) Mr Paul raises allegations of cultural insensitivity and religious discrimination. Those allegations are unsupported by contemporaneous complaint evidence, lack sufficient particularity, and are not shown to have caused or compelled resignation.

(q) Mr Paul's reliance on the *Equal Opportunity Act 1984* (WA) is unparticularised. In any event, even if such allegations were properly established (which is not accepted), they do not demonstrate that resignation was the only available course open to Mr Paul.

(r) Mr Paul's complaint about interactions with a parent between 19 and 21 August 2025 does not establish repudiatory conduct on the respondent's part. There is no evidence that the respondent breached any confidentiality obligations nor acted in a manner that forced resignation.

(s) The allegation that Mr Paul's position was advertised prior to his departure does not support that he was constructively dismissed. Recruitment activity in anticipation of an employee's notified departure is neither unusual nor indicative of dismissal.

(t) Complaints concerning progression to ST2 are irrelevant. Mr Paul was expressly advised that 'progression to ST2 is not automatic' and was conditional on negotiating with his Principal the performance of two additional duties as outlined in clauses 14.3 and 14.4 of the Agreement.

(u) Mr Paul has not established that resignation was the only option reasonably available to him in the circumstances, and as a result, he had no effective or real choice but to resign. There were several alternative and less drastic avenues open to Mr Paul which he did not exhaust prior to his resignation. These included:

(i) raising and attempting to resolve the relevant issues at the local school level, including through his line manager;

(ii) lodging formal grievance complaints with human resources or SID;

(iii) engaging constructively in any available workers compensation processes; and

(iv) providing timely and adequate evidence to substantiate any claimed entitlement to personal or bereavement leave, as would satisfy a reasonable person.

(v) Further, the evidence demonstrates that Mr Paul's Principal was surprised by Mr Paul's decision to resign, which strongly indicates that the respondent had no intention of bringing the employment relationship to an end, or otherwise 'forcing' a resignation.

(w) In the absence of any cogent explanation as to why these avenues were not pursued, Mr Paul has not demonstrated

that resignation was a course of last resort.

(x) At its highest, Mr Paul's case reflects dissatisfaction with aspects of his employment. That is insufficient to establish constructive dismissal.

(y) Mr Paul's reliance on disciplinary processes, database access, alleged reputational impacts, and other matters arising after 29 August 2025 cannot establish constructive dismissal. Those matters occurred after the employment relationship ended and they have no causal connection to the resignation.

(z) In particular, the alleged 'digital lockout' is misconceived. The removal of information technology and system access occurred after employment ended and was consistent with standard security practice. There is no entitlement for a former employee to retain system access post-employment.

(aa) Mr Paul's reliance on the 360º Feedback survey on 21 August 2025 does not assist his case. The survey was completed after Mr Paul resigned, and therefore, cannot bear on whether the resignation was forced or amounts to a dismissal. Any asserted connection between the survey and later administrative action lacks particulars and evidentiary support and, in any event, is not relevant to the issues in dispute in these proceedings. Furthermore, the survey material at pages 281–296 of the Applicant's Documents is not attributable to Mr Paul in any identifiable way and is incapable of establishing any causal connection between the alleged conduct and the resignation.

(bb) Mr Paul's reliance on the 'all-staff' email sent by the Principal in mid-August 2025, carries little, if any, weight. The document has not been produced and is speculative. The email was issued after Mr Paul resigned, and therefore, cannot support a contention that he was forced to resign.

(cc) To the extent that Mr Paul refers to the email at page 277 of the Applicant's Documents, sent by the Principal on 29 August 2025 at 5:01pm, Mr Paul's characterisation is inaccurate. The email refers to staff operating 'at a level of mediocrity' and states 'If you are not here for our kids then I would say this is not the school for you', but does not direct staff who challenged authority to leave. In any event, the email was sent after business hours on Mr Paul's last day of employment and cannot be said to have forced his resignation or otherwise constitute a dismissal.

(dd) The material at Document 33 of the Applicant's Documents is irrelevant, because it does not concern pre-resignation conduct and appears directed to another staff member.

52 The conduct that Mr Paul contends 'forced' his resignation is considered in turn below, grouped as follows:

(a) The conduct at [50(a)] above, concerning his request to have his classification progressed to ST2.

(b) The conduct at [50(b)]–[50(e)] above, concerning events from 28 May 2025 to June and July 2025, occurring before Mr Paul tendered his resignation on 6 August 2025.

(c) The conduct at [50(f)]–[50(m)] above, concerning events from 12 August 2025 to 29 August 2025, occurring after Mr Paul tendered his resignation on 6 August 2025, and including events on his final day of employment (29 August 2025).

53 **Firstly**, reviewing the evidence concerning the conduct **at [50(a)] above**, I am satisfied that:

(a) On 4 May 2025 at 1:44pm, Mr Paul was expressly advised in an email from HRMIS@education.wa.edu.au: (emphasis added)

> Please note that progression to ST2 **is not automatic**. **You will need to negotiate with your principal**, and agree to perform 2 duties as outlined in Clauses 14.3 and 14.4 of the [Agreement], or its replacement. **Meet with your principal to negotiate the duties**.

(b) On Thursday, 8 May 2025 at 6:49am, Mr Paul forwarded the email at [53(a)] above to the Principal, for the Principal's perusal and consideration, and requested the Principal to approve his progression to ST2. In this email, Mr Paul states that he is looking forward to meeting the Principal the following week when the Principal is due to start working at the school.

(c) On Thursday, 8 May 2025 at 8:20am, the Principal replied, stating that he did not currently have access to the SX system, but would have access from Monday, 12 May 2025, and would be happy to look at Mr Paul's progression in that week.

(d) On Wednesday, 14 May 2025 at 9:26am, the Principal emailed Mr Paul asking him to send through some information regarding the two duties that Mr Paul undertakes at school that are relevant to ST2 status, 'and then we can have a chat either end of this week or Monday. I know you are keen to move this forward'.

(e) On Wednesday, 14 May 2025 at 2:11pm, Mr Paul replied:

> Dear Mr Kennedy,
>
> Thank you for your response regarding the ST2 progression.
>
> In light of my intention to leave by the end of this term, I do not feel it is or [sic] relevance any longer.
>
> Thank you.
>
> Talit Paul

(f) On Wednesday, 28 May 2025 at 3:47pm, the Principal emailed Mr Paul, thanking Mr Paul 'for your time this morning' and advising Mr Paul that in order for his ST2 status to be approved 'we need to negotiate your two additional duties', which 'are in addition to the role of the teacher, so developing pedagogy or curriculum development for example would relate to creation of Scope and Sequences, whole school literacy/numeracy programs etc not just your normal lessons/programming.'

(g) There are no further emails that appear to have been exchanged between Mr Paul and the Principal.

(h) Mr Paul's bundle of documents includes the following emails, but there is no evidence that either of these emails was sent or forwarded to the Principal:

(i) Mr Paul's email to his own personal email address, dated Thursday, 15 May 2025 at 3:15pm, stating 'FYI Leadership roles. I will talk with my wife as to next steps re : leaving'.

(ii) Mr Paul's email to his own personal email address, dated Monday, 19 May 2025 at 7:28pm, in which he states 'I have discussed with my wife over the week-end, and I advise you that at this stage I will stave off leaving the school at the end of Term Two.'

(i) Although there is no evidence that the emails at [53(h)] above were sent or forwarded to the Principal, I am prepared to assume in Mr Paul's favour, for the purposes of these reasons, that the Principal was aware of their contents. That assumption does not alter my conclusion at [55] below.

54 In his Form 2, Mr Paul contends, in substance, that the Principal's refusal to accept his entitlement to progress to ST2 was the catalyst for his relationship with the Principal and the Deputy Principal deteriorating, which is the basis for his constructive dismissal application; 'it was this situation which forced me to resign under duress, harassment and unfair treatment.'

55 Having reviewed the evidence at [53] above, I am not satisfied that the Principal's conduct concerning ST2 progression was unreasonable, much less conduct capable of forcing a resignation. The contemporaneous correspondence shows Mr Paul was advised that progression was not automatic and required negotiation of two additional duties with the Principal, and that the Principal invited him to provide relevant information and to meet and discuss those duties. Mr Paul then stated on 14 May 2025 that, given his intention to leave by the end of the term, he no longer considered the matter relevant. That chronology does not support the contention that the ST2 issue forced his resignation. The chronology demonstrates that Mr Paul expressed an intention to leave within five hours of the Principal asking him to provide information regarding the duties that are relevant to ST2 progression: [53(d)]–[53(e)] above.

56 **Secondly**, reviewing the conduct **at [50(b)]–[50(e)] above**, there is insufficient contemporaneous evidence to support a finding that these alleged matters caused Mr Paul's resignation or left him with no effective or real choice but to resign. In particular, there is insufficient contemporaneous evidence that, before tendering his resignation on 6 August 2025, Mr Paul raised with anyone the matters he now relies upon as constituting constructive dismissal.

57 The absence of any contemporaneous grievance is significant. Mr Paul did not raise any of the matters he now contends constituted constructive dismissal, whether with the Principal, the Deputy Principal, the Department's human resources team, SID, Ms Panizza or any other relevant person prior to his resignation. The complaint he did raise with Ms Panizza was sent on 2 September 2025, four days after his employment ended. The failure to pursue an internal grievance is not determinative. However, it is relevant to whether Mr Paul had no effective or real choice but to resign. That Mr Paul had available avenues to raise and seek resolution of workplace concerns, but did not use those avenues before resigning, weighs against a finding that resignation was the only course reasonably open to him: ***Haydar*** [68].

58 The emails at [53(e)] and [53(h)] above, are also significant. Mr Paul's email of 14 May 2025 referred to his 'intention to leave by the end of this term'. That statement preceded the matters at [50(b)]–[50(e)] above, which Mr Paul relies upon as conduct that 'forced' his resignation. This chronology makes it more difficult to characterise these later matters as having caused the resignation tendered on 6 August 2025.

59 In the circumstances, I accept the respondent's submission that Mr Paul has not established that his dissatisfaction in relation to the matters at [50(b)]–[50(e)] above 'forced' his resignation.

60 Mr Paul did not take any of the alternatives that were open to him to have his dissatisfaction over these matters resolved. He could have, but did not, raise a grievance at the school level or at the Departmental level, including with the Department's human resources team, SID, or Ms Panizza. Mr Paul raised a complaint with Ms Panizza after his employment ended. He could have raised a complaint during his employment and sought to have any issues the subject of his complaint resolved during his employment.

61 Instead, Mr Paul sent an email on Wednesday, 6 August 2025 at 1:19pm, to the Principal, attaching a letter of resignation, clearly and unequivocally resigning with written notice, stating that his last day of employment would be Friday, 29 August 2025.

62 The Principal replied to Mr Paul, by email dated Wednesday, 6 August 2025 at 2:17pm, stating 'This is a surprise, however, I respect your decision and wish you all the best in your new adventures'.

63 On Thursday, 7 August 2025 at 5:24am, Mr Paul replied to the Principal, Deputy Principal and the Manager Corporate Services, stating:

> Dear Mr Kennedy, et al,
>
> Thank you for your reply.
>
> May I request that prior to my departure, there is no staff public get togethers for any farewells, approbations or acknowledgments. I would like to leave quietly, privately, and without any fanfare of any sorts, no morning tea, or any such gatherings.
>
> I have never done this, and I would request nothing of this nature is organised by anyone.
>
> Thank you kindly for your understanding.
>
> Talit Paul

64 In summary, the matters preceding Mr Paul's resignation on 6 August 2025 **at [50(a)]–[50(e)] above**, do not establish that Mr Paul's resignation was 'forced' such as to amount to a constructive dismissal. I have reached that conclusion having considered the cumulative effect of the matters relied upon by Mr Paul, not merely each matter in isolation. Even assessed cumulatively,

the matters relied upon do not establish that the respondent's conduct left Mr Paul with no effective or real choice but to resign.

65 Relevantly, Mr Paul does not contend that his resignation was given 'in the heat of the moment', nor that he attempted to rescind his resignation.

66 **Thirdly**, reviewing the conduct **at [50(f)]–[50(m)] above**, I am satisfied that there is insufficient evidence to support Mr Paul's contention that these matters forced his resignation. In any event, these matters post-date his resignation tendered on 6 August 2025. Although some matters occurred before his employment ended on 29 August 2025, because Mr Paul had already resigned and was working out his notice period, these matters could not have caused his decision to resign.

67 Likewise, matters that came to Mr Paul's attention after his employment ended on 29 August 2025 do not assist his constructive dismissal case. These matters include the commencement of SID's investigation into the complaint that he allegedly engaged in misconduct arising from his treatment of a student on 20 June 2025, and the TRBWA's decision to impose a condition on his teacher registration arising from that alleged misconduct. Even though the alleged misconduct occurred during Mr Paul's employment, Mr Paul was not made aware that SID had received a complaint until 4 September 2025, after his employment had ended. It cannot be said that matters first brought to his attention after his employment ended caused him to resign on 6 August 2025.

68 Mr Paul's statements to the TRBWA on 15 September 2025, that he had 'retired from teaching', was 'of retirement age', and was 'intending to retire', are not determinative. However, they are contemporaneous post-employment statements made voluntarily to a regulatory authority. They are inconsistent with Mr Paul's later contention that his resignation was compelled by the Principal's conduct, and they support the conclusion that the substantive constructive dismissal claim has weak prospects.

69 Having conducted a 'fairly rough and ready' assessment of the merits, I am not satisfied that Mr Paul has a reasonably arguable constructive dismissal claim of sufficient strength to justify accepting the late filing of his Form 2. Mr Paul's resignation was tendered on 6 August; most of the conduct relied upon either post-dates that resignation or was never raised contemporaneously; and Mr Paul's own statements to the TRBWA are inconsistent with a forced resignation.

70 This factor weighs heavily against granting an extension of time.

**Submissions made by Mr Paul out-of-time**

71 On 28 June 2026, after the respondent's submissions were filed on 26 June 2026, and despite not having leave to do so, Mr Paul lodged a four-page covering letter attaching a 22-page document titled 'Master Consolidated Jurisdictional Submission'. I have read that material. To the extent the material bears on the s 29(3) factors, I have taken it into account. To the extent the material advances factual assertions that are unsupported by the documentary material before the Commission, I give those assertions limited weight. The material does not alter my conclusion. It is unnecessary to grant Mr Paul leave to file this material, because doing so would not affect the outcome.

72 In his 28 June 2026 material, Mr Paul asserts that on 22 June 2025, he formally complained to Ms Panizza, regarding the Principal's 'hostile management conduct' and the ST2 progression issue, and he relies on that asserted complaint as contestation of his treatment before resigning.

73 I am unable to locate any document evidencing a complaint to Ms Panizza, or to the Wheatbelt Education Region, on or about 22 June 2025. The only complaint to the Wheatbelt Education Region in the material before me is Mr Paul's email of 2 September 2025 (at [20] above).

74 Mr Paul's own materials are inconsistent as to the date of any such complaint.

75 His Form 2 refers to a complaint lodged 'with Wheatbelt region re Mr Kennedy' on 30 August 2025, which he describes as him having raised his concerns about the Principal's treatment 'with regional office in the first instance, Wheatbelt'. Mr Paul attaches to his Form 2 the 'Wheatbelt emails'. These are the same documents as those at [20]–[24] above, sent between 2 September 2025 and 10 September 2025.

76 His submissions of 12 June 2026 at [9(a)] above, refer to a formal complaint lodged with 'Wheatbelt Regional Office regarding Kennedy's conduct and unlawful denial of entitlement' on 16–18 May 2025, which he states is evidenced by Document 4. However, Document 4 is his email to Ms Panizza sent on 2 September 2025 (at [20] above).

77 Furthermore, Document 4, Mr Paul's email to Ms Panizza sent on 2 September 2025, states:

> Good Day to you!
>
> We have not met I believe, however, I was given your email with respect to my concern and treatment by Mr Mat Kennady, Principal Southern Cross District High School 6426, I believe you are his direct line manager. My name is Talit M A Paul (E0407721)

78 The language of this email supports a finding that it was the first email Mr Paul sent to Ms Panizza and the Wheatbelt Education Region.

79 In those circumstances, the asserted 22 June 2025 complaint cannot be verified, and I give Mr Paul's assertion that he raised a complaint on 22 June 2025 limited weight. It does not displace my finding that Mr Paul did not raise, before tendering his resignation on 6 August 2025, the matters he now relies upon as constituting constructive dismissal.

80 A number of the matters Mr Paul emphasises in his 28 June 2026 material concern either his email of 14 May 2025 (at [53(e)] above) or events occurring on or after 29 August 2025.

81 As to the former, and as outlined at [53(i)] above, even accepting that Mr Paul's email of 19 May 2025 (at [53(h)(ii)] above) indicates that, at that time, he no longer intended to leave at the end of Term 2, that does not alter my conclusion. This is because the operative resignation relied upon by the respondent in support of their contention that Mr Paul's resignation was not forced is the written resignation tendered on 6 August 2025, not the earlier expression of intention on 14 May 2025.

82 As to the latter, the conduct Mr Paul relies upon that post-dates 6 August 2025, including the alleged 'digital lockout' on 29 August, and the Principal's all-staff email of the same date, could not have caused a resignation that had already been tendered.

83 Even taking Mr Paul's 28 June 2026 material at its highest, it does not establish that, as at 6 August 2025, the respondent's conduct left him with no effective or real choice but to resign.

**Conclusion**

84 Having assessed the factors relevant to a s 29(3) application, I find that:

(a) Fairness between Mr Paul and others in a like position is neutral.

(b) Mr Paul's complaint of 2 September 2025 weighs modestly in his favour as action taken to contest, or foreshadow contesting, the termination of his employment. However, I give that matter limited weight for the reasons outlined at [29]–[34] above.

(c) The remaining factors weigh against granting an extension of time:

(i) The delay of 118 days is substantial.

(ii) Mr Paul has not provided an adequate explanation for the delay.

(iii) The respondent would suffer some prejudice if time were extended.

(iv) The substantive constructive dismissal claim has weak prospects, having regard to the clear written resignation and the reasons outlined at [52]–[70] above.

85 Weighing all relevant factors, I am not satisfied that it would be unfair not to accept Mr Paul's Form 2 out-of-time under s 29(3) of the Act.

86 Accordingly:

(a) The respondent's out-of-time objection is upheld.

(b) Applying ***Subrayan*** [24] (at [3] above), it is unnecessary to determine the respondent's application to dismiss the proceedings under s 27(1)(a) of the Act.

(c) I will issue an order dismissing application U 10 of 2026.

**2026 WAIRC 00442**

**UNFAIR DISMISSAL APPLICATION**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | TALIT MAHMOOD AHMED PAUL |
| | **APPLICANT** |
| | **-v-** |
| | DIRECTOR GENERAL, DEPARTMENT OF EDUCATION |
| | **RESPONDENT** |
| **CORAM** | COMMISSIONER C TSANG |
| **DATE** | TUESDAY, 30 JUNE 2026 |
| **FILE NO.** | U 10 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00442 |

| | |
|---|---|
| **Result** | Respondent's out-of-time objection upheld; Applicant's unfair dismissal application dismissed |
| **Representation** | |
| **Applicant** | In person |
| **Respondent** | Ms H Ticehurst (of counsel) |

*Order*

HAVING heard from Mr T Paul on his own behalf and Ms H Ticehurst (of counsel) on behalf of the respondent, and Reasons for Decision ([2026] WAIRC 00441) having been delivered on 30 June 2026, the Commission, pursuant to the powers conferred on it by the *Industrial Relations Act 1979* (WA), hereby orders –

1. THAT the respondent's objection to the applicant's *Form 2 – Unfair Dismissal Application* being accepted out-of-time under s 29(3) of the *Industrial Relations Act 1979* (WA) is upheld.

2. THAT application U 10 of 2026 be, and by this order is, dismissed.

(Sgd.) C TSANG,
Commissioner.

[L.S.]

# STOP BULLYING/SEXUAL HARASSMENT—

**2026 WAIRC 00423**

**STOP BULLYING ORDER**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | BRYAN MARTINDALE |
| | **APPLICANT** |
| | **-v-** |
| | CITY OF KALAMUNDA AND OTHERS |
| | **RESPONDENTS** |
| **CORAM** | SENIOR COMMISSIONER R COSENTINO |
| **DATE** | FRIDAY, 26 JUNE 2026 |
| **FILE NO/S** | S 11 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00423 |

| | |
|---|---|
| **Result** | Application dismissed |
| **Representation** | |
| **Applicant** | Mr B Martindale on his own behalf |
| **Principal Respondent, Second Individual & Third Individual Respondents** | Mr B Morrison (of counsel) |

*Order*

HAVING heard from Mr B Martindale, applicant on his own behalf, and Mr B Morrison (of counsel), on behalf of the principal respondent, the second individual respondent and the third individual respondent, the Commission, for reasons given ex tempore and pursuant to the powers conferred under s 27(1)(a)(iii) of the *Industrial Relations Act 1979* (WA), hereby orders –

THAT the application be and is hereby dismissed.

(Sgd.) R COSENTINO,
[L.S.] Senior Commissioner.

# CORRECTIONS—

**2026 WAIRC 00447**

**PARLIAMENTARY EMPLOYEES GENERAL AGREEMENT 2024**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED |
| | **APPLICANT** |
| | **-v-** |
| | MEDIA, ENTERTAINMENT AND ARTS AUSTRALIA (UNION OF EMPLOYEES), UNITED WORKERS UNION, THE HON. ALANNA CLOHESY MLC, PRESIDENT OF THE LEGISLATIVE COUNCIL, THE HON. STEPHEN PRICE MLA, SPEAKER OF THE LEGISLATIVE ASSEMBLY |
| | **RESPONDENTS** |
| **CORAM** | COMMISSIONER T B WALKINGTON |
| **DATE** | WEDNESDAY, 1 JULY 2026 |
| **FILE NO/S** | AG 9 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00447 |

| | |
|---|---|
| **Result** | Correction Order Issued |
| **Representation** | |
| **Applicant** | Ms K Boey (of counsel) |
| **First Respondent** | Ms A Markey (as agent) |
| **Second Respondent** | Mr R James (of counsel) |
| **Third Respondent** | Ms T Hunter (as agent)<br>Ms S Morgillo (as agent) |
| **Fourth Respondent** | Ms T Hunter (as agent)<br>Ms S Morgillo (as agent) |

*Correction Order*

WHEREAS this is an application for a new industrial agreement pursuant to s 41 of the *Industrial Relations Act* (1979) (IR Act);

AND WHEREAS on 13 May 2026, the Commission issued Order [2026] WAIRC 00294 registering the *Parliamentary Employees General Agreement 2024*, which orders:

> THAT the agreement made between the parties filed in the Registry on 18 March 2026 entitled the *Parliamentary Employees General Agreement 2024* and attached to this order be registered as an industrial agreement in replacement of the *Parliamentary Employees General Agreement 2022* which by operation of s 41(8) is cancelled.

AND WHEREAS on 25 May 2026, the applicant advised of an omission in the *Parliamentary Employees General Agreement 2024* (**registered agreement**) and requested that the registered agreement be corrected;

AND WHEREAS the parties seek to correct a drafting omission in Schedule 1B: (Wages) Parliamentary Support Services Employees at page 69 of the registered agreement;

AND WHEREAS on 26 June 2026, the applicant provided to the Commission an updated copy of the agreement which corrects the drafting errors identified;

AND WHEREAS I am satisfied that the registered agreement may be varied by way of a correction order;

NOW THEREFORE, the Commission, in order to correct this error, and pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA) hereby orders –

> THAT the *Parliamentary Employees General Agreement 2024* be corrected by substituting the agreement attached hereto, with effect from the date of this order.

(Sgd.) T B WALKINGTON,
[L.S.] Commissioner.

# PROCEDURAL DIRECTIONS AND ORDERS—

**2026 WAIRC 00382**

**REVIEW OF THE CLERKS (COMMERCIAL, SOCIAL AND PROFESSIONAL SERVICES) AWARD NO. 14 OF 1972**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | COMMISSION'S OWN MOTION |
| | **APPLICANT** |
| | **-v-** |
| | (NOT APPLICABLE) |
| | **RESPONDENT** |
| **CORAM** | SENIOR COMMISSIONER R COSENTINO |
| **DATE** | THURSDAY, 11 JUNE 2026 |
| **FILE NO.** | APPL 17 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00382 |

**Result** Direction issued

**Representation**

Mr B Entrekin and with him Ms E Roberts on behalf of the Honourable Minister for Industrial Relations

Ms B Grubor on behalf of the Western Australian Hotels and Hospitality Association Incorporated (Union of Employers)

Mr R Knox (of counsel) on behalf of the Western Australian Municipal, Administrative, Clerical and Services Union of Employees

*Direction*

HAVING heard from Mr B Entrekin and with him Ms E Roberts on behalf of the Honourable Minister for Industrial Relations, Ms B Gruber on behalf of the Western Australian Hotels and Hospitality Association Incorporated (Union of Employers), and Mr R Knox on behalf of the Western Australian Municipal, Administrative, Clerical and Services Union of Employees, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), hereby directs –

1. THAT the application be determined on the papers, subject to further order;
2. THAT any comments, submissions or drafting suggestions from any party for consideration in determining the application be filed by Friday 3 July 2026.
3. THAT there be liberty to apply.

(Sgd.) R COSENTINO,
[L.S.] Senior Commissioner.

**2026 WAIRC 00455**

**APPLICATION FOR AN ENTERPRISE ORDER PURSUANT TO SECTION 42I**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | LOCAL GOVERNMENT, RACING AND CEMETRIES UNION (WA) |
| | **APPLICANT** |
| | **-v-** |
| | SHIRE OF GINGIN |
| | **RESPONDENT** |
| **CORAM** | SENIOR COMMISSIONER R COSENTINO |
| **DATE** | THURSDAY, 2 JULY 2026 |
| **FILE NO.** | APPL 20 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00455 |

**Result** Direction issued

**Representation**

**Applicant** Local Government, Racing and Cemetries Union (WA)

**Respondent** Shire of Gingin

*Direction*

THE COMMISSION, pursuant to the powers conferred on it under the *Industrial Relations Act 1979* (WA), and by consent hereby directs –

1. THAT by 12 July 2026, the parties file:
   (a) a list of all matters in dispute;
   (b) a schedule of all terms and conditions that are agreed by the parties.
2. THAT by 31 July 2026, the applicant file:
   (a) an outline of evidence for each witness it intends to call in accordance with Practice Note 9 of 2021;
   (b) copies of the documents upon which it intends to rely; and
   (c) its written submissions.
3. THAT by 21 August 2026, the respondent file:
   (a) an outline of evidence for each witness it intends to call in accordance with Practice Note 9 of 2021;
   (b) copies of the documents upon which it intends to rely; and
   (c) its written submissions.
4. THAT by 31 August 2026, the applicant file:

(a) its reply to the respondent's submissions;

(b) copies of any documents upon which it relies in reply; and

(c) an outline of evidence for each witness it intends to call in reply in accordance with Practice Note 9 of 2021.

5. THAT each party file a list of the authorities to which it intends to refer three (3) days prior to the commencement of the hearing.

6. THAT the matter be set down for a 3-day hearing not before 7 September 2026.

7. THAT there be liberty to apply.

(Sgd.) R COSENTINO,
[L.S.] Senior Commissioner.

**2026 WAIRC 00390**

**APPLICATION FOR AN ENTERPRISE ORDER PURSUANT TO SECTION 42I**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | THE UNITED PROFESSIONAL FIREFIGHTERS UNION OF WESTERN AUSTRALIA |
| | **APPLICANT** |
| | **-v-** |
| | DEPARTMENT OF FIRE AND EMERGENCY SERVICES |
| | **RESPONDENT** |
| **CORAM** | SENIOR COMMISSIONER R COSENTINO |
| **DATE** | MONDAY, 15 JUNE 2026 |
| **FILE NO.** | APPL 22 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00390 |

| | |
|---|---|
| **Result** | Directions issued |
| **Representation** | |
| **Applicant** | Mr C Fogliani (of counsel) on behalf of The United Professional Firefighters Union of Western Australia |
| **Respondent** | Mr J Carroll (of counsel) on behalf of the Department of Fire and Emergency Services |

*Direction*

HAVING heard from Mr C Fogliani (of counsel) on behalf of the applicant and Mr J Carroll (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 by 29 June 2026, the applicant provide the respondent with the *Enterprise Order Clause Register** with the first four columns (a) to (d) completed;

2. THAT by 27 July 2026 the respondent complete column (e) of the *Enterprise Order Clause Register* as provided by the applicant pursuant to paragraph 1 of these directions, and file the completed *Enterprise Order Clause Register* with the Commission;

3. THAT the directions hearing listed on 14 July 2026 be adjourned; and

4. THAT a further directions hearing be convened after 27 July 2026.

*In these directions, reference to the *Enterprise Order Clause Register* is reference to a template table based on the draft template circulated by Mr Fogliani by email dated 18 May 2026. The *Enterprise Order Clause Register* contains five columns headed:

a. 'Clause'

b. 'Sub-clause';

c. 'Matter and Intent' intended to be a summary of the substance of the term or condition sought to be included in the enterprise order.

d. 'UPFU Grounds' setting out the justification for the term or condition. This column is intended to include, if the term is based on a provision of the current industrial instrument, the relevant clause number, or if the clause is based on a different industrial instrument, custom or practice, that source. The details in this column should therefore enable the respondent to easily identify if a claimed term or condition is new.

e. 'DFES Response' intended to include DFES' response to each term or condition sought for inclusion such as will assist the parties and the Commission to identify the issues in dispute.

(Sgd.) R COSENTINO,
[L.S.] Senior Commissioner.

**2026 WAIRC 00302**

**ELECTORATE OFFICERS AWARD 1986**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | THE CIVIL SERVICE OF WESTERN AUSTRALIA INCORPORATED |
| | **APPLICANT** |
| | **-v-** |
| | THE HON PRESIDENT OF THE LEGISLATIVE COUNCIL |
| | **RESPONDENT** |
| | THE HON SPEAKER OF THE LEGISLATIVE COUNCIL |
| | **RESPONDENT** |
| **CORAM** | CHIEF COMMISSIONER S J KENNER |
| **DATE** | THURSDAY, 14 MAY 2026 |
| **FILE NO/S** | APPL 29 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00302 |

| | |
|---|---|
| **Result** | Order issued |
| **Representation** | |
| **Applicant** | Ms K Boey |
| **Respondents** | Ms M Bendotti |

*Order*

WHEREAS on 8 May 2026, the applicant filed in the Commission a notice of application to vary the *Electorate Officers Award 1986* pursuant to s 40 of the *Industrial Relations Act 1979* (WA);

AND WHEREAS on 8 May 2026, the applicant filed an application for substituted service pursuant to s 27(1)(o) of the *Act* and reg 27 of the *Industrial Relations Commission Regulations 2005* (WA);

AND WHEREAS the Commission has considered the application ex parte in Chambers;

NOW THEREFORE the Commission, pursuant to the powers conferred on it under the *Act*, hereby orders –

That a copy of the herein application and this order be served by email on the Acting Executive Director, Government Sector Labour Relations, Level 2, 1 Adelaide Terrace Perth WA 6000 at marny.bendotti@lgirs.wa.gov.au.

(Sgd.) S J KENNER,
[L.S.] Chief Commissioner.

**2026 WAIRC 00466**

**APPEAL AGAINST A DECISION OF THE COMMISSION IN MATTER NUMBER U 34 OF 2025 GIVEN ON 25 MARCH 2026**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | MATTHEW TRAN |
| | **APPELLANT** |
| | **-v-** |
| | EAST METROPOLITAN HEALTH SERVICE |
| | **RESPONDENT** |
| **CORAM** | FULL BENCH |
| | CHIEF COMMISSIONER S J KENNER |
| | COMMISSIONER T B WALKINGTON |
| | COMMISSIONER C TSANG |
| **DATE** | MONDAY, 6 JULY 2026 |
| **FILE NO/S** | FBA 9 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00466 |

| | |
|---|---|
| **Result** | Order issued |
| **Representation** | |
| **Appellant** | In person |
| **Respondent** | Mr J Carroll of counsel |

*Order*

HAVING heard from the appellant on his own behalf and Mr J Carroll of counsel on behalf of the respondent, the Full Bench, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), and by consent, hereby orders –

THAT the appellant be and is hereby granted leave to amend his grounds of appeal in terms of the Form 1A application filed on 13 April 2026.

By the Full Bench

(Sgd.) S J KENNER,
[L.S.] Chief Commissioner.

**2026 WAIRC 00402**

**APPEAL AGAINST A DECISION OF THE COMMISSION IN MATTER NUMBER U 79 OF 2023 AND B 51 OF 2024 GIVEN ON 5 MAY 2026**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | THOMAS ANTOINE HENRI AIME GHIGO |
| | **APPELLANT** |
| | **-v-** |
| | PICARD AURELIE ESTELLE |
| | **RESPONDENT** |
| **CORAM** | FULL BENCH |
| | CHIEF COMMISSIONER S J KENNER |
| | COMMISSIONER T EMMANUEL |
| | COMMISSIONER C TSANG |
| **DATE** | THURSDAY, 18 JUNE 2026 |
| **FILE NO/S** | FBA 16 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00402 |

| | |
|---|---|
| **Result** | Order issued |
| **Representation** | |
| **Appellant** | In person |
| **Respondent** | In person |

*Order*

HAVING heard Mr T Ghigo on his own behalf and Mrs A Picard on her own behalf, the Full Bench, pursuant to the powers conferred on it under the *Industrial Relations Act 1979* (WA), hereby orders –

(1) THAT the following documents be and are hereby removed from the appeal book lodged with the Registry on 13 June 2026:

(a) Applicant's Witness Outlines filed 6 May 2024 comprising 99 pages.

(b) Respondent's Witness Outlines filed 20 May 2024 comprising 104 pages.

(2) THAT the time for filing the appeal book in the herein appeal be and is hereby extended to 15 June 2026.

(3) THAT the appellant serve the respondent with a stamped copy of the appeal book within 48 hours of it being returned to him for service.

By the Full Bench

(Sgd.) S J KENNER,
[L.S.] Chief Commissioner.

**2026 WAIRC 00458**

**REFERRAL OF A DECISION TO DISMISS EMPLOYEE ON 4 SEPTEMBER 2025**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | ROSSANA TRINCHI |
| | **APPLICANT** |
| | **-v-** |
| | DEPARTMENT OF COMMUNITIES |
| | **RESPONDENT** |
| **CORAM** | COMMISSIONER T B WALKINGTON |
| **DATE** | THURSDAY, 2 JULY 2026 |
| **FILE NO.** | P 13 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00458 |

| | |
|---|---|
| **Result** | Direction Issued |
| **Representation** | |
| **Applicant** | No Appearance |
| **Respondent** | Ms S Walsh (of counsel) |

*Direction*

HAVING HEARD from Ms S Walsh (of counsel) on behalf of the respondent, and there being no appearance on behalf of the applicant, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), hereby directs –

(1) THAT the question of whether the Commission ought to accept the application out of time be heard and determined as a preliminary matter.

(2) THAT the applicant file and serve any witness outlines, documents and written submissions on the preliminary matter by no later than 30 July 2026.

(3) THAT the respondent file and serve any witness outlines, documents and written submissions on the preliminary matter by no later than 3 September 2026.

(4) THAT the question of whether the hearing of the preliminary matter ought to be conducted on the papers, be determined at a later date.

(5) THAT the parties have liberty to apply on short notice.

(Sgd.) T B WALKINGTON,
[L.S.] Commissioner.

**2026 WAIRC 00493**

**REFERRAL OF A DECISION TAKEN BY THE EMPLOYER ON 26 FEBRUARY 2026**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | TODD MARTIN |
| | **APPLICANT** |
| | **-v-** |
| | CHIEF EXECUTIVE PATHWEST |
| | **RESPONDENT** |
| **CORAM** | SENIOR COMMISSIONER R COSENTINO |
| **DATE** | WEDNESDAY, 8 JULY 2026 |
| **FILE NO.** | P 20 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00493 |

| | |
|---|---|
| **Result** | Direction issued |
| **Representation** | |
| **Applicant** | Mr T Martin on his own behalf |
| **Respondent** | Ms S Walsh of counsel from the State Solicitors' Office |

*Direction*

THE COMMISSION, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA) and by consent, hereby directs –

1. THAT the directions issued on 15 June 2026 (2026 WAIRC 00391) and 30 June 2026 (2026 WAIRC 00439) be and are hereby vacated; and
2. THAT the proceedings be and are hereby adjourned until 18 August 2026.

(Sgd.) R COSENTINO,
[L.S.] Senior Commissioner.

**2026 WAIRC 00439**

**REFERRAL OF A DECISION TAKEN BY THE EMPLOYER ON 26 FEBRUARY 2026**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

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|---|---|
| **PARTIES** | TODD MARTIN |
| | **APPLICANT** |
| | **-v-** |
| | CHIEF EXECUTIVE PATHWEST |
| | **RESPONDENT** |
| **CORAM** | SENIOR COMMISSIONER R COSENTINO |
| **DATE** | TUESDAY, 30 JUNE 2026 |
| **FILE NO.** | P 20 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00439 |

| | |
|---|---|
| **Result** | Directions issued |
| **Representation** | |
| **Applicant** | Mr T Martin on his own behalf |
| **Respondent** | Ms S Walsh of counsel from the State Solicitors' Office |

*Direction*

THE COMMISSION, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA) and by consent, hereby directs –

1. THAT the time for the parties to give each other discovery of the documents in their possession, custody, or power relevant to the issues in the proceedings be extended to **14 July 2026.** Discovery may be given informally, that is, by a list of documents without being verified by affidavit;
2. THAT the time for the applicant to file any outlines of witness evidence he proposes to rely upon at the hearing of this matter, including his own Outline of Evidence be extended to **28 July 2026**. Each Outline of Evidence must comply with paragraphs 10 and 11 of Practice Note 9 of 2021;
3. THAT the time for the respondent to file an Outline of Evidence for each witness whose evidence it proposes to rely upon at the hearing of this matter be extended to **11 August 2026**. Each Outline of Evidence must comply with paragraphs 10 and 11 of Practice Note 9 of 2021;
4. THAT the time for the applicant to file a written outline of opening submissions in support of his case be extended to **25 August 2026**; and
5. THAT the time for the respondent to file a written outline of opening submissions in support of its case be extended to **8 September 2026**.

(Sgd.) R COSENTINO,
[L.S.] Senior Commissioner.

**2026 WAIRC 00391**

**REFERRAL OF A DECISION TAKEN BY THE EMPLOYER ON 26 FEBRUARY 2026**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

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|---|---|
| **PARTIES** | TODD MARTIN |
| | **APPLICANT** |
| | **-v-** |
| | CHIEF EXECUTIVE PATHWEST |
| | **RESPONDENT** |
| **CORAM** | SENIOR COMMISSIONER R COSENTINO |
| **DATE** | MONDAY, 15 JUNE 2026 |
| **FILE NO.** | P 20 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00391 |

| | |
|---|---|
| **Result** | Directions issued |
| **Representation** | |
| **Applicant** | Mr T Martin on his own behalf |
| **Respondent** | Ms S Walsh of counsel from the State Solicitors' Office |

*Direction*

HAVING heard from Mr T Martin, applicant on his own behalf and Ms S Walsh (of counsel) on behalf of the respondent, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), hereby directs –

1. THAT by 30 June 2026, the parties give to each other discovery of the documents in their possession, custody or power relevant to the issues in the proceedings. Discovery may be given informally, that is, by a list of documents without being verified by affidavit.
2. THAT by 14 July 2026, the applicant file an Outline of Evidence for each witness whose evidence he proposes to rely upon at the hearing of this matter, including his own Outline of Evidence. Each Outline of Evidence must comply with paragraphs 10 and 11 of Practice Note 9 of 2021.
3. THAT by 28 July 2026, the respondent file an Outline of Evidence for each witness whose evidence it proposes to rely upon at the hearing of this matter. Each Outline of Evidence must comply with paragraphs 10 and 11 of Practice Note 9 of 2021.
4. THAT by 11 August 2026, the applicant file a written outline of opening submissions in support of his case.
5. THAT by 25 August 2026 the respondent file a written outline of opening submissions in support of its case.
6. THAT the application be listed for a two-day hearing not before 25 August 2026.

(Sgd.) R COSENTINO,
[L.S.] Senior Commissioner.

**2026 WAIRC 00421**

**REFERRAL OF A DECISION TO DISMISS EMPLOYEE ON 19 SEPTEMBER 2025**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

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|---|---|
| **PARTIES** | COLLINS OKORO |
| | **APPLICANT** |
| | **-v-** |
| | DIRECTOR GENERAL, DEPARTMENT OF COMMUNITIES |
| | **RESPONDENT** |
| **CORAM** | COMMISSIONER C TSANG |
| **DATE** | THURSDAY, 25 JUNE 2026 |
| **FILE NO.** | P 45 OF 2025 |
| **CITATION NO.** | 2026 WAIRC 00421 |

| | |
|---|---|
| **Result** | Directions issued |
| **Representation** | |
| **Applicant** | Mr C Okoro |
| **Respondent** | Mr M McIlwaine (of counsel) |

*Direction*

HAVING heard from Mr C Okoro his own behalf 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), hereby directs –

1. THAT the Directions ([2026] WAIRC 00376) issued on 10 June 2026 be vacated.
2. THAT the applicant's referral of the respondent's decision to dismiss the applicant on 19 September 2025, be listed for hearing on a *de novo* basis, for the Commission to hear and determine whether the applicant committed the alleged breaches of discipline concerning allegations 1, 2 and 3 on its merits (**Hearing**).
3. THAT the applicant file **by Wednesday, 1 July 2026**:
   (a) Replacement outlines of witness evidence that the applicant intends to rely upon at the Hearing:
      (i) In accordance with Practice Note 9 of 2021; and
      (ii) Which refers to any document either by reference to the Bundle of Agreed Documents, or by annexing the document to the witness outline.

4. THAT the respondent file **by Wednesday, 15 July 2026**:
   (a) Any supplementary or replacement outlines of witness evidence that the respondent intends to rely upon at the Hearing:
      (i) In accordance with Practice Note 9 of 2021; and
      (ii) Which refers to any document either by reference to the Bundle of Agreed Documents or Respondent's Document filed on 10 April 2026, or by annexing the document to the witness outline.
5. THAT the applicant file a replacement outline of the submissions that the applicant intends to rely upon at the Hearing, **by Wednesday, 22 July 2026**.
6. THAT the respondent file a replacement outline of the submissions that the respondent intends to rely upon at the Hearing, **by Wednesday, 29 July 2026**.
7. THAT the Hearing remain listed for 3-days from Tuesday, 11 August 2026 to Thursday, 13 August 2026, inclusive.
8. THAT the parties have liberty to apply.

(Sgd.) C TSANG,
[L.S.] Commissioner.

**2026 WAIRC 00410**

**REFERRAL OF A DECISION TAKEN BY THE EMPLOYER ON 16 SEPTEMBER 2025**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | SLADJANA NESKOVIC |
| | **APPLICANT** |
| | **-v-** |
| | CHILD AND ADOLESCENT HEALTH SERVICE |
| | **RESPONDENT** |
| **CORAM** | COMMISSIONER C TSANG |
| **DATE** | MONDAY, 22 JUNE 2026 |
| **FILE NO.** | P 48 OF 2025 |
| **CITATION NO.** | 2026 WAIRC 00410 |

| | |
|---|---|
| **Result** | Directions issued |
| **Representation** | |
| **Applicant** | Ms S Neskovic |
| **Respondent** | Mr J Raja |

*Direction*

HAVING heard from Ms S Neskovic on her own behalf and Mr J Raja on behalf of the respondent, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), hereby directs –

1. THAT Directions 3 to 9 of Directions ([2026] WAIRC 00367) issued on Friday, 5 June 2026 be vacated.
2. THAT the Directions Hearing listed on Wednesday, 22 July 2026 at 2:00pm be vacated.
3. THAT the applicant's referral of the decision imposing disciplinary action on 16 September 2025, be listed for hearing on a *de novo* basis; for the Commission to hear and determine whether the applicant committed the alleged breaches of discipline concerning allegations 1, 4, 6 and 7 on its merits (**Hearing**).
4. THAT the applicant file **by 4:00pm on Monday, 29 June 2026**:
   (a) Any documents that the applicant intends to rely upon at the Hearing, in a paginated bundle, with an index identifying the document by number, name, date and page numbers, under the heading 'Applicant's Bundle of Documents'.
   (b) A replacement outline of witness evidence that the applicant intends to rely upon at the Hearing, in accordance with paragraphs 9, 10 and 12 of Practice Note 9 of 2021 and which refers to any document by reference to the Applicant's Bundle of Documents.
5. THAT the respondent file **by 4:00pm on Monday, 20 July 2026**:
   (a) Any documents that the respondent intends to rely upon at the Hearing, in a paginated bundle, with an index identifying the document by number, name, date and page numbers, under the heading 'Respondent's Bundle of Documents'.
   (b) Any replacement outlines of witness evidence that the respondent intends to rely upon at the Hearing, in accordance with paragraphs 9, 10 and 12 of Practice Note 9 of 2021 and which refers to any

document by reference to the Respondent's Bundle of Documents.

6. THAT the applicant file a replacement outline of the legal submissions that the applicant intends to rely upon at the Hearing, **by 4:00pm on Monday, 3 August 2026**.

7. THAT the respondent file an outline of the legal submissions that the respondent intends to rely upon at the Hearing, **by 4:00pm on Monday, 17 August 2026**.

8. THAT the parties have liberty to apply.

(Sgd.) C TSANG,
[L.S.] Commissioner.

**2026 WAIRC 00465**

**REFERRAL OF A DECISION TAKEN BY THE EMPLOYER ON 7 NOVEMBER 2025**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES** DONNA BELLE PONGASE

**APPLICANT**

**-v-**

DIRECTOR GENERAL, DEPARTMENT OF HOUSING AND WORKS

**RESPONDENT**

**CORAM** COMMISSIONER T B WALKINGTON
**DATE** MONDAY, 6 JULY 2026
**FILE NO/S** P 61 OF 2025
**CITATION NO.** 2026 WAIRC 00465

**Result** Order Issued
**Representation**
**Applicant** Ms D Pongase
**Respondent** Mr M McIlwaine (of counsel)

*Order*

HAVING heard from the applicant on their own behalf 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), hereby orders –

(1) THAT the time for the applicant's compliance with direction 4 of the directions issued on 4 June 2026 ([2026] WAIRC 00363) be and is hereby extended until 4.00 pm on 9 July 2026.

(2) THAT the time for the respondent's compliance with direction 5 of the directions issued on 4 June 2026 ([2026] WAIRC 00363) be and is hereby extended until 4.00 pm on 30 July 2026.

(3) THAT the time for the applicant's compliance with direction 6 of the directions issued on 4 June 2026 ([2026] WAIRC 00363) be and is hereby extended until 4.00 pm on 13 August 2026.

(4) THAT the time for the respondent's compliance with direction 7 of the directions issued on 4 June 2026 ([2026] WAIRC 00363) be and is hereby extended until 4.00 pm on 27 August 2026.

(5) THAT as to direction 8 of the directions issued on 4 June 2026 ([2026] WAIRC 00363), the matter be listed for a two-day hearing on a date to be fixed, not before 3 September 2026.

(Sgd.) T B WALKINGTON,
[L.S.] Commissioner.

**2026 WAIRC 00453**

**ORDER PURSUANT TO S.66**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES** KIRSTEN MENNELL

**APPLICANT**

**-v-**

THE AUSTRALIAN NURSING FEDERATION, INDUSTRIAL UNION OF WORKERS PERTH

**RESPONDENT**

**CORAM** CHIEF COMMISSIONER S J KENNER
**DATE** WEDNESDAY, 1 JULY 2026
**FILE NO.** PRES 1 OF 2026
**CITATION NO.** 2026 WAIRC 00453

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|---|---|
| **Result** | Direction issued |
| **Representation** | |
| **Applicant** | In person |
| **Respondent** | Mr D Rafferty of counsel |

*Direction*

HAVING heard Ms K Mennell on her own behalf and Mr D Rafferty of counsel on behalf of the respondent, the Chief Commissioner, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), hereby directs –

(1) THAT directions four to eight of the Commission's directions dated 20 May 2026 ([2026] WAIRC 00321) be and are hereby suspended.

(2) THAT the respondent's application under s 27(1)(a) of the *Industrial Relations Act* (WA) filed on 29 June 2026 be heard on a date to be fixed and in connection with that application:

(a) the respondent file any additional affidavits and an outline of submissions and any list of authorities upon which it intends to rely by no later than 14 days prior to the date of hearing; and

(b) the applicant file any affidavits and an outline of submissions and any list of authorities upon which she intends to rely no later than seven days prior to the date of hearing.

(3) THAT the parties give notice to one another of witnesses they require to attend at the proceedings for the purposes of cross-examination no later than three days prior to the date of hearing.

(4) THAT the parties have liberty to apply on short notice.

(Sgd.) S J KENNER,
[L.S.] Chief Commissioner.

**2026 WAIRC 00395**

**ORDER PURSUANT TO S.66**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

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|---|---|
| **PARTIES** | KIRSTEN MENNELL |
| | **APPLICANT** |
| | **-v-** |
| | THE AUSTRALIAN NURSING FEDERATION, INDUSTRIAL UNION OF WORKERS PERTH |
| | **RESPONDENT** |
| **CORAM** | CHIEF COMMISSIONER S J KENNER |
| **DATE** | MONDAY, 15 JUNE 2026 |
| **FILE NO/S** | PRES 1 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00395 |

| | |
|---|---|
| **Result** | Order issued |
| **Representation** | |
| **Applicant** | In person |
| **Respondent** | Mr D Rafferty of counsel |

*Order*

HAVING heard Ms K Mennell on her own behalf and Mr D Rafferty of counsel on behalf of the respondent, the Chief Commissioner, pursuant to the powers conferred on him under the *Industrial Relations Act 1979* (WA), hereby orders –

(1) THAT the date for the applicant's compliance with direction 3 of the directions made on 20 May 2026 ([2026] WAIRC 00321) be and is hereby extended until 4.00 pm on 19 June 2026.

(2) THAT the date for the respondent's compliance with direction 4 of the directions made on 20 May 2026 ([2026] WAIRC 00321) be and is hereby extended until 4.00 pm on 6 July 2026.

(3) THAT the date for the parties' compliance with direction 5 of the directions made on 20 May 2026 ([2026] WAIRC 00321) be and is hereby extended until 4.00 pm on 13 July 2026.

(4) THAT the date for the applicant's compliance with direction 6 of the directions made on 20 May 2026 ([2026] WAIRC 00321) be and is hereby extended until 4.00 pm on 20 July 2026.

(5) THAT the date for the respondent's compliance with direction 7 of the directions made on 20 May 2026 ([2026] WAIRC 00321) be and is hereby extended until 4.00 pm on 3 August 2026.

(6) THAT as to direction 8 of the directions made on 20 May 2026 ([2026] WAIRC 00321) the application be listed for hearing on a date to be fixed.

(Sgd.) S J KENNER,
[L.S.] Chief Commissioner.

**2026 WAIRC 00396**

**ORDER PURSUANT TO S.66**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

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|---|---|
| **PARTIES** | SALLY DENNIS |
| | **APPLICANT** |
| | **-v-** |
| | STATE SCHOOL TEACHERS UNION OF WA |
| | **RESPONDENT** |
| **CORAM** | CHIEF COMMISSIONER S J KENNER |
| **DATE** | MONDAY, 15 JUNE 2026 |
| **FILE NO.** | PRES 9 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00396 |

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|---|---|
| **Result** | Direction issued |
| **Representation** | |
| **Applicant** | Mr J Nicholas of counsel |
| **Respondent** | Mr A Illich of counsel |

*Direction*

HAVING heard Mr J Nicholas of counsel on behalf of the applicant and Mr A Illich of counsel on behalf of the respondent, the Chief Commissioner, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), hereby directs –

(1) THAT the applicant is to file an amended application by no later than 22 June 2026.

(2) THAT the respondent is to file an amended response by no later than 29 June 2026.

(3) THAT the application be listed for a further directions hearing on a date to be fixed not before 6 July 2026.

(4) THAT the parties have liberty to apply on short notice.

(Sgd.) S J KENNER,
[L.S.] Chief Commissioner.

**2026 WAIRC 00462**

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

IN THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

SITTING AS

THE ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL

| | |
|---|---|
| **PARTIES** | JOONDALUP TRANSPORT PTY LTD |
| | **APPLICANT** |
| | **-v-** |
| | ONSITE RENTAL GROUP OPERATIONS PTY LTD |
| | **RESPONDENT** |
| **CORAM** | COMMISSIONER T KUCERA |
| **DATE** | FRIDAY, 3 JULY 2026 |
| **FILE NO/S** | RFT 1 OF 2025 |
| **CITATION NO.** | 2026 WAIRC 00462 |

| | |
|---|---|
| **Result** | Order issued |
| **Representation** | |
| **Applicant** | Ms Melissa Gillespie (of counsel) |
| **Respondent** | Ms Kate Pedersen (of counsel) |

*Order*

WHEREAS a hearing in RFT 1 of 2025 was held on 3 June 2026, 4 June 2026, 5 June 2026, 8 June 2026, 9 June 2026 and 10 June 2026;

AND WHEREAS by consent the parties agree to vary the orders made by Commissioner Kucera on 15 June 2026 ([2026] WAIRC 00393);

AND HAVING heard from Ms M Gillespie (of counsel) on behalf of the applicant and Ms K Pedersen (of counsel) on behalf of the respondent, the Road Freight Transport Industry Tribunal pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), and by consent, hereby orders –

1. THAT the respondent file written closing submissions by Wednesday, 8 July 2026.

2. THAT the applicant file written closing submissions by Wednesday, 22 July 2026.

3. THAT the respondent file any written submissions in reply by Wednesday, 5 August 2026.

4. THAT following the filing of submissions the decision is to be reserved.

5. THAT there be liberty to apply.

(Sgd.) T KUCERA,
[L.S.] Commissioner.

**2026 WAIRC 00393**

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

IN THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

SITTING AS

THE ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL

| | |
|---|---|
| **PARTIES** | JOONDALUP TRANSPORT PTY LTD |
| | **APPLICANT** |
| | **-v-** |
| | ONSITE RENTAL GROUP OPERATIONS PTY LTD |
| | **RESPONDENT** |
| **CORAM** | COMMISSIONER T KUCERA |
| **DATE** | MONDAY, 15 JUNE 2026 |
| **FILE NO/S** | RFT 1 OF 2025 |
| **CITATION NO.** | 2026 WAIRC 00393 |

| | |
|---|---|
| **Result** | Order issued |
| **Representation** | |
| **Applicant** | Ms Melissa Gillespie (of counsel) |
| **Respondent** | Ms Kate Pedersen (of counsel) |

*Order*

WHEREAS a hearing in RFT 1 of 2025 was held on 3 June 2026, 4 June 2026, 5 June 2026, 8 June 2026, 9 June 2026 and 10 June 2026;

AND HAVING heard from Ms M Gillespie (of counsel) on behalf of the applicant and Ms K Pedersen (of counsel) on behalf of the respondent, the Road Freight Transport Industry Tribunal pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), hereby orders –

1. THAT the respondent file written closing submissions by Friday, 3 July 2026.
2. THAT the applicant file written closing submissions by Friday, 17 July 2026.
3. THAT the respondent file any written submissions in reply by Friday, 31 July 2026.
4. THAT following the filing of submissions the decision is to be reserved.
5. THAT there be liberty to apply.

(Sgd.) T KUCERA,
[L.S.] Commissioner.

**2026 WAIRC 00403**

**STOP BULLYING ORDER**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | MATTHEW GERARD OWEN POW |
| | **APPLICANT** |
| | **-v-** |
| | THE COMMISSIONER OF POLICE, WESTERN AUSTRALIA POLICE FORCE |
| | **FIRST RESPONDENT** |
| | **AND** |
| | ALAN KICKETT |
| | **SECOND RESPONDENT** |
| **CORAM** | COMMISSIONER C TSANG |
| **DATE** | THURSDAY, 18 JUNE 2026 |
| **FILE NO.** | S 7 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00403 |

| | |
|---|---|
| **Result** | Direction issued |
| **Representation** | |
| **Applicant** | Mr S Farrell (as agent) |
| **Respondent** | Ms S Walsh (of counsel) |

*Direction*

HAVING heard from Mr S Farrell (as agent) on behalf of the applicant and Ms S Walsh (of counsel) on behalf of the first respondent, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), hereby directs –

1. THAT the first respondent's *Form 1A – Application* for an order that the proceedings be dismissed under s 27(1)(a)(ii) or (iv) of the *Industrial Relations Act 1979* (WA) filed on 14 May 2026 be listed for hearing and determination **on Friday, 18 September 2026 at 10:30am** (**Hearing**).
2. THAT the first respondent file an outline of the legal submissions that the first respondent intends to rely upon at the Hearing **by Thursday, 16 July 2026**.
3. THAT the applicant file **by Thursday, 20 August 2026**:
   (a) An outline of the legal submissions that the applicant intends to rely upon at the Hearing.
   (b) Any outlines of witness evidence that the applicant intends to rely upon at the Hearing.
4. THAT the respondents file any responsive outlines of witness evidence that the respondents intend to rely upon at the Hearing, **by Thursday, 3 September 2026**.
5. THAT the parties have liberty to apply.

(Sgd.) C TSANG,
[L.S.] Commissioner.

**2026 WAIRC 00457**

**UNFAIR DISMISSAL APPLICATION**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | SHANE BASHAM |
| | **APPLICANT** |
| | **-v-** |
| | DIRECTOR GENERAL, DEPARTMENT OF EDUCATION |
| | **RESPONDENT** |
| **CORAM** | COMMISSIONER C TSANG |
| **DATE** | THURSDAY, 2 JULY 2026 |
| **FILE NO.** | U 7 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00457 |

| | |
|---|---|
| **Result** | Directions issued |
| **Representation** | |
| **Applicant** | In person |
| **Respondent** | Ms H Ticehurst (of counsel) |

*Direction*

HAVING heard from Mr S Basham on his own behalf and Ms H Ticehurst (of counsel) on behalf of the respondent, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), hereby directs –

1. THAT Direction 6 of the Directions ([2026] WAIRC 00180) issued on 26 March 2026 be vacated.
2. THAT the matter be listed for a 3-day hearing on Monday, 24 August 2026, Tuesday, 25 August 2026 and Wednesday, 26 August 2026.

(Sgd.) C TSANG,
[L.S.] Commissioner.

**2026 WAIRC 00432**

**UNFAIR DISMISSAL APPLICATION**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | MYANDRAN SUBRAYAN |
| | **APPLICANT** |
| | **-v-** |
| | LYNWOOD CHRISTIAN CHURCH INC |
| | **RESPONDENT** |
| **CORAM** | SENIOR COMMISSIONER R COSENTINO |
| **DATE** | MONDAY, 29 JUNE 2026 |
| **FILE NO.** | U 9 OF 2024 |
| **CITATION NO.** | 2026 WAIRC 00432 |

| | |
|---|---|
| **Result** | Directions issued |
| **Representation** | |
| **Applicant** | Mr M Subrayan |
| **Respondent** | Mr B O'Donoghue on behalf of the respondent |

*Direction*

THE COMMISSION, pursuant to the powers conferred on it under the *Industrial Relations Act 1979* (WA), hereby directs –

1. THAT the applicant's application for the Commission to accept his referral out of time (**out of time application**) be listed for hearing on Tuesday, 28 July 2026 at 10:00 a.m..
2. THAT by 14 July 2026 the applicant file:
   (a) any documents he intends to rely upon in support of the out of time application;
   (b) a witness statement for each witness whom the applicant intends to call to give evidence in support of the out of time application, such witness statement to comply with Practice Note 9 of 2021; and
   (c) written submissions in support of the out of time application.
3. THAT by 21 July 2026, the respondent is to file:
   (a) any documents it intends to rely upon in opposition to the out of time application;
   (b) a witness statement for each witness whom the respondent intends to call to give evidence in relation to the out of time application, such witness statement to comply with Practice Note 9 of 2021; and
   (c) written submissions in opposition to the out of time application.
4. THAT there be liberty to apply.

(Sgd.) R COSENTINO,
[L.S.] Senior Commissioner.

**2026 WAIRC 00440**

**UNFAIR DISMISSAL APPLICATION**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | CHIMA PRECIOUS OHAZURUME |
| | **APPLICANT** |
| | **-v-** |
| | DEPARTMENT OF COMMUNITIES |
| | **RESPONDENT** |
| **CORAM** | COMMISSIONER T B WALKINGTON |
| **DATE** | TUESDAY, 30 JUNE 2026 |
| **FILE NO.** | U 21 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00440 |

| | |
|---|---|
| **Result** | Direction issued |
| **Representation** | |
| **Applicant** | Mr C P Ohazurume |
| **Respondent** | Ms A Carter (of counsel) |

*Direction*

HAVING heard from the applicant on their own behalf and Ms A Carter (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 the question of whether the Commission ought to accept the application out of time (**out of time issue**) and the question of whether there was a dismissal at the initiative of the employer (**dismissal issue**), be heard and determined as preliminary matters.

(2) THAT the applicant file and serve any witness outlines, documents and written submissions they intend to rely upon in relation to the out of time issue by no later than 9 July 2026.

(3) THAT the respondent file and serve any witness outlines, documents and written submissions they intend to rely upon in relation to the dismissal issue by no later than 9 July 2026.

(4) THAT the applicant file and serve any witness outlines, documents and written submissions they intend to rely upon in relation to the dismissal issue by no later than 23 July 2026.

(5) THAT the respondent file and serve any witness outlines, documents and written submissions they intend to rely upon in relation to the out of time issue by no later than 23 July 2026.

(6) THAT the parties have liberty to apply on short notice.

(Sgd.) T B WALKINGTON,
[L.S.] Commissioner.

**2026 WAIRC 00431**

**UNFAIR DISMISSAL APPLICATION**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | DEBORAH CORREIA |
| | **APPLICANT** |
| | **-v-** |
| | CHILD AND ADOLESCENT HEALTH SERVICE |
| | **RESPONDENT** |
| **CORAM** | SENIOR COMMISSIONER R COSENTINO |
| **DATE** | FRIDAY, 26 JUNE 2026 |
| **FILE NO.** | U 24 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00431 |

| | |
|---|---|
| **Result** | Direction issued |
| **Representation** | |
| **Applicant** | Ms E Orman (of counsel) on behalf of the applicant |
| **Respondent** | Mr J Raja as an agent on behalf of the respondent |

*Direction*

THE COMMISSION, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA) and by consent, hereby directs –

THAT the directions issued on 5 June 2026 ([2026] WAIRC 00369) be and are hereby vacated.

(Sgd.) R COSENTINO,
[L.S.] Senior Commissioner.

**2026 WAIRC 00420**

**UNFAIR DISMISSAL APPLICATION**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | REBECCA ANNE NEIL |
| | **APPLICANT** |
| | **-v-** |
| | CAMPBELL DAVID JAMES AS TRUSTEE FOR ALLIED SERVICE ENTITY TRUST #1 |
| | **RESPONDENT** |
| **CORAM** | COMMISSIONER T B WALKINGTON |
| **DATE** | THURSDAY, 25 JUNE 2026 |
| **FILE NO/S** | U 46 OF 2025 |
| **CITATION NO.** | 2026 WAIRC 00420 |

| | |
|---|---|
| **Result** | Order and Direction issued |
| **Representation** | |
| **Applicant** | Mr M Cox (of counsel) |
| **Respondent** | Mr C James |

*Order*

HAVING heard from Mr M Cox (of counsel) on behalf of the applicant and Mr C James on behalf of the respondent, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), hereby orders –

(1) THAT Mr Campbell James is not to discuss his intended evidence with Ms Kelly Dyball before his intended evidence is given to the Commission under oath or affirmation.

(2) THAT the matter be listed part-heard for Wednesday, 1 July 2026 at 12:00 PM to conclude the respondent's evidentiary case.

(3) THAT the respondent file and serve their written closing submissions by no later than 4.00 pm, 2 July 2026.

(4) THAT the matter be listed part-heard for Wednesday, 8 July 2026 at 10:30 AM for the applicant's closing submissions and for the respondent's reply submissions limited to any questions of law raised that could not reasonably have been anticipated.

(Sgd.) T B WALKINGTON,
[L.S.] Commissioner.

**2026 WAIRC 00449**

**UNFAIR DISMISSAL APPLICATION**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | CASSANDRA GLAUS-JOHNSON |
| | **APPLICANT** |
| | **-v-** |
| | CITY OF SUBIACO |
| | **RESPONDENT** |
| **CORAM** | SENIOR COMMISSIONER R COSENTINO |
| **DATE** | WEDNESDAY, 1 JULY 2026 |
| **FILE NO.** | U 72 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00449 |

| | |
|---|---|
| **Result** | Direction issued |
| **Representation** | |
| **Applicant** | Ms C Glaus-Johnson |
| **Respondent** | City of Subiaco |

*Direction*

THE COMMISSION, pursuant to the powers conferred on it under the *Industrial Relations Act 1979* (WA), hereby directs –

1. THAT the applicant's application for the Commission to accept her referral out of time (**out of time application**) be listed for hearing on Thursday, 23 July 2026 at 10:00 a.m..
2. THAT by 9 July 2026 the applicant file:
   (a) any documents she intends to rely upon in support of the out of time application;
   (b) a witness statement for each witness whom the applicant intends to call to give evidence in support of the out of time application, including her own witness statement, such witness statements to comply with Practice Note 9 of 2021; and
   (c) written submissions in support of the out of time application.
3. THAT by 16 July 2026, the respondent is to file:
   (a) any documents it intends to rely upon in opposition to the out of time application;
   (b) a witness statement for each witness whom the respondent intends to call to give evidence in relation to the out of time application, such witness statement to comply with Practice Note 9 of 2021; and
   (c) written submissions in opposition to the out of time application.
4. THAT there be liberty to apply.

(Sgd.) R COSENTINO,
[L.S.] Senior Commissioner.

**2026 WAIRC 00489**

**UNFAIR DISMISSAL APPLICATION**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

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|---|---|
| **PARTIES** | SATNAM SINGH |
| | **APPLICANT** |
| | **-v-** |
| | DIRECTOR GENERAL, DEPARTMENT OF JUSTICE |
| | **RESPONDENT** |
| **CORAM** | COMMISSIONER T B WALKINGTON |
| **DATE** | WEDNESDAY, 8 JULY 2026 |
| **FILE NO.** | U 136 OF 2025 |
| **CITATION NO.** | 2026 WAIRC 00489 |

| | |
|---|---|
| **Result** | Direction Issued |
| **Representation** | |
| **Applicant** | Mr S Singh |
| **Respondent** | Ms A Kildea (of counsel) |

*Direction*

HAVING heard from the applicant on his own behalf, and Ms A Kildea (of counsel) on behalf of the respondent, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979*, and by consent, hereby directs –

(1) THAT the applicant file and serve any outlines of witness evidence and documents upon which they intend to rely upon by no later than 21 July 2026

(2) THAT the respondent file and serve any outlines of witness evidence and any documents upon which they intend to rely upon by no later than 11 August 2026.

(3) THAT the applicant file and serve an outline of written submissions upon which they intend to rely upon by no later than 25 August 2026.

(4) THAT the respondent file and serve an outline of written submissions upon which they intend to rely upon by no later than 8 September 2026.

(5) THAT the parties have liberty to apply on short notice.

(Sgd.) T B WALKINGTON,
[L.S.] Commissioner.

**2026 WAIRC 00481**

**UNFAIR DISMISSAL APPLICATION**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | SATNAM SINGH |
| | **APPLICANT** |
| | **-v-** |
| | DEPARTMENT OF JUSTICE |
| | **RESPONDENT** |
| **CORAM** | COMMISSIONER T B WALKINGTON |
| **DATE** | WEDNESDAY, 8 JULY 2026 |
| **FILE NO/S** | U 136 OF 2025 |
| **CITATION NO.** | 2026 WAIRC 00481 |

| | |
|---|---|
| **Result** | Order issued to amend the name of respondent |
| **Representation** | |
| **Applicant** | Mr S Singh |
| **Respondent** | Ms A Kildea (of counsel) |

*Order*

HAVING heard from the applicant on his own behalf, and Ms A Kildea (of counsel) on behalf of the respondent, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979*, and by consent, hereby orders –

THAT the name of the respondent in these proceedings be amended to 'Director General, Department of Justice'.

(Sgd.) T B WALKINGTON,
[L.S.] Commissioner.

**2026 WAIRC 00416**

**APPLICATION FOR AN ORDER IN RELATION TO ENGAGING IN OR INDUCING DISCRIMINATORY OR COERCIVE CONDUCT PURSUANT TO SECTION 112 OF THE WORK HEALTH AND SAFETY ACT 2020**

THE WORK HEALTH AND SAFETY TRIBUNAL

| | |
|---|---|
| **PARTIES** | KATI ROBINSON |
| | **APPLICANT** |
| | **-v-** |
| | CAROLINE VERSACI |
| | **RESPONDENT** |
| **CORAM** | COMMISSIONER C TSANG |
| **DATE** | TUESDAY, 23 JUNE 2026 |
| **FILE NO.** | WHST 2 OF 2026 |
| **CITATION NO.** | 2026 WAIRC 00416 |

| | |
|---|---|
| **Result** | Application granted; Order issued |
| **Representation** | |
| **Applicant** | Ms K Robinson |
| **Respondent** | Mr J Carroll (of counsel) |

*Order*

WHEREAS on 22 June 2026, the applicant filed a *Form 1A – Application to join* the Department of Transport and Major Infrastructure as a respondent to application WHST 2 of 2026;

AND WHEREAS the Department of Transport and Major Infrastructure indicated in a *Form 4 – Response* submitted on 17 June 2026 that it does not oppose the application for it to be joined to the claim;

NOW THEREFORE the Tribunal, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA) and the *Work Health and Safety Act 2020* (WA), and by consent, hereby orders –

THAT the Department of Transport and Major Infrastructure be joined as the second respondent to application WHST 2 of 2026.

(Sgd.) C TSANG,
[L.S.] Commissioner.

# INDUSTRIAL AGREEMENTS—Notation of—

| Agreement Name/Number | Date of Registration | Parties | | Commissioner | Result |
|---|---|---|---|---|---|
| Shire of Murray (Administration Staff) Enterprise Bargaining Agreement 2026 AG 15/2026 | 01/07/2026 | Shire of Murray | The Western Australian Municipal, Administrative, Clerical and Services Union of Employees | Senior Commissioner R Cosentino | Agreement registered |
| Shire of Murray (Outside Workforce) Enterprise Bargaining Agreement 2026 AG 14/2026 | 01/07/2026 | Shire of Murray | The Western Australian Municipal, Administrative, Clerical and Services Union of Employees, The Local Government, Racing and Cemeteries Employees Union (WA) | Senior Commissioner R Cosentino | Agreement registered |
| Shire of Plantagenet Inside Workforce Industrial Agreement 2026 AG 17/2026 | 15/06/2026 | Shire of Plantagenet | Western Australian Municipal, Administrative, Clerical and Services Union | Senior Commissioner R Cosentino | Agreement registered |

# INDUSTRIAL AGREEMENTS—BARGAINING—Matters dealt with—

**2026 WAIRC 00443**

**APPLICATION FOR AN ENTERPRISE ORDER PURSUANT TO SECTION 42I**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES** THE CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION OF WORKERS

**APPLICANT**

**-v-**

CITY OF CANNING

**FIRST RESPONDENT**

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

**SECOND RESPONDENT**

LOCAL GOVERNMENT, RACING AND CEMETERIES EMPLOYEES UNION (WA)

**THIRD RESPONDENT**

**CORAM** SENIOR COMMISSIONER R COSENTINO

**DATE** TUESDAY, 30 JUNE 2026

**FILE NO/S** APPL 33 OF 2025

**CITATION NO.** 2026 WAIRC 00443

| | |
|---|---|
| **Result** | Orders issued |
| **Representation** | |
| **Applicant** | Ms R Kumar of counsel on behalf of The Construction, Forestry, Mining and Energy Union of Workers |
| **First Respondent** | Mr C Beetham of counsel on behalf of the City of Canning |
| **Second Respondent** | Mr C Fogliani of counsel on behalf of Western Australian Municipal, Administrative, Clerical and Services Union Of Employees |
| **Third Respondent** | Mr K Trainer on behalf of the Local Government, Racing and Cemeteries Employees Union (WA) |

*Order*

HAVING heard from Ms R Kumar of counsel on behalf of the applicant, The Construction, Forestry, Mining and Energy Union of Workers (**CFMEUW**), Mr C Beetham of counsel on behalf of the first respondent, City of Canning, Mr C Fogliani of counsel on behalf of the second respondent, Western Australian Municipal, Administrative, Clerical and Services Union of Employees (**WASU**), and Mr K Trainer on behalf of the third respondent, Local Government, Racing and Cemeteries Employees Union (WA) (**LGRCEU**), the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA) (**IR Act**), orders –

1. THAT WASU's Form 1A application for dismissal of the proceedings under s 27(1)(a) dated 29 April 2026 and LGRCEU's Form 1A application for dismissal of the proceedings under s 27(1)(a) dated 13 May 2026 be granted in part.
2. THAT the CFMEUW's claim for its primary relief as specified in paragraph 1(a) on page 5 of their Application for an Enterprise Order be and is hereby dismissed; and
3. THAT the CFMEUW be granted leave to amend its application by substituting the relief sought in paragraph 1(b) of the Application for an Enterprise Order with the Minute of Proposed Amended Relief dated 30 June 2026.

(Sgd.) R COSENTINO,
[L.S.] Senior Commissioner.

**2026 WAIRC 00452**

**APPLICATION FOR AN ENTERPRISE ORDER PURSUANT TO SECTION 42I**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | |
|---|---|
| **PARTIES** | THE CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION OF WORKERS<br>**APPLICANT**<br>**-v-**<br>CITY OF CANNING<br>**FIRST RESPONDENT**<br>WESTERN AUSTRALIAN MUNICIPAL, ADMINISTRATIVE, CLERICAL AND SERVICES UNION OF EMPLOYEES<br>**SECOND RESPONDENT**<br>LOCAL GOVERNMENT, RACING AND CEMETERIES EMPLOYEES UNION (WA)<br>**THIRD RESPONDENT** |
| **CORAM** | SENIOR COMMISSIONER R COSENTINO |
| **DATE** | WEDNESDAY, 1 JULY 2026 |
| **FILE NO.** | APPL 33 OF 2025 |
| **CITATION NO.** | 2026 WAIRC 00452 |

| | |
|---|---|
| **Result** | Direction issued |
| **Representation** | |
| **Applicant** | Ms R Kumar of counsel on behalf of The Construction, Forestry, Mining and Energy Union of Workers |
| **First Respondent** | Mr C Beetham of counsel on behalf of the City of Canning |

*Direction*

HAVING heard from Ms R Kumar of counsel on behalf of the applicant, The Construction, Forestry, Mining and Energy Union of Workers (**CFMEUW**), and Mr C Beetham of counsel on behalf of the first respondent, City of Canning, the Commission, pursuant

to the powers conferred under the *Industrial Relations Act 1979* (WA) (**IR Act**), hereby directs –

1. THAT the applicant file any supplementary written closing submissions by 3 July 2026,
2. THAT the first respondent file any supplementary written closing submissions by 10 July 2026.

(Sgd.) R COSENTINO,
[L.S.] Senior Commissioner.

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

**2026 WAIRC 00418**

**WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

Application No. APPL 39 of 2026

**CANCELLATION OF THE *BAKERS' (COUNTRY) AWARD NO. 18 OF 1977***

NOTICE is given of application APPL 39 of 2026 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 *Bakers' (Country) Award No. 18 of 1977* on the ground that there is no employee to whom the award applies.

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,
[L.S.] Registrar.

23 JUNE 2026

# NOTICES—General Matters—

**2026 WAIRC 00417**

**Salary Cap for Lodging Claims of Unfair Dismissal or Denial of Contractual Benefits**

An employee whose contract of employment provides for a salary greater than $212,800.00 cannot have the Commission decide whether they have been unfairly dismissed or have been denied a benefit to which they are entitled under their contract of employment.

Section 29AA(3) and (4) of the *Industrial Relations Act 1979* (WA) provides that the Commission must not determine a claim for harsh, oppressive or unfair dismissal or a claim for a denied contractual benefit if an industrial instrument does not apply to the employment and the contract of employment provides for a salary which exceeds the prescribed amount.

What is meant by an industrial instrument is defined in section 29AA(5) of the *Industrial Relations Act 1979* (WA) and was discussed by the Full Bench in *Thomas Quinn v Kalgoorlie Consolidated Gold Mines Pty Ltd* [2006] WAIRC 05220; (2006) 86 WAIG 2725.

The prescribed amount of the salary is determined by Regulations 5 and 6 of the *Industrial Relations (General) Regulations* 1997 (WA). The amount is adjusted each year on 1 July.

The figure that will apply from 1 July 2026 has been calculated by the Registrar as being $212,800.00. The amount is a matter for the Commission to determine so this figure must be seen as a guide, until such time as the Commission may determine a different amount.