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CUMULATIVE CONTENTS AND DIGEST APPEAR AT THE END OF THIS PUBLICATION

LONG SERVICE LEAVE— Standard Provisions—

(As Consolidated at a Hearing before the Commission in Court Session on 15 December 1977)*

1.—Right to Leave.

A worker shall, as herein provided, be entitled to leave with pay in respect of long service.

2.—Long Service.

(1) The long service which shall entitle a worker to such leave shall, subject as herein provided, be continuous service with one and the same employer.

(2) Such service shall include service prior to the 1st day of April 1958, if it continued until such time but only to the extent of the last 20 completed years of continuous service.

(3) (a) Where a business has, whether before or after the coming into operation hereof, been transmitted from an employer (herein called "the transmittor") to another employer (herein called "the transmittee") and a worker who at the time of such transmission was an employee of the transmittor in that business becomes an employee of the transmittee the period of the continuous service which the worker has had with the transmittor, (including any such service with any prior transmittor shall be deemed to be service of the worker with the transmittee.

(b) In this subclause "transmission" includes transfer, conveyance, assignment or succession whether voluntary or by agreement or by operation of law and "transmitted" has a corresponding meaning.

(4) Where, over a continuous period, a worker has been employed by two or more companies each of which is a related company within the meaning of section 6 of the Companies Act 1961 the period of the continuous service which the worker has had with each of those companies shall be deemed to be service of the worker with the company by whom he is last employed.

Section 6 reads—

(1) For the purposes of this Act, a corporation shall, subject to the provisions of subsection (3) of this section, be deemed to be a subsidiary of another corporation, if,

(a) that other corporation—

(i) controls the composition of the board of directors of the first mentioned corporation;

(ii) controls more than half of the voting power in the first mentioned corporation; or

(iii) holds more than half of the issued share capital of the first mentioned corporation excluding any part thereof which carries no right to participate beyond a specified amount in a distribution of either profits or capital; or

(b) the first mentioned corporation is a subsidiary of any corporation which is that other corporation's subsidiary.

(2) For the purpose of subsection (1) of this section, the composition of a corporation's board of directors shall be deemed to be controlled by another corporation if that other corporation by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove all or a majority of the directors; and for the purposes of this provision that other corporation shall be deemed to have power to make such an appointment if—

(a) a person cannot be appointed as a director without the exercise in his favour by that other corporation of such power; or

(b) a person's appointment as a director follows necessarily from his being a director or other officer of that other corporation.

(3) In determining whether one corporation is subsidiary of another corporation—

(a) any shares held or power exercisable by that other corporation in a fiduciary capacity shall be treated as not held or exercisable by it;

(b) subject to paragraphs (c) and (d) of this subsection, any shares held or power exercisable—

(i) by any person as a nominee for that other corporation (except where that other corporation is concerned only in a fiduciary capacity); or

(ii) by, or by a nominee for, a subsidiary of that other corporation, not being a subsidiary which is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other corporation;

(c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first mentioned corporation or of a trust deed for securing any issue of such debentures shall be disregarded; and

(d) any shares held or power exercisable by, or by a nominee for, that other corporation or its subsidiary (not being held or exercisable as mentioned in paragraph (c) of this subsection) shall be treated as not held or exercisable by that other corporation if the ordinary business of that other corporation or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is so exercisable by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(4) A reference in this Act to the holding company of a company or other corporation shall be read as a reference to a corporation of which that last mentioned company or corporation is a subsidiary.

(5) Where a corporation—

(a) is the holding company of another corporation;

(b) is a subsidiary of another corporation;

(c) is a subsidiary of the holding company of another corporation,

that first mentioned corporation and that other corporation shall for the purposes of this Act be deemed to be related to each other.

(5) Such service shall include—

(a) any period of absence from duty on any annual leave or long service leave;

(b) any period of absence from duty necessitated by sickness of or injury to the worker but only to the extent of 15 working days in any year of his employment;

(c) any period following any termination of the employment by the employer if such termination has been made merely with the intention of avoiding obligations hereunder in respect of long service leave or obligations under any award in respect of annual leave;

(d) any period during which the service of the worker was or is interrupted by service—

(i) as a member of the Naval, Military or Air Forces of the Commonwealth of Australia other than as a member of the British Commonwealth Occupation Forces in Japan and other than as a member of the Permanent Forces of the Commonwealth of Australia except in the circumstances referred to in section 31 (2) of the Defence Act 1903-1956, and except in Korea or Malaya after 26 June 1950;

(ii) as a member of the Civil Construction Corps established under the National Security Act 1939-1946;

(iii) in any of the Armed Forces under the National Service Act 1951 (as amended).

Provided that the worker as soon as reasonably practicable on the completion of any such service resumed or resumes employment with the employer by whom he was employed immediately before the commencement of such service.

(6) Service shall be deemed to be continuous notwithstanding—

(a) the transmission of a business as referred to in paragraph (3) of this subclause;

(b) the employment with related companies as referred to in paragraph (4) of this subclause;

(c) any interruption of a class referred to in paragraph (5) of this subclause;

(d) any absence from duty authorised by the employer;

(e) any standing down of a worker in accordance with the provisions of an award, industrial agreement, order or determination under either Commonwealth or State law;

(f) any absence from duty arising directly or indirectly from an industrial dispute if the worker returns to work in accordance with the terms of settlement of the dispute;

(g) any termination of the employment by the employer on any ground other than slackness of trade if the worker be re-employed by the same employer within a period not exceeding two months from the date of such termination;

(h) any termination of the employment by the employer on the ground of slackness of trade if the worker is re-employed by the same employer within a period not exceeding six months from the date of such termination;

(i) any reasonable absence of the worker on legitimate union business in respect of which he has requested and been refused leave;

(j) any absence from duty after the coming into operation of this clause by reason of any cause not specified in this clause unless the employer, during the absence or within 14 days of the termination of the absence notifies the worker in writing that such absence will be regarded as having broken the continuity of service, which notice may be given by delivery to the worker personally or by posting it by registered mail to his last recorded address, in which case it shall be deemed to have reached him in due course of post.

Provided that the period of absence from duty or the period of any interruption referred to in placita (d) to (j) inclusive of this paragraph shall not (except as set out in paragraph (5) of this subclause) count as service.

3.—Period of Leave.

(1) The leave to which a worker shall be entitled or deemed to be entitled shall be as provided in this subclause.

(2) Subject to the provisions of paragraphs (5) and (6) of this subclause:

Where a worker has completed at least 15 years' service the amount of leave shall be—

(a) in respect of 15 years' service so completed—13 weeks' leave;

(b) in respect of each 10 years' service completed after such 15 years—eight and two-thirds weeks' leave;

(c) on the termination of the worker's employment—

(i) by his death;

(ii) in any circumstances otherwise than by his employer for serious misconduct;

in respect of the number of years' service with the employer completed since he last became entitled to an amount of long service leave, a proportionate amount on the basis of 13 weeks for 15 years' service.

(3) Subject to the provisions of paragraph (6) of this subclause, where a worker has completed at least 10 years' service but less than 15 years' service since its commencement and his employment is terminated—

(i) by his death; or

(ii) in any circumstances, otherwise than by his employer for serious misconduct;

the amount of leave shall be such proportion of 13 weeks' leave as the number of completed years of such service bears to 15 years.

(4) In the cases to which paragraphs (2) (c) and (3) of this subclause apply the worker shall be deemed to have been entitled to and to have commenced leave immediately prior to such termination.

(5) A worker whose service with an employer commenced before 1 October 1964, and whose service would entitle him to long service leave under this clause shall be entitled to leave calculated on the following basis:—

(a) For each completed year of service commencing before 1 October 1964, an amount of leave calculated on the basis of 13 weeks' leave for 20 years' service and

(b) for each completed year of service commencing on or after 1 October 1964, an amount of leave calculated on the basis of 13 weeks' leave for 15 years' service.

Provided that such worker shall not be entitled to long service leave until his completed years of service entitle him to the amount of long service leave prescribed in either paragraph (2) (a) or paragraph (2) (b) of this subclause as the case may be.

(6) A worker to whom paragraphs (2) (c) and (3) of this subclause apply whose service with an employer commenced before 1 October 1964, shall be entitled to an amount of long service leave calculated on the following basis:

(a) For each completed year of service commencing before 1 October 1964, an amount of leave calculated on the basis of 13 weeks' leave for 20 years' service; and

(b) for each completed year of service commencing on or after 1 October 1964, an amount of leave calculated on the basis of 13 weeks' leave for 15 years' service.

4.—Payment for Period of Leave.

(1) A worker shall, subject to paragraph (3) of this subclause, be entitled to be paid or each week of leave to which he has become entitled or is deemed to have become entitled the rate of pay applicable to him at the date he commences such leave.

(2) Such rate of pay shall be the rate applicable to him for the standard weekly hours which are prescribed by this award (or agreement), but in the case of casuals and part-time workers shall be the rate for the number of hours usually worked up to but not exceeding the prescribed standard.

(3) Where by agreement between the employer and the worker the commencement of the leave to which the worker is entitled or any portion thereof is postponed to meet the convenience of the worker, the rate of payment for such leave shall be at the rate of pay applicable to him at the date of accrual, or, if so agreed, at the rate of pay applicable at the date he commences such leave.

(4) The rate of pay—

(a) shall include any deductions from wages for board and/or lodging or the like which is not provided and taken during the period of leave;

(b) shall not include shift premiums, overtime, penalty rates, special rates, disability allowances, fares and travelling allowances or the like.

(5) In the case of workers employed on piece or bonus work or any other system of payment by results the rate of pay shall be calculated by averaging the workers' rate of pay for each week over the previous three monthly period.

5.—Taking Leave.

(1) In a case to which placita (a) and (b) of paragraph (2) of subclause (3) apply:—

(a) Leave shall be granted and taken as soon as reasonably practicable after the right thereto accrues due or at such time or times as may be agreed between the employer and the worker or in the absence of such agreement at such time or times as may be determined by the Special Board of Reference having regard to the needs of the employer's establishment and the worker's circumstances.

(b) Except where the time for taking leave is agreed to by the employer and the worker or determined by the Special Board of Reference the employer shall give to a worker at least one month's notice of the date from which his leave is to be taken.

(c) Leave may be granted and taken in one continuous period or if the employer and the worker so agree in not more than three separate periods in respect of the first 13 weeks' entitlement and in not more than two separate periods in respect of any subsequent period of entitlement.

(d) Any leave shall be inclusive of any public holidays specified in this award (or agreement) occurring during the period when the leave is taken but shall not be inclusive of any annual leave.

(e) Payment shall be made in one of the following ways:—

(i) In full before the worker goes on leave;

(ii) at the same time as his wages would have been paid to him if the worker had remained at work, in which case payment shall, if the worker in writing so requires, be made by cheque posted to an address specified by the worker; or

(iii) in any other way agreed between the employer and the worker.

(f) No worker shall, during any period when he is on leave, engage in any employment for hire or reward in substitution for the employment from which he is on leave, and if a worker breaches this provision he shall thereupon forfeit his right to leave hereunder in respect of the unexpired period of leave upon which he has entered, and the employer shall be entitled to withhold any further payment in respect of the period and to reclaim any payments already made on account of such period of leave.

(2) In the case to which paragraph (2)(c) or paragraph (3) of subclause (3) applies and in any case in which the employment of the worker who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the employer shall, upon termination of his employment otherwise than by death pay to the worker, and upon termination of employment by death pay to the personal representative of the worker upon request by the personal representative, a sum equivalent to the amount which would have been payable in respect of the period of leave to which he is entitled to deemed to have been entitled and which would have been taken but for such termination. Such payment shall be deemed to have satisfied the obligation of the employer in respect of leave hereunder.

6.—Granting Leave in Advance and Benefits to be Brought into Account.

(1) Any employer may by agreement with a worker allow leave to such a worker before the right thereto has accrued due, but where leave is taken in such case the worker shall not become entitled to any further leave hereunder in respect of any period until after the expiration of the period in respect of which such leave had been taken before it accrued due.

(2) Where leave has been granted to a worker pursuant to the preceding paragraph before the right thereto has accrued due, and the employment subsequently is terminated, the employer may deduct from whatever remuneration is payable upon the termination of the employment such amount as represents payment for any period for which the worker has been granted long service leave to which he was not at the date of termination of his employment or prior thereto entitled.

(3) Any leave in the nature of long service leave or payment in lieu thereof under a State Law or a long service leave scheme not under the provisions hereof granted to a worker by his employer in respect of any period of service with the employer shall be taken into account whether the same is granted before or after the coming into operation hereof and shall be deemed to have been taken and granted hereunder in the case of leave with pay to the extent of the period of such leave and in the case of payment in lieu thereof to the extent of a period of leave with pay equivalent thereof of the entitlement of the worker hereunder.

7.—Records to be Kept.

(1) Each employer shall during the employment and for a period of 12 months thereafter, or in the case of termination by death of the worker for a period of three years thereafter, keep a record from which can be readily ascertained the name of each worker, and his occupation, the date of the commencement of his employment and his entitlement to long service leave and any leave which may have been granted to him or in respect of which payment may have been made hereunder.

(2) Such record shall be open for inspection in the manner and circumstances prescribed by this award (or agreement) with respect to the time and wages record.

8.—Special Board of Reference.

(1) There shall be constituted a Special Board of Reference for the purpose hereof to which all disputes and matters arising hereunder shall be referred and the Board shall determine all such disputes and matters.

(2) There shall be assigned to such Board the functions of—

(a) the settlement of disputes of any matters arising hereunder;

(b) the determination of such matters as are specifically assigned to it hereunder.

(3) The Board of Reference shall consist of one representative or substitute therefor nominated from time to time by the Confederation of Western Australian Industry (Incorporated) and one representative or substitute nominated from time to time by the Trades and Labor Council of Western Australia together with a chairman to be mutually agreed upon by the organisations named in this paragraph.

9.—State Law.

(1) The provisions of any State Law to the extent to which they have before the coming into operation hereof conferred an accrued right on a worker to be granted a period of long service leave in respect of a completed period of 15 or more years' service or employment or an accrued right on a worker or his personal representative to payment in respect of long service leave shall not be affected hereby and shall not be deemed to be inconsistent with the provisions hereof.

(2) The entitlement of any such worker to leave in respect of a period of service with the employer completed after the period in respect of which the long service leave referred to in paragraph (1) of this subclause accrued due shall be in accordance herewith.

(3) Subject to paragraphs (1) and (2) of this subclause the entitlement to leave hereunder shall be in substitution for and satisfaction of any long service leave to which the worker may be entitled in respect of employment of the worker by the employer.

(4) An employer who under any State Law with regard to long service leave is exempted from the provisions of that law as at 1 April 1958, shall in respect of the workers covered by such exemptions be exempt from the provisions hereof.

10.—Exemptions.

The Special Board of Reference may subject to such conditions as it thinks fit exempt any employer from the provisions hereof in respect of its employees where there is an existing or prospective long service scheme which in its opinion, is, viewed as a whole, more favourable for the whole of the employees of that employer than the provision hereof.

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*Editor's Note.

The Judgment and General Order as prescribed by section 94A was published in 58 WAIG Part 1 Subpart 2 at Page 116.

There was no Schedule of Exemptions.

INDUSTRIAL APPEAL COURT—Appeals against decision of Full Bench—

JURISDICTION: WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT.

CORAM: KENNEDY J (President).
ROWLAND J.
FRANKLYN J.

DELIVERED: 23 NOVEMBER 1995.

FILE NO/S: APPEAL IAC 10 of 1995.

BETWEEN:

THE WESTERN AUSTRALIAN BUILDERS LABOURERS, PAINTERS AND PLASTERERS UNION OF WORKERS
Appellant

AND

MICHAEL NELSON CLARK and AMANDA JOY CLARK t/as MIKE CLARK CONTRACTING
Respondents.

JUDGMENT—

KENNEDY J:

We are of the view that there should be an order that the appellant pay the respondents' costs, including the costs of a legal practitioner fixed at the sum of $1,200, and I publish the reasons of the Court for that view.

Catchwords:

Industrial relations (WA)—Appeal—Costs—Appeal frivolously or vexatiously instituted—Order for payment of costs, including costs of legal practitioner.

Industrial Relations Act 1979, s86(2).

Representation:

Counsel:

Appellant	:	Mr A L Drake-Brockman
Respondents	:	Ms S E O'Brien

Solicitors:

Appellant	:	Dwyer Durack
Respondents	:	Talbot & Olivier

Case(s) referred to in judgment(s):

Heidt v Chrysler Australia Ltd (1976) 26 FLR 257

Transport Workers Union of Australia Industrial Union of Workers, WA Branch v Tip Top Bakeries (1994) 58 IR 22

Case(s) also cited:

Foxcroft v Ink Group Pty Ltd (1994) 125 ALR 677

JUDGMENT OF THE COURT:

In this case, the appellant instituted penal proceedings against the respondents under s83 of the *Industrial Relations Act 1979*, alleging no less than 110 breaches of the *Building Trades (Construction) Award 1987* ("the award") with a view to recovering, on behalf of a worker employed by the respondents, wages and allowances amounting to some $7,000 which, it claimed, were due, but not paid, under the provisions of the award. The respondents defended these proceedings on the basis that the worker was not subject to the award. The learned Magistrate found that the worker did not come within the award and he dismissed the appellant's complaints. The appellant appealed to the Full Bench of the Industrial Relations Commission. The Full Bench unanimously dismissed the appeal.

The appellant appealed to this Court. Pursuant to s90(1) of the *Industrial Relations Act*, an appeal to this Court lies "on the ground that the decision is erroneous in law or is in excess of jurisdiction but upon no other ground". In the event, the solicitors for the appellant, some few days prior to the hearing, advised the solicitors for the respondents that they would seek leave to discontinue the appeal. When the matter was called on, counsel for the respondents did not object to the appellant's motion but sought an order for costs of the appeal, including costs for the services of a legal practitioner.

By s86(2) of the *Industrial Relations Act 1979*:

> " In the exercise of its jurisdiction under this Act the Court may make such orders as it thinks just as to the costs and expenses (including the expenses of witnesses) of proceedings before the Court, including proceedings dismissed for want of jurisdiction, but costs shall not be given to any party to the proceedings for the services of any legal practitioner or agent of that party unless, in the opinion of the Court, the proceedings have been frivolously or vexatiously instituted or defended, as the case requires, by the other party."

In seeking leave to discontinue the appeal, counsel for the appellant did not concede that the appeal was hopeless, but accepted that, on one view, the prospect of successfully challenging the Court below was not good.

There are several grounds of appeal, but it was accepted that only one in the circumstances involved a question of law and it seems that, before that matter could be argued, the relevant findings of fact found against the appellant by the learned Industrial Magistrate, and confirmed by the Full Bench, would have to be overturned. What the result would be, had the facts been as required by the appellant, may well be a matter of interest; but, unless the facts as found could be overturned, that argument could not be aired before us. In the event, it now seems to be accepted by the appellant that the relevant findings of fact were supported by the evidence. Notwithstanding that there may have been an argument involving a question of law on one view of the award, given different facts, that, in the circumstances, cannot activate the jurisdiction of this Court. It follows, if that is accepted, that the appeal is incompetent.

The policy envisaged within s86(2) of the Act indicates that it will only be on very rare occasions that the costs of a legal practitioner or agent will be granted. The section was considered by this Court in ***Transport Workers Union of Australia Industrial Union of Workers, WA Branch v Tip Top Bakeries*** (1994) 58 IR 22, at 26-27, where the Court said, in relation to the respondent's submissions at the conclusion of the hearing of an appeal, that there should be an order for costs in its favour:

> " In support of these submissions it was said that the appeal was so unmeritorious and misconceived that the section should be applied. In the submissions it was said for the respondent that the meaning of the words "frivolous or vexatious" had not attracted explanation in decisions of the Court, the matter apparently not having been raised on any previous occasion. The submissions for the respondent were supported by reference to *Naqvi v M B P (SA) Pty Ltd* (1981) 36 ALR 379 where consideration was given to s 197A of the *Crimes Act* 1914 (Cth) providing for the payment of costs where proceedings were instituted "vexatiously or without reasonable cause". Evatt J referred to discussion of that section by Northrop J in *Heidt v Chrysler Australia Ltd* (1976) 26 FLR 257 and the judgment of Barwick CJ in *General Steel Industries v Commissioner of Railways (NSW)* (1964) 112 CLR 125 at 129 where the Chief Justice said in relation to the words "frivolous or vexatious" in O 26, r 18 of the *High Court Rules* 1952 (Cth):
>
> > "It is sufficient for me to say that these cases uniformly adhere to the view that the plaintiff ought not to be denied access to the customary tribunal which deals with actions of the kind he brings, unless his lack of a cause of action – if that be the ground on which the court is invited, as in this case, to exercise its powers of summary dismissal – is clearly demonstrated. The test to be applied has been variously expressed: 'so obviously untenable that it cannot possibly succeed'; 'manifestly groundless'; so manifestly faulty that it does not admit of argument'; 'discloses a case which the court is satisfied cannot succeed'; 'under no possibility can there be a good cause of action'; 'be manifest that to allow them' (the pleadings) 'to stand would involve useless expense'.
> >
> > At times the test has been put as high as saying that the case must be so plain and obvious that the court can say at once that the statement of claim, even if proved, cannot succeed; or 'so manifest on the view of the pleadings, merely reading through them, that it is a case that does not admit of reasonable argument'; 'so to speak apparent at a glance'.
> >
> > The application for costs is opposed on behalf of the appellant on the grounds that there was no intent or purpose of being vexatious or frivolous and that the authorities relied upon are factually distinguishable from the present circumstances.
> >
> > The award of costs is a discretionary matter. While it is the case that in our opinion the appeal was untenable, we are not satisfied that this is an appropriate occasion to make an award of costs pursuant to s 86(2) of the Act. It must be remembered that the appellant succeeded at first instance. The section has to be applied in the context of the Act as a whole and having regard to the relative informality of proceedings before the Commission and the general policy of not awarding costs. In the particular circumstances of this matter, we are not prepared to hold that the appeal is brought vexatiously or frivolously. The application for costs is refused."

In ***Heidt v Chrysler Australia Ltd*** (1976) 26 FLR 257, at 273, in the context of an Act which stated that "a party shall not be ordered to pay any costs incurred by any other party to that proceeding except where the party against whom the order is made instituted the proceedings vexatiously or without reasonable cause", Northrop J held that "the test is not subjective to the party instituting the proceedings".

We accept that the test is an objective one.

In order to come within the award, it was necessary for the appellant to establish either that the worker was a bricklayer's labourer or that he was a builder's labourer, the latter expression being defined in the award to mean, *inter alia*, an employee engaged in general labouring, not provided for in the award, when such worker is part of the building contractor's contract and under his/her direct control.

The evidence of the worker was that he was employed by the respondents to undertake brick cleaning on building sites. The buildings in question included houses, school buildings and industrial buildings. He said that for 90% of the time, his work was undertaken before the plastering was carried out, and for 99% of the time it was undertaken before completion. In most cases, landscapers or painters were also working on the sites while he was there, although they did try to get there before the painters arrived. It was not the practice to work on walls immediately following the bricklayers for the reason that the mortar had to set before the acid solution could be applied. The worker denied that he was ever required to work with a bricklaying team on any job. Indeed, in most cases, the bricklayers had finished by the time he started his work. Those bricklaying teams which were present on the site had their own labourers, and he acknowledged that he was working essentially as a labourer for the respondents.

Apart from the worker, the only other witness called for the appellant was Mr V Braham, a former president of the appellant, who had retired as a builder's labourer two or three years previously. He acknowledged that, in his experience, labourers in a bricklayer's team did not generally do the cleaning and that the builder would normally either employ labourers for brick cleaning or subcontract this part of the job. His evidence was quite clear that the brick cleaner was never part of the bricklayer's team.

The evidence of the first respondent was that the worker worked under his supervision and that he had been left alone on site only on two or three occasions. When this had occurred, the worker had been left "with all the gear, the acid, all that sort of stuff". The worker was told that, if he had any problems, to give the first respondent a call on his mobile telephone. The worker agreed that he was under the direct supervision of the first respondent "most of the time". What he meant by this was, he said, that, on occasions, the first respondent would drop him off at the premises where he was to work, prepare the acid solution which was necessary for his task and then go off to another job, leaving him to clean the bricks.

The first respondent said that brick cleaning involved cleaning mortar, plaster, tiler's render – "just any dirt, grime, stuff that has to be cleaned off". In contrast to the evidence of the worker, the first respondent said that the normal procedure was to come in just after the plasterers had finished or, less frequently, after the tilers had finished.

The respondent's case was supported by the evidence of a number of persons experienced in the industry.

On the state of the evidence outlined, the finding that the worker was not a bricklayer's labourer could not conceivably successfully be challenged. It was overwhelmingly supported by the evidence. Indeed, there would not appear to have been any evidence to the contrary.

The position is the same in relation to the question of whether the worker was a builder's labourer. He could only come within that description, as defined in the award, if he were under the direct control of the building contractor. The most which the worker could say was that, if the builder asked him to do anything, which happened rarely, he would do it. The first respondent's evidence was that the worker was not directed to work under anybody else's supervision and that, had he been aware of a builder asking the worker to do something, he would have had problems with the worker's following those directions because he "was the guy paying [him], not the builder". The finding of the Full Bench that the worker was not under the direct control of the building contractor was one which was required by the evidence. There is no basis whatever for challenging that finding.

Notwithstanding the wording of the notice of appeal, the reality is that the appeal was an appeal against findings of fact. The proper construction of the award could only have arisen if the findings of fact could be reversed.

We were informed that, before instituting the appeal, the appellant obtained an opinion from Queen's Counsel who advised that the decision of the Full Bench was appealable on the ground that it had misconstrued the relevant terms of the award, and a notice of appeal was drafted accordingly. The present solicitors for the appellant were then instructed for the first time and the opinion of another Queen's Counsel was sought. His advice was that the single ground of appeal which disclosed "what was arguably an error of law" was not strong. The decision to seek to discontinue the appeal was made immediately thereafter; but, by that time, only a few days remained before the date set for the hearing of the appeal.

In our view, this is one of the rare cases which falls within the exceptions to s86(2). The appeal was obviously untenable and could not possibly have succeeded. If, as appears to be the case, the appellant wished to alter the award coverage, it could have sought to achieve that object without involving the present respondents in the costs of a second appeal. In the circumstances, we will order that the appellant pay the respondents' costs, including the costs of the legal practitioner. We were told that these costs amounted to $1,200, being counsel fees of $850 and solicitors' costs of $350, and there was no argument against the quantum. We will order that the appellant pay the respondents' costs fixed at $1,200.

WESTERN AUSTRALIAN
INDUSTRIAL APPEAL COURT.

Industrial Relations Act 1979.

Appeal No. IAC 10 of 1995.

IN THE MATTER OF an appeal against the decision of the Full Bench of the Western Australian Industrial Relations Commission in Matter Numbered 127 of 1995 dated the 17th day of May 1995.

BETWEEN

The Western Australian Builder's Labourers, Painters and Plasterers Union of Workers
Appellant

and

Michael Nelson Clark and Amanda Joy Clark Trading as Mike Clark Contracting
Respondent.

BEFORE:

JUSTICE KENNEDY (PRESIDENT).
JUSTICE ROWLAND.
JUSTICE FRANKLYN.

23 November 1995.

Order.

HAVING heard Mr A L Drake-Brockman (of Counsel) for the appellant, and Ms S E O'Brien (of Counsel)) for the respondent, THE COURT HEREBY ORDERS that the appellant pay the respondents' costs fixed at $1,200.00.

(Sgd.) J.G. CARRIGG,
[L.S] Clerk of the Council.

INDUSTRIAL APPEAL COURT—

JURISDICTION: WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT.

CORAM: KENNEDY J (President).

DELIVERED: 1 DECEMBER 1995.

FILE NO/S: APPEAL IAC 12 of 1995.

BETWEEN:

THE WEST AUSTRALIAN LOCOMOTIVE ENGINE DRIVERS' FIREMEN'S and CLEANERS' UNION OF WORKERS
Appellant

AND

EDGAR SCHMID and OTHERS
Respondents.

Catchwords:

Industrial law (WA)—Appeal to Industrial Appeal Court—Application for stay of order of President of Commission for institution of proceedings—Order for institution of proceedings to recover sums paid to General President and General Vice Presidents of appellant in excess of amounts fixed by registered rules—Stay ordered.

Representation:

Counsel:
Appellant : Mr J O Kennedy
Respondents : The first respondent appeared in person

Solicitors:
Appellant : Minter Ellison Northmore Hale
Respondents : The first respondent appeared in person

Case(s) referred to in judgment(s):

The West Australian Locomotive Engine Drivers' Firemen's and Cleaners' Union of Workers v Hathaway (1995) 75 WAIG 1785

Case(s) also cited:

Alexander v Cambridge Credit Corporation Ltd (receivers appointed) (1985) 2 NSWLR 685

The Australian Coarse Grain Pool Pty Ltd v The Barley Marketing Board of Queensland (1982) 57 ALJR 425

Barker v Lavery [1885] 14 QBD 769

Cox v Simeon, unreported; FCt SCt of WA; Library No 5063; 7 September 1983

Deputy Commissioner of Taxation v Fontana [1989] WAR 262

Federal Commissioner of Taxation v Myer Emporium Limited (No 1) (1986) 160 CLR 220

Federated Liquor and Allied Industries Employees Union of Australia Western Australian Branch, Union of Workers v Federated Miscellaneous Workers Union of Australia Western Australian Branch, Union of Workers (1993) 52 IR 1

Professional Officers' Association of New South Wales v New South Wales Teachers' Association (1993) 50 IR 404

Waller v Todorovic, unreported; Ct of Appeal (New South Wales); 21 December 1979

Water Industry Salaried Officers' Union v Professional Officers' Association (NSW) (1987) 22 IR 178

KENNEDY J:

Mr Edgar Schmid and 18 other members of the appellant made an application to the President of the Industrial Commission under s66 of the *Industrial Relations Act 1979*, complaining of the failure to observe certain of its rules. They claimed that Mr K Campbell, Mr M Ryan and Mr K Jarrett, who were at the material times the General President and the General Vice Presidents of the appellant, had in the years 1991, 1992, 1993 and 1994 received payments by way of honoraria of amounts in excess of those authorised by the rules of the appellant. A resolution had in fact been passed increasing the permissible amounts payable by way of honoraria, but the changes had not been registered and they were therefore ineffective.

The learned President found that the President and the Vice Presidents of the appellant had been paid honoraria that they were not entitled to be paid, and which the appellant was not authorised to pay in accordance with rr16 and 17 of its rules. He further found that the General Committee, the President and the Vice Presidents knew or ought to have known of this. He then found that there had been a "misappropriation" of funds, in that funds were put to use in a way which the rules did not authorise.

After further argument, the President made an order that the appellant, through its General Committee, should forthwith order its trustees to institute legal proceedings in a competent court, within 14 days of 21 September 1995, to recover the sums paid, should any such amount not be paid to the appellant within seven days of 21 September 1995. His Honour further ordered that, in the event that the moneys were not repaid, or such proceedings were not so instituted by the trustees, then the appellant should itself institute such proceedings within 21 days of 21 September 1995, and further that the appellant should at all times, in any event, take all steps and do all things necessary to recover such moneys from the General President and the General Vice Presidents as expeditiously as is possible.

By r22(j) of the Rules of the Association, members of the General Committee (in the interim between Delegate meetings) have the power to "[d]irect the General Trustees to take legal proceedings against any officer or member of the Union guilty of misappropriating any of its funds".

On 10 October 1995, the appellant filed a notice of appeal against the orders made by the President. It contended that the President erred for the reason that r22(j) did not allow the President to make an order for its enforcement without a finding of misappropriation being made against the individuals specified in the order, and that there was no finding of misappropriation made against those individuals. Further, it was contended that the President erred in law in his interpretation of the rule, in that he incorrectly construed "misappropriation" to exclude any element of intention to deprive and/or fraud, and that the President exceeded his jurisdiction in making the orders which he did. Thirdly, it was contended that the President erred in law and exceeded his jurisdiction in purporting to make an order that the appellant commence proceedings against individuals who were not respondents to the application, when they had a legitimate expectation to be heard, and thus the President did not exercise the Commission's powers in accordance with the principles of natural justice and, further or alternatively, contrary to s26(1)(c) of the *Industrial Relations Act*.

Whatever may be said as to the justification for the three office bearers retaining moneys paid to them, as the President has found, in excess of the maximum amount permissible under the registered rules of the appellant, a finding which has not been challenged, I have no doubt that the appeal raises serious questions of law. I have reached this conclusion having regard to the unusual wording of cl 22(j). Particular issues must arise as to the meaning of "misappropriating" in this context, the significance of the expression "guilty" in the rule and by whom any such finding should be made.

The appellant has sought a stay of proceedings on the ground that, if its appeal is successful, and the stay application is unsuccessful, the commencement of proceedings against the office bearers will cause prejudice to the appellant for the following reasons –

(i) the commencement of legal proceedings against the specified individuals will involve considerable legal costs to the appellant;

(ii) the institution of legal proceedings will involve a considerable time and administrative burden for the appellant;

(iii) the institution of legal proceedings against the specified individuals will cause considerable disunity amongst members of the Union; and

(iv) legal proceedings against the specified individuals may be concluded by the time that this matter is concluded.

In addition, it was contended that the granting of a stay merely delayed the commencement of action against the specified individuals.

In my view, there is substance in the appellant's general contentions and a stay should be granted. As I have already indicated, it does appear to me that the appeal raises serious questions for argument. Furthermore, in my view, it would be undesirable, while there are issues still to be finally determined, to have proceedings instituted against three individuals who were not formally parties to the original application. Unquestionably, if proceedings are instituted, costs would be incurred by the organisation and by the individuals concerned which, in the end, if the appeal succeeds, will be wasted. I am influenced in reaching this decision by the fact that the appeal is listed for hearing on 1 February 1996, and accordingly not a great deal of time will elapse prior to its determination. No prejudice on the part of the respondents by reason of a relatively short postponement has been pointed to.

Counsel for the appellant raised a question as to whether, in order to obtain a stay, it was required to demonstrate "special circumstances" justifying the stay, or whether the balance of convenience test was the appropriate test. Murray J, in ***The West Australian Locomotive Engine Drivers' Firemen's and Cleaners' Union of Workers v Hathaway*** (1995) 75 WAIG 1785, was of the view that the special circumstance test was applicable. It is not necessary to resolve that interesting question because, in my view, both tests are clearly satisfied in the instant case.

In the circumstances, I would grant a stay of the orders made by the learned President until the determination of the appeal herein or until further order. Liberty will be reserved to the respondents to apply to vary or discharge the stay in the event that circumstances change.

WESTERN AUSTRALIAN
INDUSTRIAL APPEAL COURT.

Industrial Relations Act 1979.

Appeal Nos. IAC 12 of 1995.

IN THE MATTER OF an appeal against the decision of his Honour the President of the Western Australian Industrial Relations Commission in Matter Numbered 531 of 1995 dated the 21st day of September 1995.

BETWEEN

The West Australian Locomotive Engine Drivers' Firemen's and Cleaners' Union of Workers
Applicant

and

Edgar Schmid and Others
Respondents.

BEFORE:

JUSTICE KENNEDY.

1 December 1995.

Order.

HAVING heard Mr J O Kennedy, (of Counsel) for the applicant, and Mr E Schmid, on his own behalf, THE COURT HEREBY ORDERS that the decision of His Honour The President of the Western Australian Industrial Relations Commission in matter No. 531 of 1995 dated the 21st day of September 1995, be stayed.

(Sgd.) J.G. CARRIGG,
[L.S] Clerk of the Council.

FULL BENCH—
Appeals against decision of Commission—

WESTERN AUSTRALIAN

INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and Others
(Appellants)

and

Minister for Works
(Respondent).

No 717 of 1995.

BEFORE THE FULL BENCH.

28 November 1995.

HIS HONOUR THE PRESIDENT P J SHARKEY.
COMMISSIONER R N GEORGE.
COMMISSIONER R H GIFFORD.

Reasons for Decision.

THE PRESIDENT: This is an appeal against the decision of the Commission at first instance, constituted by a single Commissioner, and properly brought under s.49 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act").

By the decision appealed against, the Commission dismissed an application made by the appellant organisations, then the applicant organisations, to vary the Building Trades (Government) Award 1968, No 31A of 1966 (hereinafter referred to as "the award"). That application was brought pursuant to s.40 of the Act and was required to be dealt with as s.40 prescribes.

By the application it was sought to delete from Appendix D of the award, which is the Award Restructuring Appendix, the exemption provided therein to the Honourable Minister for Works from the operation of Appendix D. I will turn to that in some more detail later.

The decision is appealed against on the following grounds, as amended (see page 3 of the appeal book (hereinafter referred to as "AB"))—

"1. The Commission erred in law and in fact in failing to apply the wage fixing principles formulated by the Commission in that the current wage fixing principles allow for the Structural Efficiency Principal (sic) to be applied to BMA employees and the Commission refused to apply those principles

2. The Commission failed in the proper exercise of its discretion in the following areas:

a) the Commission concluded that the wage fixing principles formulated by the Commission should not apply to the employees the subject of this application. In doing so, the employees were treated inequitably, contrary to the objects of the WA Industrial Relations Act, 1979, as amended.

b) the commission erred in reasoning that the employees the subject of this application could have been disadvantaged because the BMA did not have input into Appendix D when it was incorporated into the Award.

c) the Commission failed to give sufficient weight to the evidence of Ms Harrison that an exemption was negotiated between the parties based on progress being made towards implementing a BMA specific classification structure.

d) the Commission failed to give sufficient weight to the evidence of Ms Harrison that no progress had been made since 1993 on agreeing on a classification structure for the BMA.

e) the Commission erred in giving too much weight to the presence of a classification structure in the Engineering Trades (Government) Award and the consequences at the workplace of having that structure, when Appendix D was incorporated into the Building Trades (Government) Award.

3 The Commission erred in fact in holding that the timeframe for implementing the classification structure at the BMA would be lengthy and few gains would arise out of the process.

In the circumstances, the Appellant seeks orders that:

a) The Appeal be upheld.

b) The Order made by the Commission on 30 May 1995 be quashed.

c) Alternatively, the order made by the Commission on the 30th day of May 1995 be varied in such manner as the Full Bench might deem appropriate."

BACKGROUND

The applicants represent employees of the respondent, in particular those persons employed in the Breakdown Services Branch of the Building Management Authority (hereinafter referred to as "the BMA"). The respondent was, at all material times, bound by and covered by the award.

Appendix D was attached to the award as a result of a decision by Beech C dated 17 January 1994 which was to operate from 17 November 1993 (see OPDU and Others v Minister for Health and Others 74 WAIG 266).

The Commission in that case observed that an appendix entitled "Award Restructuring Consistent with the Structural Efficiency Principle" was sought to be inserted in the award in order to provide a complete reclassification of the employees covered by the award. The claim would see the employees classified as "building and maintenance employees" with ten levels of employee, four classifications below the trade level, the trade level itself, and five classifications above the trade level.

The Commission observed there, too, that it was common ground that the proposed Appendix would not apply to the Minister for Works, which meant, particularly, the BMA. The

Commission also noted that, by clause 3.—Scope of the award, the award did not apply to the construction operations division of the BMA, but observed further that the intention was that the Appendix would not apply to any of the operations of the BMA. The Commission therefore inserted a provision in the Appendix to that effect.

Appendix D is a lengthy Appendix which makes provision for a skills based classification structure. It sets out objectives, guidelines for implementation, rates of pay, requirements for training, as well as consultative mechanisms and the classification structure itself.

It seemed to be common ground that the National Building and Construction Industry Award (a Federal award) had not been varied in similar terms, as yet.

It was also found by the Commission at first instance, and not challenged before us as a finding of fact, that there were attempts on the part of the applicant employee organisations to negotiate an enterprise agreement and classification structure for the employees concerned. It was also accepted by the Commission that the applicants had genuinely "sought such negotiations" and that their agreement to exclude the BMA from Appendix D was in the hope that they could resolve an integrated classification structure. However, as the Commission found, the hope that they could resolve an integrated classification structure was not realised.

It was not in dispute, following the evidence of Mr James Norman Pakes, the Branch Manager of the Breakdown Repairs Service of the BMA, that the service would within about eight months of the date of hearing, which was 3 May 1995, (the order issuing on 30 May 1995), be "contracted out", that is placed in private hands. The Minister had made an announcement to that effect, although I am not aware of the date of it from the appeal book. If that were to occur there would not necessarily be award coverage of employees under the subject award.

FINDINGS AT FIRST INSTANCE

The Commission at first instance made a number of findings—

(1) That the claim before Beech C was to reflect the classifications determined by the Full Bench of the Australian Industrial Relations Commission, and the applicants were to seek the below trade level classifications when resolved at Federal level.

(2) (a) That the "unions" had genuinely sought negotiations for an enterprise agreement and classification structure for the employees concerned, and accepted further that the agreement to exclude the BMA from Appendix D was in the hope that the unions and the BMA could resolve an integrated classification structure.

(b) That that hope and belief were not reciprocated.

(3) That the BMA should not be bound by Appendix D for the following reasons—

(a) The exclusion of the BMA from Appendix D was by agreement.

(b) The terms of the Appendix were resolved without the BMA having input into the matters agreed or to the decision made by the Commission in those aspects of the Appendix which required arbitration.

(c) It was not appropriate to apply to an unconsenting party a matter agreed to by others, unless such conditions were fair and reasonable on their merits. The Commission cited Municipal Officers Association v Melbourne Metropolitan Board of Works 165 CAR 478 at 484 and Re Transport Workers (Northern Territory) Award 1973, 241 CAR 336.

(4) That it could be argued that, in addition to the issue of the merits of the Appendix itself, the issue of merit relating to the employees of the BMA being disadvantaged vis-a-vis the other government employees covered by the Appendix arose. However, this was essentially a comparative wage justice argument and not available under the current wage fixing regime without other justification.

(5) That there was no agreement reached with the BMA when Beech C originally dealt with the matter.

(6) That, in that the National Building and Construction Industry Award had not yet been amended to incorporate the Appendix, nor had the associated State awards, the employees covered by the award would seem to be in a "quite unique position". However, BMA employees were like other employees in the building and construction industry in that they were disadvantaged only by comparison with employees who had received the benefit which was ahead of its time and by virtue of an agreement of their employers in circumstances which Beech C described at the time as being unusual.

(7) That Beech C had found, contrary to what he would normally have done, that he ought to amend the award because of the desire by the parties involved, notwithstanding the lack of resolution of the issues and in spite of the National Building and Construction Industry Award and the normally precedent State awards not having been amended.

(8) That Beech C so found because of the circumstances concerning those employers and employees where the award had been amended for its classification structure, and employees covered by the award were working alongside employees covered by that award and this difference had been the subject of dispute.

(9) That the BMA was also excluded from the amendment to the Engineering Trades (Government) Award No 29, 30 and 31 of 1961 and 3 of 1962 (see 70 WAIG 3195), but subsequently specifically covered by a separate schedule to that award which arose as a result of separate negotiation.

(10) That the circumstances which caused the other respondents to seek an appendix for the classification structure in the award did not arise for the BMA, and there was no evidence that such circumstances have now arisen.

(11) That Appendix D did not merely set out a classification structure and a mechanism for employees to be allocated to particular levels. By its terms, it is quite clearly an agreement between parties committed to the objectives, processes and outcomes.

(12) (a) From the evidence of Ms Harrison (of Counsel), who gave evidence, and Mr Pakes, the relationship of the parties was quite removed from the consultative co-operative approach envisaged by the Appendix and taken by the parties who agreed to it. The terms of the Appendix did not reflect an approach which the parties were likely to be able to jointly adopt at this time as evidenced by their recent dealings.

(b) The Commission placed weight on the implementation of Appendix D through consultative mechanisms, the establishment of consultative committees, and agreement as to initial classification, as well as requiring the employer to develop a training programme following proper consultation or through the establishment of a committee.

(c) That some of the employees concerned would receive the benefit of the initial translation to the new structure, but, based on the evidence of the time taken to fully implement the Appendix elsewhere and of the discussions and other work necessary for it to be achieved, it was highly unlikely that the process of reclassification would be anywhere near complete by the time the Branch ceased to operate.

(13) That the process leading to and including reclassification, on the evidence, would be a lengthy one.

(14) That the Appendix could be adapted in relation to the work done by the BMA. However, some time

and work, and, importantly, co-operation would be required to achieve this.

(15) That a significant amount of time and effort would be applied for very little result, and, on balance, would not be a productive use of time and resources. It would be time and resources spent to implement something which was agreed by other parties in circumstances which do not apply here and in terms which do not reflect the joint intentions or objectives of the parties.

ISSUES AND CONCLUSIONS

The decision was a discretionary decision as that is described in Norbis v Norbis 65 ALR 12 (HC). In accordance with House v The King [1936] 55 CLR 499 (HC) and Gromark Packaging v FMWU 73 WAIG 220 (IAC), the Full Bench cannot interfere with the exercise of the discretion by the Commission at first instance, unless the appellant establishes that there was an error in the exercise of that discretion in the terms described in House v The King (HC) (op cit). The Full Bench may then, and only then, substitute its decision for that of the decision at first instance. However, Warren v Coombes and Another [1978-1979] 142 CLR 531 (HC) enables an appellate court or tribunal to draw inferences of its own from undisputed primary facts, or from facts which, having been disputed, are established by the tribunal at first instance. In deciding what is the proper inference to be drawn, the appellate court will give respect and weight to the conclusion of the trial judge, but once having reached its own conclusion, will not shrink from giving effect to it. It is not for the appellate court or tribunal to overturn findings of fact which derive from the advantage which the tribunal at first instance derives from seeing the witnesses (see Gromark Packaging v FMWU (op cit) (IAC)), unless the tribunal has misdirected itself or has misused its advantage.

By ground 1 of the grounds of appeal, it is alleged that the current Wage Fixing Principles applied at the time of hearing, to the employees of the BMA, and, in particular, it is alleged that the Principles allowed for the Structural Efficiency Principle to be applied to BMA employees, but the Commission refused to apply those Principles.

The Commission found (see page 12 (AB)) that the case before it was not one which required to be dealt with as a Special Case because it related to the Structural Efficiency Adjustments referred to in the Statement of Principles arising from the State Wage Decision of December 1994 (75 WAIG 23 at 41). That finding was not challenged upon this appeal.

It is quite clearly the law that when a General Order is made more is required than that the Commission act consistently with the Principles. The Commission is required to apply those Principles. An application where that is the case, made before the Commission, can be resolved only by reference to those Principles (see RRIA v AMWSU and Others 73 WAIG 1993 at 1999 (IAC) per Nicholson J, Wallwork and Owen JJ agreeing). I do not agree with Mr Hooker (of Counsel), for the respondent, that what I have just stated was not part of the ratio decidendi in that case.

On 30 December 1994, a General Order was made by the Commission in Court Session requiring, inter alia, that any award or industrial agreement be not made, except in compliance with the Statement of Wage Fixing Principles set down by the Commission in reasons for decision in application No 985 of 1994 (see 75 WAIG 23).

In this case, the application to vary the award was to be resolved by reference to the Principles contained in the reasons for decision and in accordance with the General Order.

The Commission, of course, was then required to apply the Structural Efficiency Principle if it were applicable. The Structural Efficiency Principle set out in the State Wage Principles of 1993 was expressly adopted in the 1994 State Wage Case (75 WAIG 23 at 28-29) in the following terms—

"STRUCTURAL EFFICIENCY

Consistent with General Orders which issued pursuant to State Wage Cases in September, 1988 ([1988] 68 WAIG 2412 at 2419), September, 1989 ([1989] 69 WAIG 2917 at 2929) and June, 1991 ([1991] 71 WAIG 1723 at 1729), the Structural Efficiency Principle provides a framework through which it is intended that the parties to an award co-operate positively in a fundamental review of that award with a view to implementing measures to improve the efficiency of industry and provide employees with access to more varied, fulfilling and better paid jobs."

There is then a prescription of the measures which should be included and these are as follows (see pages 28-29)—

"• establishing skill-related career paths which provide an incentive for employees to continue to participate in skill formation;

• eliminating impediments to multi-skilling and broadening the range of tasks which an employee may be required to perform;

• creating appropriate relativities between different categories of employees within the award and at enterprise level;

• ensuring that working patterns and arrangements enhance flexibility and the efficiency of the industry;

• including properly fixed minimum rates for classifications in awards relate appropriately to one another, with any amounts in excess of these properly fixed minimum rates being expressed as supplementary payments;

• updating and/or rationalising the list of respondents to awards; and

• addressing any cases where award provisions discriminate against sections of the workforce.

• examining both award and non-award matters to test whether work classifications and basic work patterns and arrangements are appropriate—the examination to include specific consideration of—

(i) the contract of employment including the employment of casual, part-time, temporary, fixed term and seasonal employees,

(ii) the arrangement of working hours,

(iii) the scope and incidence of the award;

• inserting facilitative provisions in relevant clauses of the award;

• establishing a consultative mechanism and procedures appropriate to their size, structure and needs for consultation and negotiation on matters affecting their efficiency and productivity;

• providing in awards, in order to ensure increased efficiency and productivity at the enterprise level, while not limiting the rights of either an employer or union to arbitration, a process whereby consideration can be given to changes in award provisions; any agreement reached under this process would have to be formally ratified by the Commission and any disputed areas should be subject to conciliation and/or arbitration; and

• providing in an award a provision to the effect that an employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training."

Appendix D contains provisions which implement a number of the measures listed above.

It was submitted by Mr Hooker that the application of the Structural Efficiency Principle was not mandatory. It is clear that it is not by its wording, but that is not an end to the matter.

As Ms Harrison submitted, Appendix D was inserted under the Structural Efficiency Principle, Beech C so observed in OPDU and Others v Minister for Health and Others (op cit). The submission for the appellants was that the application came within the Structural Efficiency Principle, but that by the exercise of its discretion the Commission did not apply the Principle in this case. There was a further submission, too, namely that the Commission was bound to apply the Principles, and, in applying the Structural Efficiency Principle, to thereby accede to the application by the appellants.

Mr Hooker's submission was that simply making an application to remove the exemption could not inevitably result in that occurring. This was because any application of that nature which seeks to have effect so that a spirit of co-operation is imposed on the employer when the employer is opposing

that change being made is an application which "of its nature carries a very substantial onus to succeed".

Mr Hooker submitted, too, that what one must do in applying the Principle is to see if it can have operation in the existing industrial relations circumstances. What was involved here, at first instance, was therefore an exercise of discretion, so the submission went, and the appeal is against the Commission's refusal to exercise its discretion in the applicants' favour.

It is important to note that the Commission in Court Session in the 1994 State Wage Case (75 WAIG 23 at 29) said this—

> "By retaining the Structural Efficiency Principle and the availability of adjustments under previous State Wage Cases the opportunity exists for parties to maintain the relevance of their awards through structural efficiency reviews. This avenue also complements the review of awards referred to by the Australian Commission under Section 150A of the Industrial Relations Act 1988 (Cwlth.). However the Structural Efficiency process has the virtue of enabling the parties to an award to take responsibility for the process rather than having it driven by the Commission under statute. (my underlining)
>
> Commitments have been given by parties under Structural Efficiency. Improvements in efficiency and career opportunities should have resulted. Parties should have achieved this. However, it appears that this has not always been the case. The Commission gives notice that where appropriate it will inquire into the delivery of these commitments." (my underlining)

There is no doubt that it is an integral and major part of arbitration and the award system, the award safety net and award reviews. It is plain that the Structural Efficiency Principle is and has been one of the major Principles among the Wage Fixing Principles. It is a fundamental Principle. That was made clear by the Commission in Court Session in the 1994 State Wage Case (75 WAIG 23 at 28-29) in those portions of the Commission's reasons for decision which I have quoted (supra).

Firstly, the Principle itself is not couched in mandatory terms. Some of the Principles are not. However, the Commission was bound to apply the Principle insofar as it was applicable to the industrial circumstances before it. The Commission in Court Session has made it clear that the opportunity exists by the application of that Principle and the availability of adjustments under previous State Wage Cases for parties to maintain the relevance of their awards through Structural Efficiency reviews. The Commission in Court Session also observed that the Structural Efficiency process has the virtue of enabling parties to take responsibility for the process, whereby the parties co-operate positively in a fundamental review of the award with a view to implementing measures to improve efficiency of industry and provide employees with access to more varied, fulfilling and better paid jobs. Those, therefore, are two expected results of the process being carried out. The alternative is to have the process driven by the Commission, so the Commission observed, under statute (see the 1994 State Wage Case (75 WAIG 23 at 29)).

The power to drive the process under the statute is not and cannot be removed by the Principles. Thus, it is open to the Commission to reflect the requirement to have the Principle complied with by an order or by variation of an award.

Accordingly, there was a recognition by the Commission in Court Session of the purpose of the Structural Efficiency Principle. It is to provide a framework through which it is intended that the parties to an award co-operate. That co-operation is to be positive. The co-operation is to be directed to implementing measures to achieve two results, to improve the efficiency of industry and provide employees with access to more varied and fulfilling and better paid jobs. Whilst the Structural Efficiency Principle envisages a process of consultation and agreement as being at the heart of the process, there is nothing which suggests that that can exclude the jurisdiction of the Commission to order that the process occur. Indeed, the Commission observed (see 75 WAIG 29) that improvements in efficiency and career opportunities should have resulted by the date of the 1994 State Wage Decision, namely 30 December 1994 (see the 1994 State Wage Case (75 WAIG 23 at 29). In other words, there is an expectation that improvements occur. If that is not achieved, the Commission can plainly order it to be achieved by applying s.26 of the Act to an application under s.40 of the Act or arising out of s.32 or s.44 proceedings if there were a dispute. The Commission in Court Session has also indicated that it could conduct an inquiry where these ends have not been achieved. In any event, it is obvious that the process is not to be left to the whims of the parties to an award. If that were not so, an organisation of employers or employees or an employer or an association of employers or employees could unilaterally thwart the implementation of measures which the Structural Efficiency Principle exists to provide as a significant feature of the Wage Fixing Principles.

The duty of the Commission was, as a matter of law, to apply in this case the Wage Fixing Principles and in this case the Structural Efficiency Principle in particular.

It is true that the mere making of an application invoking this Principle is not sufficient to vary the award. However, having regard to the pre-eminence of the Principle and the careful description of its function given by the Commission in Court Session, to which I have referred, the operation of the Principle and the need to ensure implementation of what was required was a very weighty consideration as a matter of the equity, good conscience and substantial merits of this application and was bound to be applied as a matter of law, as well.

I deal with other questions of equity, good conscience and the substantial merits of the case. The Commission at first instance was required to take into account the interests of the employer and the employees concerned (see s.26(1)(a) and (c) of the Act).

Firstly, the enterprise bargaining process was not advanced either. Merit was not on the respondent's side in that respect. As a result of this failure and of the failure of the respondent to engage in the Structural Efficiency Principle process, as the Commission found, the BMA employees were deprived of benefits which other employees covered by the award have enjoyed since Appendix D was inserted in the award. That constituted, on the face of it, an inequity, too. However, a major reason which the Commission found existed for not granting the application was that one could not merely apply a provision to which other parties had agreed for that reason alone. With that I agree. The applicants were required to establish that the award should be varied in the terms which they sought ((ie) that the exemption of the respondent from the operation of Appendix D contained in the award should be removed). The applicants did so in this case.

That should be seen against the background of what occurred in the original proceedings. In the original proceedings, a mechanism was put in place by Appendix D providing a more flexible career path at work, provision for training, the capacity to have past work value recognised, and facility for the recognition of duties which employees have undertaken outside those which accord with their base trade skills, etc.

The uncontradicted evidence of Ms Harrison was quite plainly that the exemption from the operation of Appendix D for the respondent was agreed to by the appellants because there was, and the Commission at first instance found, an expectation of an intention to negotiate a reclassification structure, on Ms Harrison's evidence, based on the proposed Appendix Q to the Federal award. (Indeed, there was such a duty for both parties). Of course, that really leads to an inference that the unions sought a different reclassification structure. In the event that that was not achieved because the respondent plainly failed to take the steps which the Commission in Court Session (see the 1994 State Wage Case (75 WAIG 23 at 28-29)) expects the parties to have achieved, then it was open to the Commission to order that it be achieved. However, the applicants at first instance, the appellants on this appeal, were required to establish their case.

What the applicants were in fact saying to the Commission at first instance was this. There was an agreement that Appendix D would not apply to the respondent. However, that agreement was reached because the appellants had wished to embark on consultation to reach their own agreement for reclassification. It was a reasonable expectation by the appellants that this should occur. That is what the 1994 State Wage Case makes clear that the Structural Efficiency Principle required the parties to do. It was, I think, both express and

implied in that they were attempting to reach an agreement which would result in a different reclassification structure to that contained in Appendix D. That was not achieved. The application was therefore based on the premise that Appendix D was applicable to BMA employees covered by the applicants, and that because the basis on which the exemption was agreed to was not achieved then the basis on which the variation was agreed to no longer existed. Accordingly, the variation seeking the removal of the exemption should be granted.

As I understand the Commission's findings, however, the Commission found that the merits of the application were not argued and not made out. The Commission also found that no mention was made of the respondent's intentions and that there was no indication that the BMA encouraged those hopes or gave any commitment. By that, I understood the Commission to mean that it was necessary to establish that, as a matter of merit, the classification restructure set out in Appendix D should be applicable to BMA employees. The Commission, however, found, unequivocally after hearing evidence, that Appendix D could be adapted to the work of the BMA, but that some time and work, and, importantly, co-operation would be required to achieve this. That was a finding as to the merit of the application. The Commission also observed that whilst it was clear that co-operation would not be willingly forthcoming from the BMA, should the Commission have so ordered, such co-operation and resources would have been required. The Commission there, too, made a crucial finding. It was that Appendix D was adaptable, an unchallenged finding made on the evidence of the BMA's witnesses, inter alia. It was also the finding that this could be achieved by time, work, and, importantly, co-operation. The Commission found, too, that no time, work or co-operation was given, performed or afforded by the respondent to achieve this end. That this was required to have been given, performed or afforded by the terms of the Structural Efficiency Principle was also the case. That the employees were disadvantaged themselves and also disadvantaged compared to other persons covered by the award was a fact, too.

Something further should be said about the Structural Efficiency Principle in the light of what was finally decided. Appendix D implements what that Principle requires. Having regard to the dicta of the Commission in Court Session set out in the 1994 State Wage Case (75 WAIG 23), it was open to the applicants to seek an order at any time to require that the process be embarked upon. It was contrary, therefore, to the equity and substantial merits of the application that the respondent be permitted to decline to enter into consultation with a genuine view to complying with the Principle and to benefit from such a failure to comply. In particular, the respondent could not, as a matter of equity, use that failure to consult and failure to do its part in implementing what the Principle prescribes, as a shield against an application to vary the award in terms which would enable implementation of what the Structural Efficiency Principle requires. It was open to the Commission at first instance to so find. The duty of the Commission was to have regard to that Principle and its application. As the Full Bench observed in RRIA v AMWSU and Others 72 WAIG 25 at 56 (FB)—

> "... the Commission expressed a clear intention that the parties should be given an opportunity by that to develop a co-operative policy approach to matters. That was based upon the proper and relevant consideration that the Structural Efficiency Principle was central to the Wage Fixing Principles, and that the essence of that was co-operation and consultation at the establishment level."

The behaviour of the respondent in this case acted contrary to the Wage Fixing Principles. That behaviour was a very relevant consideration as part of the equity, good conscience and substantial merits of the application (see RRIA v AMWSU and Others 72 WAIG 25 at 56 (FB)).

Accordingly, the Commission at first instance erred in placing any weight on the fact that the relationship between the parties was in any way a factor which should militate against the order sought being made when the respondent had acted unfairly in taking such an approach.

This is because it would cause an inequity to permit an employer or employee organisation or any other party to benefit from refusing to implement or to impede the process which the Wage Fixing Principles require.

I do not agree either, with respect, with the Commission's attaching much weight to the fact that Appendix D was a provision applied ahead of its time and in unusual circumstances. That was not a factor which could validly be said to militate against the BMA employees receiving the benefits of Appendix D, because the award applied to employees covered by the award, an award which also covered BMA employees.

Again, this was not a question of comparative wage justice, but a question of the proper application of the Structural Efficiency Principle to employees to whom the manner of application of the Principle in terms of Appendix D was said to be adaptable. Appendix D, of course, applied to other employees covered by the scope of the award, as I have observed. In this context, it is interesting to note that BMA employees in the Construction Operations Division are covered by a Federal award, the National Building Trades Construction Award 1975 (see clause 3. Scope of the award). Be that as it may, however, the fact of the matter is that the Scope clause of the award applies the award and its conditions generally to all employees covered by the award. In other words, the award is meant to cover BMA employees and does do so, along with others as "all building trades employees classified in Clause 9". To therefore pray in aid other awards which do not cover BMA employees in the Breakdown Branch as an answer to this claim would seem to me, for those reasons, to be irrelevant and a matter of error.

I next turn to the Commission's finding which was as follows (see page 22 (AB))—

> "It is true that some of the employees concerned would receive the benefit of the initial translation to the new structure, but, based on the evidence of the time taken to fully implement the Appendix elsewhere, and of the discussions and other work necessary for it to be achieved, it is highly unlikely that the process of reclassification would be anywhere near complete by the time the Branch ceases to operate. The evidence of Mr Dallas showed very clearly that the process would be a lengthy one. Whilst I accept that the work already done elsewhere would mean that the process would not take quite so long, it would be very unlikely to achieve much of benefit in the time left."

That finding has been challenged, praying in aid evidence as to the shortness of time required to complete the process, given by Ms Harrison from the bar table. If that evidence were not given great weight in the face of the evidence on oath, then that would be an approach entirely open to the Commission (see R v Commonwealth Conciliation and Arbitration Commission and Others; ex parte Melbourne and Metropolitan Tramways Board [1965] 113 CLR 228 at 243 (HC) per Barwick CJ, and at page 252 per Menzies J). I do not think that great weight could safely be given to Ms Harrison's evidence from the bar table when there was evidence given on oath about this subject and when Ms Harrison herself gave evidence on oath in any event.

It would seem somewhat doubtful on the evidence of Mr Dallas and Mr Pakes that the process would take 12 months or even eight months.

I note, too, that there were submissions at first instance that the variation of the award could be made retroactive. A variation to an award can be made retroactive even in the absence of agreement between the parties where, in the opinion of the Commission, there were special circumstances which make it fair and right to do so. It was submitted in this matter, at first instance, that the order could have and should have been made retroactively. If it could have, then that would remedy the situation by which the employees had been denied benefits because of the unwarranted action of the respondent. This was because the process of negotiation could and should have commenced relatively soon after Appendix D was inserted by order on 17 January 1994, if not before. There plainly existed special circumstances which would enable the Commission to make a retroactive order. The special circumstances were that the process should have been commenced and completed months ago. It was open to the Commission to so find. However, that was not a ground of appeal and I make no finding here.

The Commission did not apply the Structural Efficiency Principle to the circumstances of this application and the Commission in Court Session's requirement as to the process expected to be completed by the end of 1994. The Commission failed to give sufficient weight to the fact that no progress had been made, as it was not, in agreeing a specific classification structure for the BMA employees and that this was the fault of the respondent.

The Commission erred, too, in taking into account as relevant the presence of a classification structure in the Engineering Trades (Government) Award Nos 29, 30 and 31 of 1961 and 3 of 1962, given that the "building trades employees" identified by the Scope clause of the award include, as I have observed, these BMA employees, and that Appendix D could be adapted to BMA Breakdown Branch employees.

For those reasons, too, which I have mentioned, the Commission erred in holding that the time frame for implementing the classification structure at the BMA would be lengthy and few gains would arise out of it. It may have been lengthy, but I do not agree that few gains would arise out of it, with respect. In particular, the Commission should have found that, given the requirements of the Principle, the equity and good conscience of the case required that, since Appendix D was adaptable to BMA employees, since they had been deprived of the fruits of compliance with the Principle through no fault of their own, since the Principle was otherwise impliable under the award, since no cogent reason was advanced as to why Appendix D should apply, and because the respondent had impeded the Structural Efficiency process, and since the Commission was required to apply the Structural Efficiency Principle, then the time involved should not be used as a factor to nullify the process under the Principles.

Accordingly, the Commission at first instance, for those reasons, erred in terms of ground 1 of the grounds of appeal because it should have found that the merit of the claim was established. It mattered not whether there was an agreement to consult and achieve a classification structure, etc. There was a duty upon the applicants to participate in such a process and the respondent refused or neglected to do so giving no good reason for so refusing or neglecting. The Commission should have found and I would so find.

As the Commission found, there was disadvantage to the applicants as a result. That disadvantage was obvious.

Further, the respondent's employees were and are persons who belong to one class of building trades employees to whom Appendix D is adaptable on the Commission's finding. In other words, as I understand the word "adaptable" in principle, Appendix D can apply but some aspects need to be adapted. Accordingly, there was merit in its application. The Commission should have found, and I would so find.

The Commission found correctly, and that finding was not challenged that Appendix D was adaptable to the BMA employees. There was, too, sufficient evidence from Mr Pakes (see pages 103-104 (AB)) to that effect, albeit in some respects begrudgingly. Further Appendix D related to tradespeople within the scope of the award. The BMA employees are tradespeople within the scope of the award. Beech C found sufficient merit to insert Appendix D. The same merit exists for other tradespersons under the award, the subject of this application, to whom Appendix D is applicable.

As a matter of merit, it was open to find and the Commission should have found that the equity, good conscience and substantial merits of the case lay in remedying an inequity by varying the award so that the exemption to the Minister was lifted retroactively as at 17 January 1994, given that the BMA had been part of the negotiations, at least in 1992, which led to the insertion in 1994 of Appendix D. I would so find.

For those reasons, the Commission at first instance erred in law and in fact in failing to apply the Wage Fixing Principles in that the Structural Efficiency Principle was applicable to the BMA and its employees, when it was required, as a matter of law, to apply that Principle, and it was a matter of equity, good conscience and the substantial merits of the case that it should be so applied. (I would observe, too, that the Commission observed that the merits were not argued. That was not a finding and could not be treated as such). In any event, for the reasons which I have set out, the merits were very much before the Commission at first instance, as I have said. The Commission made findings about some questions of merit. Most particularly and cogently the Commission found plainly that Appendix D was adaptable, notwithstanding some evidence for the respondent, and that the respondent did not take part in the consultation process. All that needed to be done, therefore, to properly decide the matter was to determine the question of what modifications were necessary. I would, insofar as it is necessary, so find.

As a result, further, the Commission erred in the exercise of its discretion for those reasons, in that it failed to apply the Principles, and, in particular, the Structural Efficiency Principle to the employees, the subject of this application.

Further, the Commission failed to give sufficient weight to the evidence of Ms Harrison that an exemption was negotiated between the parties based on progress being made towards implementing a BMA specific classification structure. The Commission found that there was such an expectation. However, there was a requirement that the Structural Efficiency process be implemented. It was not. The applicants were entitled to expect that this occur. That it did not was a matter of great weight, as was the fact that nothing had been achieved in this regard since 1993. The Commission erred accordingly.

Further, because of those facts, the Commission erred in attaching weight to the fact that the time frame for implementing the classification structure at the BMA would be so lengthy that few gains would arise from it, for reasons I have already expressed.

It is not clear how long the process would take on the evidence, and the Commission made no finding, but it is quite clear that the BMA should not be permitted, as a matter of equity, to gain at the expense of the employees from its failure to co-operate in achieving what the Principle required be implemented. It was open to the Commission to so hold on all of those bases, as a matter of merit, and it should have done so. I would, insofar as it is necessary, so find.

Grounds 1 and 2, and also ground 3, are, for those reasons, made out.

Therefore, since the exercise of discretion miscarried at first instance, in terms prescribed in House v The King (op cit) (HC), as I find for those reasons, it is open to the Full Bench to substitute the exercise of its own discretion for that of the Commission at first instance.

For those reasons, and upon the findings which I have said were necessary to be made, and which I make, I would exercise discretion and substitute the Full Bench's decision as follows.

I would, for those reasons, uphold the appeal. This matter is best dealt with by saying that the decision at first instance should be varied by ordering a grant of the variation sought by deleting the exemption for the respondent so that Appendix D applies to the appellants' members employed in the BMA Breakdown Branch. I would also vary the order at first instance to give liberty to apply to the Commission at first instance for the Commission to decide any necessary adaptations to Appendix D which are established by either of the parties as being required to be made, provided that such application is made in writing within 14 days of the date hereof. In the event that such an application is made, I would order that the variation not take effect until that application is heard and determined, provided that such hearing and determination is completed within 30 days. (The Commission itself has power to hear and determine all necessary matters to enable such variation to be implemented). I would vary the decision made at first instance to delete the exemption from the effect of Appendix D, subject to those matters being complied with expeditiously.

GEORGE C: The background to this matter and the principles which bind the Full Bench in appeals of this nature are set out in some detail by His Honour the President and need not be repeated here.

The question before the Commission at first instance was whether the exemption of the BMA from the operation of Appendix D to the Building Trades (Government) Award No. 31A of 1966 should be removed by order of the Commission. The answer to that question necessarily involved a consideration of the Structural Efficiency Principle enunciated by the Commission in Court Session in its State Wage Decisions.

The Structural Efficiency Principle provides a framework through which it is intended that parties to an award cooperate positively in a fundamental review of awards with a view to implementing measures to improve efficiency in industry and provide employees with access to more varied fulfilling and better paid jobs (see 68 WAIG 2412, 67 WAIG 2917, 71 WAIG 1723, 72 WAIG 191, 74 WAIG 198 and 75 WAIG 23). General wage increases in a number of those State Wage Decisions were dependent upon commitments by the parties to this process.

The measures to be addressed in accordance with the Structural Efficiency Principle include but are not limited to—

"• establishing skill-related career paths which provide an incentive for employees to continue to participate in skill formation;

- eliminating impediments to multi-skilling and broadening the range of tasks which an employee may be required to perform;
- creating appropriate relativities between different categories of employees within the award and at enterprise level;
- ensuring that working patterns and arrangements enhance flexibility and the efficiency of the industry;
- including properly fixed minimum rates for classifications in awards relate appropriately to one another, with any amounts in excess of these properly fixed minimum rates being expressed as supplementary payments;
- updating and/or rationalising the list of respondents to awards; and
- addressing any cases where award provisions discriminate against sections of the workforce.
- examining both award and non-award matters to test whether work classifications and basic work patterns and arrangements are appropriate—the examination to include specific consideration of—
  - (i) the contract of employment including the employment of casual, part-time, temporary, fixed term and seasonal employees,
  - (ii) the arrangement of working hours,
  - (iii) the scope and incidence of the award;
- inserting facilitative provisions in relevant clauses of the award;
- establishing a consultative mechanism and procedures appropriate to their size, structure and needs for consultation and negotiation on matters affecting their efficiency and productivity;
- providing in awards, in order to ensure increased efficiency and productivity at the enterprise level, while not limiting the rights of either an employer or union to arbitration, a process whereby consideration can be given to changes in award provisions; any agreement reached under this process would have to be formally ratified by the Commission and any disputed areas should be subject to conciliation and/or arbitration; and
- providing in an award a provision to the effect that an employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training."

The nature of the process under the Structural Efficiency Principle is that it encourages the parties to take responsibility for the process. The failure of that to occur may be addressed by the Commission in three ways. Firstly, where appropriate, through an enquiry by the Commission into the delivery of the commitments to structural efficiency (see 75 WAIG 23 at 29), secondly by conference proceedings pursuant to S.44 of the Industrial Relations Act 1979 and thirdly an application by a party to vary an award consistent with the Structural Efficiency Principle (see Section 3 Role of Arbitration and the Award System, Section 1—Award Safety Net, of the State Wage Principles—75 WAIG 23 at 41). The application at first instance was before the Commission in the latter circumstance.

Having heard the parties at first instance the Commission made a number of findings upon which the decision now appealed against was based. The findings are summarised in the Reasons for Decision of His Honour the President. To these, however, I would add one further important finding to the effect that the merits of the appendix itself were not argued before the Commission at first instance (See AB 19).

In my view these findings were open to the Commission at first instance on the evidence and the question to be answered as a consequence of this appeal is whether on the basis of the findings the refusal to delete the exemption of the BMA from the operation of Appendix D to the Building Trades (Government) Award No. 31A of 1966 the Commission erred in law or in fact or in the proper exercise of its discretion as asserted in the grounds of appeal.

The first ground of appeal asserts that the Commission at first instance erred in law and in fact "in failing to apply the wage fixing principles formulated by the Commission in that the current wage fixing principles allow for the Structural Efficiency Principal (sic) to be applied to BMA employees and that the Commission refused to apply those principles" (AB 3). In my view this misconstrues the Structural Efficiency Principle and the role of the Commission in giving it effect. The nature of the Structural Efficiency Principle and the Commission's role in giving it effect can be ascertained by reference to the following excerpts from State Wage Decisions dating back to 1988.

> "It is to be understood that the Structural Efficiency Principle is the key element in the new system of wage fixation and that without limiting the matters to be addressed in a review of an award or industrial agreement, it is intended that the new Principle will provide the incentive and scope for—
>
> establishing skill related career paths which provide an incentive for workers to continue to participate in skill formation;
>
> eliminating impediments to multi-skilling and broadening the range of tasks which a worker may be required to perform;
>
> creating appropriate relativities between categories of workers within the award at an enterprise level;
>
> ensuring that working patterns and arrangements enhance flexibility and meet the competitive requirements of the industry;
>
> including properly fixed minimum rates for classifications in awards, related appropriately to one another, with any amounts in excess of these properly fixed minimum rates being expressed as supplementary payments;
>
> updating and/or rationalising the list of respondents to awards;
>
> addressing any cases where award provisions discriminate against sections of the work force.
>
> While the Commission requires a formal commitment to be given by unions seeking an increase in accordance with the Structural Efficiency Principles, it is not necessary that they submit a schedule of matters to be addressed. It may well be that where there is agreement between the parties seeking the increases, consultation will have taken place on a programme of review. However this is not a condition which attaches to the Structural Efficiency Principle. It is sufficient for the Commission to be satisfied that there is a genuine undertaking to co-operate positively in a fundamental review of the award or industrial agreement."
>
> [68 WAIG 2412 at 2413]
>
> "There should be no doubt about the scope of matters which may be addressed as part of structural efficiency exercises. Reference to paragraphs under the heading "Meaning of the Structural Efficiency Principle" at pages 3 and 4 of the February 1989 Review (Print H8200) illustrates this. In addition to those matters which address career paths, establishing appropriate award relativities and determining properly fixed minimum rates, the Principle comprehends that issues involving the removal of award restrictions on contracts of employment, a review of the scope and incidents of awards and the elimination

of barriers to efficiency that arise from demarcation issues, may be addressed."

[69 WAIG 2913 at 2923]

"It would be folly for the Commission to set down a check list of initiatives to be followed in a structural efficiency exercise. The needs and aspirations of employees and employers will dictate the agenda to which they will have a commitment."

[69 WAIG 2913 at 2924]

"A feature of the Structural Efficiency Principle is that it leads to restructuring at the enterprise level. Often its effectiveness is dependent upon enterprise specific arrangements, the nature of which involves variations to conditions of employment and wage rates. We suspect that with the growth in understanding of the Structural Efficiency Principle and in light of the progress that some have made under structural reform that there will be greater focus on enterprise agreements."

[71 WAIG 1723 at 1728]

"A number of issues raised during proceedings go to the scope of changes under Structural Efficiency. These involve the restructuring of minimum rates awards to establish appropriate equitable wage relationships within and between awards and industries. In the August 1989 National Wage Case Decision the Full Bench stated:

"We cannot over emphasise the importance of successfully applying the structural efficiency principle and the minimum rates adjustment process. These exercises provide an opportunity for the parties to display the maturity required to overcome the wage instabilities with which the community is only too familiar. It also provides the opportunity to take an essential step towards institutional reform which is a pre-requisite to a more flexible system of wage fixation."

(Print H9100 at p 14)

The development of the Enterprise Bargaining Principle gives effect to the flexibility in the wages systems foreshadowed in 1989. However, the advent of this facet of change within Structural Efficiency does not remove the need to continue the restructuring of minimum rates awards into wage structures with properly established base rates and supplementary payments."

[72 WAIG 191 at 199]

"By retaining the Structural Efficiency Principle and the availability of adjustments under previous State Wage Cases the opportunity exists for parties to maintain the relevance of their awards through structural efficiency reviews. This avenue also complements the review of awards referred to by the Australian Commission under Section 150A of the Industrial Relations Act 1988 (Cwlth.). However the Structural Efficiency process has the virtue of enabling the parties to an award to take responsibility for the process rather than having it driven by the Commission under statute.

Commitments have been given by parties under Structural Efficiency. Improvements in efficiency and career opportunities should have resulted. Parties should have achieved this. However, it appears that this has not always been the case. The Commission gives notice that where appropriate it will inquire into the delivery of these commitments."

[75 WAIG 23 at 29]

It is clear from what is said above that Structural Efficiency involves a broad agenda and that "The needs and aspirations of employees and employers will dictate the agenda to which they will have a commitment" (Supra at 2924). While it is open to the Commission to facilitate the process, as indicated by the Commission at first instance, it would be a wrong application of the Structural Efficiency Principle, contrary to what is asserted in Appeal Ground 1, for the Commission to impose structural efficiency on the parties as though it was mandatory in its terms. The Structural Efficiency Principle does no more than provide a framework through which it is intended that the parties co-operate positively in a fundamental review of their award with a view to implementing measures to improve the efficiency of industry and provide employees with access to more varied, fulfilling and better paid jobs. Any variation to give effect to structural efficiency measures needs to be considered in the context of Section 2 Enterprise Bargaining or Section 3 Role of Arbitration and the Award System.

While the Commission in Court Session notes in its December 1994 State Wage Decision that "Commitments have been given by parties under Structural Efficiency. Improvements in efficiency and career opportunities should have resulted. Parties should have achieved this. However, it appears that this has not always been the case" (Supra at 29), the Commission takes the matter no further than to give notice that where appropriate it will inquire into the delivery of these commitments. For this reason the commission at first instance did not in my view err in the manner asserted by Appeal Ground 1.

I turn now to the grounds which go to the exercise of the discretion of the Commission at first instance and the finding as a fact that the timeframe for implementing the classification structure at the BMA would be lengthy and few gains would arise out of the process.

Section 3 Role of Arbitration and the Award System of the December 1994 State Wage Principles (Supra at 41) provides that "Existing wages and conditions in the relevant award or awards shall be the safety net underpinning enterprise bargaining". The Principles further provide that the Commission will generally not arbitrate to vary award wages and conditions above and below the award safety net. The avenues open to the parties to vary the award safety net are through Enterprise Bargaining (Section 2 Enterprise Bargaining), applications consistent with Structural Efficiency principle under previous State Wage Decisions (Section 3 Role of Arbitration and The Award System) or Special Cases. This matter falls within the second of these three avenues.

In my view there are five crucial findings made by the Commission at first instance which I have indicated above are properly made on the evidence.

1. The terms of Appendix D were resolved without the BMA having input into the matters agreed or to the decision made by the Commission in these aspects of the Appendix which required arbitration.
2. The merits of the Appendix itself were not argued before the Commission at first instance.
3. The Appendix could be adapted in relation to the work done by the BMA. However, some time and work and importantly , co-operation would be required to achieve this.
4. (a) The unions had genuinely sought negotiations for an enterprise agreement and classification structure for the employees concerned.
   (b) The agreement to exclude the BMA from Appendix D was in the hope that the unions and the BMA could resolve an integrated classification structure. That hope and belief were not reciprocated.
5. A significant amount of time and effort would be required for very little result and on balance, would not be a productive use of time and resources. It would be time and resources spent to implement something which was agreed by other parties in circumstances which do not apply here and in terms which do not reflect the joint intentions or objectives of the parties.

In the end the Commission at first instance concluded with reluctance that the application to delete the exemption for the BMA from the operation of Appendix D should be refused. The reasons for this conclusion were said to stem largely from the time when Beech C. amended the Building Trades (Government) Award No. 31A of 1966 to attach the Appendix but took into account other issues including the question of the future of the employer's operations. That latter consideration, in my view, led the learned Commissioner into error in that she held and relied upon the view that a significant amount of time and effort would be applied for very little result without having heard the merits of the application itself. The argument on behalf of the Applicant union relied solely on what had been agreed to by other Respondents, without input

from the BMA, and evidence that the Appendix had been able to be applied in the particular circumstances of some of those other Respondents. While it was also found that the Appendix could be adapted to the work done at the BMA, this finding was made in the absence, as the Commission at first instance noted, of any argument as to the merit of the Appendix itself in the context of its application to the BMA. In these circumstances it is my view that Ground 3 is made out and I would uphold the appeal on that Ground.

I do not accept that any of the areas specified in Ground 2 are made out. In my view Ground 2(a) is misconceived for reasons already expressed in relation to Ground 1 and the other matters referred to do not on the evidence or findings provide any basis upon which the Full Bench could interfere in the exercise of the discretion of the Commission at first instance.

Having found that Appeal Ground 3 is made out it remains only to consider what remedy should apply. In all of the circumstances I would suspend the order of the Commission at first instance and remit the matter for further hearing as to the merit of the Application and for determination of the Application in accordance with the Principles.

GIFFORD C: I have read the reasons for decision in draft form, of His Honour the President and regret that I do not agree with them. In turn, I have read the reasons for decision, in draft form, of Mr Commissioner George and find myself in agreement with them. Further, I agree with the remedy he proposes.

THE PRESIDENT: For those reasons, the appeal is upheld and the decision of the Commission at first instance is suspended and the matter remitted back to the Commission at first instance for further hearing as to the merit of the application and for determination of the application in accordance with the Principles.

Order accordingly

Appearances: Ms J Harrison, as agent, on behalf of the appellants.

Mr R Hooker (of Counsel), by leave, on behalf of the respondent.

WESTERN AUSTRALIAN

INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasters Union of Workers and Others
(Appellants)

and

Minister for Works
(Respondent).

No 717 of 1995.

BEFORE THE FULL BENCH.

12 December 1995.

HIS HONOUR THE PRESIDENT P J SHARKEY.
COMMISSIONER R N GEORGE.
COMMISSIONER R H GIFFORD.

Order.

This matter having come on for hearing before the Full Bench on the 4th day of September 1995, and having heard Ms J Harrison, as agent, on behalf of the appellants and Mr R Hooker (of Counsel), by leave, on behalf of the respondent, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 28th day of November 1995 wherein it was found that the appeal should be upheld, and this matter having come on for a speaking to the minutes on the 12th day of December 1995, and having heard Ms J Harrison, as agent, on behalf of the appellants and Mr M Jenkin, as agent, on behalf of the respondent, and the Full Bench having given reasons, it is this day, the 12th day of December 1995, ordered and directed as follows—

(1) THAT appeal No 717 of 1995 be and is hereby upheld.

(2) THAT the decision of the Commission in application No 1279 of 1994 made on the 30th day of May 1995 be and is hereby suspended and the matter remitted back to the Commission at first instance for further hearing as to the merit of the application and for determination of the application in accordance with the Principles.

By the Full Bench

(Sgd.) P. J. SHARKEY,
President.

[L.S]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers', Painters and Plasterers Union of Workers and Others
(Appellants)

and

Minister for Works and Others
(Respondents).

No. 1128 of 1995.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.
CHIEF COMMISSIONER W S COLEMAN.
SENIOR COMMISSIONER G G HALLIWELL.

20 December 1995.

Reasons for Decision.

THE PRESIDENT: These are the unanimous reasons for decision of the Full Bench.

This is an appeal against the decision of the Commission made at first instance on 22 September 1995. By that decision, the Commission dismissed the application of the now appellants whereby they sought to vary the Building Trades (Government) Award 1968, No 31A of 1966 (hereinafter referred to as "the award"), pursuant to s.40 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act"), by seeking a wage increase.

The appellants cover and covered employees bound by the award, and the firstnamed respondent is and was the employer of those employees and is bound by the award.

The application was to vary clause 9—Wages and Appendix D—Award Restructuring of the award.

GROUNDS OF APPLICATION

The grounds upon which the application was brought were as follows (see page 12 of the appeal book (hereinafter referred to as "AB"))—

"1. The Wage increase reflect a move to bring parity between the Engineering Trades (Government) Award and the Building Trades (Government) Award with respect to the base rate paid to tradespeople. Due to the classification structure now being based on a relativity matrix the other rates on either side of the base tradesperson rate have moved accordingly.

2. The wages clause of the Award needs to be altered to reflect changes to the wages paid to Tradespeople, Tradespeople (Special Class) and Plumbers."

GROUNDS OF APPEAL

The grounds of appeal read as follows (see page 4 (AB))—

"1. The Commission erred in law and in fact in failing to apply the wage fixing principles formulated by the Commission in that the current wage fixing principles allow for the Structural Efficiency Principle to be applied to WA Government employees, and the Commission refused to apply that Principle.

2. The Commission erred in fact in holding that the Engineering Trades (Government) Award was a paid rates award and therefore not capable of operating as a benchmark award for comparison with the Building Trades (Government) Award, 31A of 1966.

3. The Commission erred in fact in holding that the rate in the Engineering Trades (Government) Award was an inappropriate rate to use as a benchmark for rates of pay in the Building Trades (Government) Award 31A of 1966.
4. The Commission failed to give sufficient weight to the evidence of Mr Dallas and Mr Watson, that their qualifications and job skills were equal, that they worked in the same work environment, they both worked under classification structures holding the same level of skills and task requirements, and yet they received different rates of pay.

In the circumstances, the Appellant seeks orders that:

a) The Appeal be upheld; and
b) The Order made by the Commission on 22 September 1995 be quashed or alternatively varied in such manner as the Full Bench deems appropriate."

BACKGROUND

The change sought was sought in accordance with the Structural Efficiency Principle, which remains a Principle adopted by this Commission, and which, as set out in the State Wage Decision (68 WAIG 2412 at 2416), reads in its relevant part as follows—

"STRUCTURAL EFFICIENCY

Increases in wages and salaries or improvements in conditions shall be justified if the union(s) party to an award formally agree(s) to co-operate positively in a fundamental review of that award with a view to implementing measures to improve the efficiency of industry and provide workers with access to more varied, fulfilling and better paid positions. The measures to be considered should include but not be limited to:

- establishing skill-related career paths which provide an incentive for workers to continue to participate in skill formation;

...

- creating appropriate relativities between different categories of workers within the award and at enterprise level;

...

- including properly fixed minimum rates for classifications in awards, related appropriately to one another, with any amounts in excess of these properly fixed minimum rates being expressed as supplementary payments;"

This application was based on two main grounds which we have set out above.

It is a condition of the award that any variation to its terms on or from 30 December 1994, including the $8.00 per week Arbitrated Safety Net Adjustments, shall not be made except in compliance with the Statement of Principles set down by the Commission in Court Session in the reasons for decision in matter No 985 of 1994 (75 WAIG 23) (see clause 1A). Thus, the parties are bound to accept that no variation shall be made which does not comply with those Principles after 30 December 1994. That was the case with this application.

The respondents' case was that the two awards sought to be compared were inappropriate for comparison. This is because the Engineering Trades (Government) Award 1967, Award Nos 29, 30 and 31 of 1961 and 3 of 1962 (hereinafter referred to as "the Engineering Trades (Government) Award), was a paid rates award and not a minimum rates award. The subject award, however, was said to be a minimum rates award, and, accordingly, the two could not be compared. To do so, it was said, would be to act contrary to the Structural Efficiency Principle.

From the decision of George C in MEWU and Another v Honourable Minister for Works and Others 73 WAIG 118, it was clear that the Engineering Trades (Government) Award was converted to a paid rates award. The Commission at first instance held, and so George C had held.

The Commission held itself bound to apply the terms of the Statement of Principles determined by the Commission in Court Session in the State Wage Decision (75 WAIG 73) as the Commission was bound to do (see RRIA v AMWSU and Others 73 WAIG 1993 (IAC)). Indeed, as the award bound it to do so, as we have already observed. Any review or adjustment of wages by those Principles must take place consistent with the Structural Efficiency Principle. The Commission held, and it is the case, that the National Wage Case and the State Wage Case (see 72 WAIG 191 at 206) attached great significance to minimum rates awards being used for the setting of properly fixed minimum classification rates in other minimum rates awards. As the Commission held, correctly, the Principles do not provide for the use of paid rates awards in that process. The Commission therefore held that it was contrary to the Principles to compare a minimum classification in a minimum rates award with a paid rates award for the purpose of properly fixing the minimum rates award rates. The Commission held, too, that the award was a minimum rates award with its rates and classification structure based on an as yet unresolved Federal award.

The Commission at first instance also held that there was, in any event, no potential for flow-on, and (see 73 WAIG 121) also because of the history of awards it would be an inappropriate comparison. (There is no doubt that the Engineering Trades (Government) Award is a paid rates award for the reasons which the Full Bench found in Honourable Minister for Education, Employment and Training and Others v ALHMWU 75 WAIG 14 (FB). We were certainly not persuaded that it was not).

The question is whether the award is a minimum rates award. In Comalco Aluminium (Bell Bay) Ltd v O'Connor and Others 131 ALR 657, in the joint judgment of Wilcox CJ and Keely J, with whom Moore J agreed generally, the Full Court of the Australian Industrial Court discussed what a paid rates award was and what a minimum rates award is. Although Their Honours did so in terms of the definition contained in s.4 of the Industrial Relations Act 1988 (as amended) (Cth), it was common ground before us that the definition which was applied in this State by the Commission in Court Session in connection with the Principles, in any event, was the same. Their Honours held that a paid rates award is one which specifies actual rather than minimum entitlements in relation to wages and conditions. Their Honours said at page 683—

> "The definition of "paid rates award" draws a clear distinction between "specifying actual entitlements" and "[specifying] minimum entitlements". When minimum entitlements are specified in an award, there is not necessarily an expectation on anybody's part that these will accord with the entitlements actually provided to employees. It is commonplace, in many industries, for employers to provide over-award benefits. Because there is no necessary expectation of a correlation between specified minimum entitlements and actual entitlements, it is clear that an award that specifies minimum entitlements is not a paid rates award. As we have pointed out, the Act uses the term "award" to refer to a complete instrument, not part of it. It seems to us that, unless the whole award meets the test of specifying actual entitlements rather than minimum entitlements, it is not a paid rates award. It is not enough that it specifies some actual entitlements, if it specifies only minimum standards in relation to others."

Their Honours referred, too, to the distinction between a paid rates award and a hybrid award, quoting an extract from the Australian Industrial Relations Commission in the February 1989 Review of Wage Fixing Principles, which reads as follows (see pages 683-684)—

> "There has been a clear distinction, at least in theory, between minimum rates and paid rates awards. The former have prescribed rates recognised as being legal minima in addition to which supplementary payments might be awarded and over-award payments reflecting the market might exist; the latter have prescribed rates which were intended to be actual rates of pay.
>
> On recent experience there are grounds for doubting the wisdom of attempting to maintain paid rates awards in the private sector ...
>
> A paid rates award must, as the name implies, prescribe all of the rates and conditions which actually apply; for it to do otherwise must modify its status to that of a hybrid for which no provision is made in the principles."

The Commission in Court Session quoted those passages in the 1992 State Wage Case (72 WAIG 191 at 199) adding its own comments—

> "However, the distinction between the two types of awards based on wage rates becomes blurred when conditions of employment are also used as a factor in identifying the character of an award."

The Commission in Court Session also quoted the Australian Industrial Relations Commission at page 199—

> "The Paid Rate Award Principle requires the Commission, on each occasion an application is before it for the variation of a paid rates award to "enquire whether the integrity of the award has been preserved"."

So what the Structural Efficiency Principle, summarised, required in this instance was as follows—

(1) That there be properly fixed minimum rates for classifications in awards.

(2) That these be related appropriately to one another.

(3) That any amounts in excess of those properly fixed minimum rates be expressed as supplementary payments.

To achieve this in this case, the applicants relied upon a comparison between the two awards. The wage increase sought was to achieve "parity between the Engineering Trades (Government) Award and the Building Trades (Government) Award with respect to the base rate paid to tradespeople" (see page 12 (AB)). To be comparable they had to be minimum rates awards.

The Engineering Trades (Government) Award, upon application by two organisations, the Metals and Engineering Workers' Union—Western Australia and the Australian Electrical, Electronics, Foundry and Engineering Workers Union (Western Australian Branch), was declared by George C to be a paid rates award within the Paid Rates Principle. We do not think that we can therefore go behind that decision. Even if we could, on the submissions made by Ms Harrison, the Engineering Trades (Government) Award could be said to be more a hybrid award (as described supra) than a minimum rates award, and would still not be an award comparable within the Principle with the award.

The award itself is certainly a minimum rates award, because even though the most relevant clauses and provisions such as clauses 7, 9, 11, 13, 14, 14A, 14B, 15, 19, 20, 21, 24, 25, 29, 30 and 42 are paid rate clauses because they specify actual entitlements, clause 9 contains a clause whereby the applicant undertakes not to pursue "any extra claims, award or overaward except when consistent with the State Wage Principles". (That connotes liberty to pursue over-award claims consistent with the Principles).

It would seem to us that that undertaking would be unnecessary, at least in relation to over-award claims, if the award were a paid rates award. However, if it is a minimum rates award then it cannot be compared to the Engineering Trades (Government) Award determined by the Commission to be a paid rates award. If we are wrong in that, then the award is a paid rates award and not comparable to the Engineering Trades (Government) Award for the purposes of the Structural Efficiency Principle.

In any event, the Commission held that, having regard to the history of the two awards, it would be an inappropriate comparison, in any event, a history which as set out by the Commission bears that finding out.

For those reasons, the Commission did not err as the grounds of appeal allege, nor did the Commission's discretion miscarry in its exercise, in terms of House v The King [1936] 55 CLR 499 at 505 (HC). We would dismiss the appeal.

Order accordingly

Appearances: Ms J Harrison, as agent, on behalf of the appellants.

Mr P L Wishart on behalf of the respondents.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers', Painters and Plasterers Union of Workers and Others
(Appellants)
and
Minister for Works and Others
(Respondents).

No. 1128 of 1995.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY.
CHIEF COMMISSIONER W S COLEMAN.
SENIOR COMMISSIONER G G HALLIWELL.

20 December 1995.

Order.

THIS matter having come on for hearing before the Full Bench on the 4th day of December 1995, and having heard Ms J Harrison, as agent, on behalf of the appellants and Mr P L Wishart on behalf of the respondents, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 20th day of December 1995 wherein it was found that the appeal should be dismissed, it is this day, the 20th day of December 1995, ordered that appeal No 1128 of 1995 be and is hereby dismissed.

By the Full Bench

(Sgd.) P.J. SHARKEY,
[L.S] President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Forest Products, Furnishing and Allied Industries Industrial Union of Workers, WA
(Applicant)
and
Joyce Australia Ltd and Others, Dubrov Pty Ltd t/a Innovation and Others, Bunnings Ltd and Others and Wesfi Pty Ltd
(Respondents).

Nos. 753, 754, 755 and 756 of 1995.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY.
COMMISSIONER R N GEORGE.
COMMISSIONER C B PARKS.

12 December 1995.

Reasons for Decision.

THE PRESIDENT: These are the joint reasons for decision of Parks C and myself.

We heard an application to extend time for the lodging of appeal books in these appeals, that application having been served as required by the Industrial Relations Commission Regulations 1985 (hereinafter referred to as "the Regulations") on all of the respondents.

There was also an application made ex parte, as the Regulations permit, for an order for substituted service of the appeal books herein upon the respondents. Such an application was not made in appeal No 756 of 1995.

As we understand it, the notices of appeal have been served upon all of those persons who are properly respondents upon these appeals.

The notices of appeal were filed herein on 3 July 1995, and the orders made by the Commission and appealed against were deposited in the registry on 12 June 1995, since the orders bear the stamp of the Registrar to that effect.

On 10 July 1995, the appellant had forwarded to all of the respondents a notice to which was attached the appropriate extracts from the Regulations in photocopy form, together with a copy of the notice of appeal. Inter alia, the notice advised

these persons that should they require a copy of the appeal book, it could be acquired by contacting the appellant. Mr Lourey, on behalf of the appellant, informed us that no person had sought thus far a copy of the appeal book.

The application for extension of time and for an order for substituted service have been pursued in this matter. There are 280 respondents involved, and the cost in time and in money of producing a large number of appeal books which may not, in the end, be required by the parties means, in our opinion, that an order for substituted service of the appeal books is the best and most just way of bringing the appeal books to the notice of the respondents. Indeed, this has already been done by forwarding the notice to the respondents of 10 July 1995.

Specific orders were sought in relation to various organisations who represent respondents, and that in itself supports the view that those persons most interested (in the more common meaning of interested) will have been directly served and those persons who may not be interested in pursuing their case as respondents will be given sufficient notice that if they are interested to obtain a copy of the appeal book and pursue their interest.

Mr Tomlinson, who appeared for a large number of respondents on whose behalf a warrant had been filed herein, numbering 51, did not oppose the orders sought, and, in fact, did not comment on these applications.

As to the application to extend time within which to file the appeal books, that application obviously depended on the outcome of the application for substituted service, because the number of appeal books to be lodged would not be known until such time as the application for an order for substituted service had been made, if it were made.

In any event, no one has suggested that any injustice has or will be occasioned by us making these two orders, or that any real detriment will or has been suffered. Accordingly, we made those orders.

In addition, we concluded that all of these appeals ought to be heard together, an obvious course to take. Those orders represent a proper disposition of those matters within the prescription of s.27(1)(v) of the Act.

There was one other matter that was raised. Mr Tomlinson, on behalf of those respondents whom he represented, submitted that the notice of appeal had been filed out of time.

S.49(3) of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act") requires that an appeal under s.49 "shall be instituted within 21 days of the date of the decision against which the appeal is brought". The decision appealed against, as we have already observed, was in the form of an order. That is as required by s.34 of the Act. S.36 of the Act requires that every decision of the Commission shall be sealed with the seal of the Commission and be deposited in the office of the Registrar, as well as be open for inspection without charge during office hours by any person interested.

In this case, as we understood Mr Tomlinson's argument, there was evidence that because the Commission had issued its order at 10.00 am on Thursday, 8 June 1995 through the registry, that this was evidence of the order having been deposited in the registry. It is axiomatic, of course, that an order is not perfected and therefore cannot be appealed against unless it is sealed with the seal of the Commission and is deposited in the office of the Registrar. Further, of course, s.34(1) and s.35(1) of the Act have to be complied with. Both are couched in mandatory terms by the use of the word "shall" (see the discussions of the effect of s.36 of the Act in Registrar v MEWU and Others 74 WAIG 1487 (IAC) and McCorry v Como Investments Pty Ltd 69 WAIG 1000 (IAC)). In the latter case, it was held that an appeal was competent, having been instituted within 21 days of the date of decision, that date being when the document was signed, sealed and deposited in the office of the Registrar. The decision cannot be said to have been deposited in the office of the Registrar until the Registrar has formally entered it into his records, the records of the registry. That he does and did by stamping it as deposited. In other words, depositing a decision has connotations of entering the same in the records of the Commission, similar to what is done in the Supreme Court under order 43.14 of the rules of the Supreme Court. The issuing of a decision through the office of the Registrar for collection or in lieu of formally handing the same down is not sufficient. In any event, even were we wrong in this view, the appellant still has the right to extend time within which to lodge the notice of appeal.

We would dismiss the respondents' application in the matter.

GEORGE C: I have had the opportunity of reading the Reasons for Decision of His Honour the President in draft form. I am in agreement with his reasons and conclusions and have nothing to add.

THE PRESIDENT: For those reasons, we dismissed the respondents' application in these matters and made orders accordingly.

Appearances: Mr M J Lourey on behalf of the appellant.

Mr A C Tomlinson on behalf of those respondents for whom a warrant had been filed herein.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Forest Products, Furnishing and Allied Industries Industrial Union of Workers, WA
(Appellant)

and

Joyce Australia Ltd and Others, Dubrov Pty Ltd t/a Innovations and Others, Bunnings Ltd and Others and Wesfi Pty Ltd
(Respondents).

Nos. 753, 754, 755 and 756 of 1995.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY.
COMMISSIONER R N GEORGE.
COMMISSIONER C B PARKS.

5 December 1995.

Order.

THESE matters having come on for hearing before the Full Bench on the 5th day of December 1995, and having heard Mr M J Lourey on behalf of the appellant and Mr A C Tomlinson on behalf of those respondents for whom a warrant had been filed herein, and the Full Bench having determined that its reasons for decision will issue at a future date, it is this day, the 5th day of December 1995, ordered and directed as follows—

(1) THAT appeals Nos 753, 754, 755 and 756 of 1995 be heard together.

(2) THAT the application to strike out the appeals herein be and is hereby dismissed.

(3) THAT time be and is hereby extended to and including the 19th day of December 1995 for the appellant herein to lodge appeal books in these appeals.

(4) THAT following compliance by the appellant to order (3) herein, the appellant serve appeal books on or before the 23rd day of December 1995 as follows—

(a) In appeal No 753 of 1995, serve appeal books on the Chamber of Commerce and Industry of WA, the Furniture Industry Association of WA, the Cabinetmakers' Association of WA, and the Picture Framers' Guild of WA on behalf of the respondents.

(b) In appeal No 754 of 1995, serve appeal books on the Chamber of Commerce and Industry of WA and the Curtain Industry Association of WA on behalf of the respondents.

(c) In appeal No 755 of 1995, serve appeal books on the Chamber of Commerce and Industry of WA and the Forest Industries' Federation of WA on behalf of the respondents.

(d) In appeal No 756 of 1995, serve appeal books on Wesfi Pty Ltd or its agents.

(5) THAT the notices dated the 10th day of July 1995 (exhibit 3) herein and sent to each of the respondents herein stand as substituted service of appeal books in appeals Nos 753, 754 and 755 of 1995 upon all of the respondents, save and except for those represented by the persons or bodies referred to in order (4) hereof.

By the Full Bench

(Sgd.) P.J. SHARKEY,
President.

[L.S]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Forest Products, Furnishing and Allied Industries Industrial Union of Workers, WA
(Appellant)
and
Joyce Australia Ltd and Others, Dubrov Pty Ltd t/a Innovations and Others, Bunnings Ltd and Others and Wesfi Pty Ltd
(Respondents).

Nos. 753, 754, 755 and 756 of 1995.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY.
COMMISSIONER R N GEORGE.
COMMISSIONER C B PARKS.

31 August 1995.

Order.

THESE matters having come on for hearing before the Full Bench on the 31st day of August 1995, and having heard Mr M Lourey on behalf of the appellant and there being no appearance for any respondent, and whereas the Full Bench found it necessary to make such orders as were necessary for the expeditious and just hearing and determination of these matters, it is this day, the 31st day of August 1995, ordered as follows—

(1) THAT the appellant herein do serve notice of application to extend time on the respondents herein within 14 days of the 31st day of August 1995 by forwarding same by post to their addresses to which notices of appeal were served, except that in the case of those respondents represented at first instance by an agent it is sufficient to forward a copy to that agent.

(2) THAT the applications herein be and are hereby adjourned sine die.

By the Full Bench

(Sgd.) P.J. SHARKEY,
President.

[L.S]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ruth Lawson, Joseph Surace and Dean Hall
(Appellants)
and
Joyce Australia Pty Ltd
(Respondent).

No. 420 of 1995.

and

Joyce Australia Pty Ltd
(Appellant)
and
Ruth Lawson, Joseph Surace and Dean Hall.

No. 448 of 1995.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY.
CHIEF COMMISSIONER W S COLEMAN.
COMMISSIONER R H GIFFORD.

18 December 1995.

Reasons for Decision.

THE PRESIDENT: These are the joint reasons for decision of Coleman CC and myself.

These are two appeals to the Full Bench pursuant to s.49 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act"). They were heard together by consent.

Appeal No 420 of 1995 is an appeal against the decision of the Commission, constituted by a single Commissioner, by three employees who were applicants at first instance before the Commission.

Appeal No 448 of 1995 is an appeal by the employer, Joyce Australia Pty Ltd (hereinafter referred to as "Joyce") which was the respondent at first instance.

The three employees had applied to the Commission for orders that they be paid contractual benefits not allowed by their employer, Joyce, and to which they allege they were entitled under their contracts of service.

Application No 601 of 1994 (Mr Joseph Surace's application) and application No 610 of 1994 (Mr Dean Hall's application) were dismissed by the Commission at first instance on 23 March 1995. Application No 593 (Ms Ruth Lawson's application) was dismissed, except for one order which was made on the same date. That was that Ms Lawson be paid by Joyce pro-rata long service leave in accordance with the Long Service Leave Standard Provisions contained at 75 WAIG 1.

(Earlier in the proceedings in a separate decision (Lawson and Others v Joyce Australia Pty Ltd 75 WAIG 155) the Commission, having heard submissions that it had no jurisdiction to hear and determine these matters, decided that it in fact did).

The applicants now appeal against these decisions on the following grounds (see pages 2-6 of the appeal book (hereinafter referred to as "AB") of appeal book No 420 of 1995)—

"1. The Learned Commissioner erred in law in strictly applying the conditions for the implication of a term into a written contract referred to in BP Refinery (Western Port) Pty. Ltd. v. Shire of Hastings (1976) 52 ALJR 20 at page 26 ("the Western Port case") in the circumstances of the present case.

2. In applying the test in the Western Port case the Learned Commissioner erred in applying the law to the facts of the case and thereby erred in concluding that the contracts of employment of the appellants did not contain an implied term about redundancy payment.

3. The Learned Commissioner erred in that he failed to give any, or any sufficient, weight to evidence which showed that the respondent had a consistent custom and practice of granting redundancy pay to its employees which was common knowledge to employees including the appellants.

4. The Learned Commissioner erred in that he failed to give any, or any sufficient, weight to evidence which showed that the respondent had a consistent custom and practice of granting redundancy pay to its employees at either the relevant award rate or at the rate of 2 weeks' pay for every year of service up to a maximum of 13 weeks' pay whichever was the higher and that this practice was codified in a company policy manual to ensure the company's practice was consistent throughout Australia.
5. The Learned Commissioner erred in that he failed to give any, or any sufficient, weight to evidence which showed that the respondent's custom and practice concerning redundancy pay was so entrenched that only the Deputy General Manager of the respondent could alter the established practice.
6. The Learned Commissioner erred in that he failed to give any, or any sufficient, weight to evidence which showed that the appellants were the only employees whose positions had been made redundant by the respondent who had not been paid redundancy pay in accordance with its established custom and practice.
7. By reason of the errors referred to in grounds 3 to 6 inclusive, the Learned Commissioner erred further in not concluding on the weight of the evidence that a term was to be implied into the contract of employment of each appellant to the effect that redundancy pay of 2 weeks for every year of service up to 13 weeks' pay would be paid if their positions became redundant.
8. By reason of the error referred to in Ground 7, the Learned Commissioner then failed to consider and determine whether the implied term concerning redundancy itself contained an exclusion that it would not apply if the respondent obtained acceptable alternative employment for the employee.
9. By reason of the error referred to in Ground 8, the Learned Commissioner erred in law by considering and giving weight to evidence that the respondent's reason for not granting redundancy pay to the appellants was because the respondent believed it had found suitable alternative employment for the applicants.
10. The Learned Commissioner erred further in that he went on to decide that the alternative employment was, on its merits, suitable alternative employment, contrary to the evidence which established that:
    (a) contrary to its initial expectations, the respondent was unable to get the prospective employer to agree to continue its employees on in employment without loss of service or benefits;
    (b) the offer of employment made to the appellants was identical to that made to any applicant for such employment and did not preserve any service or entitlements accrued by the appellants during their employment with the respondent.
11. The Learned Commissioner erred in giving weight to the respondent's submission that it ought not have to pay redundancy pay to the appellants because it had found alternative employment for the appellants when:
    (a) the evidence that the respondent did nothing more than provide the prospective employer with details of its redundant employees so the prospective employer could choose who it wished to employ.
    (b) the evidence established that the respondent's decision to terminate the appellants had caused the appellants to lose the benefit of their accrued service entitlements such as sick leave and long service leave.
    (c) the evidence established that the offer of alternative employment made to the applicants did not preserve any existing service or accrued entitlements.

As a remedy, the Appellants would seek an order from the Full Bench quashing the decision at first instance and further orders effecting the relief sought originally, that is, payment of the appropriate amounts to the following named:

NAME	$
Ruth Lawson	5,822.70
Joseph Surace	7,250.10
Dean Hall	3,916.00

Alternatively, the Appellants seek such orders as the Full Bench considers appropriate, or orders remitting the matters back to the Commission for further hearing and determination."

The respondent, Joyce, now appeals against that part of the decision relating to Ms Lawson's application, No 593 of 1994, on the following grounds, as amended (see pages 2-3 (AB) of appeal book No 448 of 1995)—

"1. The Commission erred in law and exceeded its jurisdiction in finding that it had the power to issue an order for the payment of denied contractual benefits to an ex-employee.
2. The Commission erred in law and exceeded its jurisdiction in acting contrary to the decisions of the Industrial Appeal Court in Robe River Iron Associates -vs- Association of Drafting, Supervisory and Technical Employees of Western Australia (68 WAIG 11) and Kounis Metal Industries Pty Ltd -vs- Transport Workers Union of Australia, Industrial Union of Workers, W.A. Branch (73 WAIG 14) and Coles Myer Ltd -vs- Coppin, Ryan and Sweeting (73 WAIG 1754).
3. The Commission erred in the proper exercise of its discretion in that it mistook the nature of the claims being made when:
    (i) the claims were for redundancy payments;
    (ii) the original claim for pro-rata long service leave in Application No. 593 of 1994 was not proceeded with;
    (iii) the Commission dealt with Application No. 593 of 1994 as if it were a claim for pro-rata long service leave.
4. The Commission erred in the proper exercise of its discretion in that it applied the wrong test in the determination of Application No. 593 of 1994 as:
    (i) the Commission was required to adopt a judicial approach, whereas;
    (ii) the Commission adopted an arbitral approach and considered merit factors.
5. The Commission erred in the proper exercise of its discretion in that it took account of irrelevant factors when:
    (i) having found that there was no expressed or implied contractual entitlement to redundancy payments, the Commission should have dismissed Application No. 593 of 1994.
    (ii) having found that there was no expressed or implied contractual entitlement to redundancy payments, the Commission was not required to consider whether the alternative employment offered to Mrs Ruth Lawson was suitable.

SUBSTITUTED ORDER SOUGHT

The appellant seeks an order that the decision the subject of the appeal be quashed and that the original order be varied to indicate that Application No. 593 of 1994 is dismissed in its entirety."

BACKGROUND

We should first set out the background to this matter, which does not seem to have been in dispute.

The three applicants were employees of Joyce, a company involved in the manufacture and sale of timber products, and, in particular, furniture. That company sold its timber division to National Furniture Industries (hereinafter referred to as "NFI"), another and separate company. That sale took place,

or was at least finalised, on 27 May 1994. As a result, 25 employees were made redundant. Amongst these were Ms Lawson who had been employed for nine years and eight months by Joyce, Mr Surace who had been employed for 18 years and four months, and Mr Hall who had been employed for four years and one month. Ms Lawson was employed in a clerical capacity. Therefore she was employed pursuant to the Clerks Award. Mr Surace was the kitchen sales manager. Mr Hall was employed as the factory supervisor.

There had been an announcement of the forthcoming sale made to all employees on 16 May 1994. Each of the three applicants received a letter from Joyce dated 23 May 1994, which, formal parts omitted, reads as follows (see pages 148, 152 and 156 (AB) of appeal book No 420 of 1995)—

> "Further to the announcement last Monday, this letter is to confirm that due to the sale of the Timber activity at O'Connor to National Furniture Industries, your employment with Joyce Corporation will cease effective from Friday 27 May, 1994.
>
> We understand that National Furniture Industries has offered comparable employment with their organisation commencing immediately after your termination with Joyce.
>
> Where applicable, any monies owed in respect of annual leave and long service leave entitlements and, payment in lieu of notice will be made available on your final day.
>
> We thank you for your contribution whilst you were with Joyce and wish you every success in your future endeavours."

Mr Hall received a payment in lieu of annual leave, a payment in lieu of notice, no payment in lieu of long service leave and no "severance/redundancy payment" (see page 187 (AB) of appeal book No 420 of 1995). The total amount paid was $1770.13.

In Mr Surace's case he was paid $8905.45, which included $4439.89 in lieu of long service leave, $1282.68 in lieu of notice and $3184.88 for annual leave. Nothing was paid for any severance/redundancy payment.

Ms Lawson was paid a total of $1380.17, including $36.47 for annual leave, no amount for long service leave and $1343.70 in lieu of notice. She was paid no "severance/redundancy payment".

Each person commenced employment with NFI on 30 May 1994, having accepted the employment which was offered to them, and which Joyce had attempted to obtain for them.

The applicants' claim at first instance was that they should have been paid two weeks salary for every year of service, making the total amount claimed to be payable to Ms Lawson $5822.70, to Mr Surace $7250.10, and to Mr Hall $3916.00. The claim was based on portions of a document called the "Joyce Corporation Ltd Policies and Procedures Manual" (see pages 146-147 (AB) of appeal book No 420 of 1995). The introduction to the manual provides, inter alia—

> "Use of the policies and procedures manual is mandatory and any deviation must be authorised by the Chairman or Deputy Managing Director".

On the subject of "redundancy/retrenchment payments", policy No P5/92 issued on 30 April 1992 in the following terms—

> "The Company policy is to pay two weeks salary for every year of service up to a maximum of 13 weeks where benefits are not specified under an Award or agreement.
>
> All redundancy/retrenchment payments made are to be authorised by an Executive Director of the Company prior to payment.
>
> Any payments in excess of those set out above are at the discretion of the Managing Director or Deputy Managing Director.
>
> The above policy can also be applied, at the discretion of Executive Directors, to employees leaving work because of ill health."

There was evidence from Paul Mathew Roseingrave, the personnel manager at Joyce, that redundancy payments are made when, in fact, the decision has been made by the company that a particular position is not further required. The policy has been applied to both salaried officers and "weekly" employees. The policy was applied to a number of personnel (see pages 60-64 (AB) of appeal book No 420 of 1995). His evidence was that the policy was not applied to the three applicants because alternative and/or comparable employment was obtained by Joyce with the new employer on terms and conditions no less favourable than what they in fact had at Joyce at that time. No such exemption was included in the written policy, but each payment was said to be authorised by the executive director (see page 66 (AB) of appeal book No 420 of 1995) who applied a discretion. Mr Roseingrave's evidence was that employees of Joyce were generally aware of the policy.

The positions at NFI were negotiated by Joyce's senior executive for the applicants, the positions being identical for Ms Lawson, but similar for the other two applicants. In no case, so the evidence went, were credits given by NFI for long service leave in respect of service with Joyce. Mr Roseingrave confirmed that the policy would automatically be applied in every situation, but perhaps with the exception of if alternative employment was obtained by Joyce (see page 76 (AB) of appeal book No 420 of 1995).

Ms Ruth Clarke Lawson gave evidence that she was employed by NFI. She is a clerk. She gave evidence that clerks who had previously been made redundant had been paid for 13 weeks leave calculated at two weeks for every year of service. She expected this payment in this case, but was told by Joyce that they had found other employment for her and the other applicants and that they would not thus be getting "redundancy" pay. Her work is 35 percent similar to what it was. She received no credit for long service leave. The only employees who did not receive redundancy payments were those offered alternative employment by NFI.

Mr Giuseppe Surace, the kitchen sales manager, had been employed with Joyce for 18 years and four months. He believed when he was terminated that he should have received termination pay. He was terminated and none of his entitlements were "rolled over" with the new company. He said that he is doing 70 percent more work than what he did at Joyce. He was paid long service leave. He has lost 24 weeks sick leave. He believed that he should be paid redundancy pay because others had been paid redundancy pay.

Mr Dean William Hall gave evidence. The policy was, in his opinion, that if one was terminated at Joyce one was paid redundancy. If the job were no longer required then one would be entitled to application of the policy. Thirty five percent of the work he did at Joyce he now does at NFI. He is a supervisor, but he also works on the bench, since he is a cabinetmaker by trade. He saw a copy of the company's policy on redundancy 12 months ago (that is 12 months before the date of hearing).

Mr Robert Proctor Bishop, currently a non-executive director of Joyce, but at the time of the termination of employment of these three applicants was the senior executive, gave evidence. He said that the main "thrust" of the sale of the timber business was that key employees would transfer over to the new business. It was only four weeks prior to the sale that the purchaser decided that it did not want to accept the transfer of these three applicants and their entitlements for financial reasons, and Joyce was therefore put in a position where it had to terminate these persons with Joyce prior to their joining NFI. The intention had been that they would transfer and take all their credits to NFI. The company had adopted the position that if they preserved the employment opportunity for these people then they were not under the policy and at the discretion of the management required to pay redundancy payments when their jobs were in effect being preserved (see page 109 (AB) of appeal book No 420 of 1995). The second sentence of the policy was put in there, he said, specifically to give the company the right at its own discretion to treat employees in cases on their own merits so that it was not an all embracing policy. These were notes of guidance for managers so that they might manage the company, too, he said. In Mr Bishop's opinion, and in the opinion of the directors of the company, the applicants were getting an employment opportunity on no less favourable terms with NFI than they had enjoyed. They had endeavoured to treat their employees properly. The employment was on no less favourable terms because the employees were getting paid the same money. The conditions

were the same. When there was a transfer of employment to a new company then the redundancy payment did not apply. When the closure of the timber division occurred the people who were made redundant received redundancy payments. Redundancy occurs when the job ceases to exist and they do not want to move over to the other employer. The policy document indicates to the management how they should interpret equitably the redundancy policy of the company. It is not something that is paid "as of right" to employees. The policy is mandatory, but this policy was usually only applied where there was no award coverage. The company wanted these employees to transfer over to NFI, which is the reason why the re-employment opportunity was created.

JURISDICTION

It was submitted to us that there was no jurisdiction in the Commission at first instance on the authority of RRIA v ADSTE 68 WAIG 11 (IAC) ("Pepler's Case"), Kounis Metal Industries Pty Ltd v TWU 73 WAIG 14 (IAC), FMWU v Nappy Happy Hire Pty Ltd t/a Nappy Happy Service 74 WAIG 1493 (IAC), and Coles Myer Ltd t/a Coles Supermarkets v Coppin and Others 73 WAIG 1754 (IAC). The ratio of those cases was approved also by the Industrial Appeal Court in Sakal v T O'Connor and Sons Pty Ltd 75 WAIG 1509 (IAC). In Coles Myer Ltd t/a Coles Supermarkets v Coppin and Others (op cit) (IAC) that ratio was expressed at page 1757 as follows—

> "Absent any industrial dispute and a claim to reinstate a dismissed employer (sic) the Commission does not have jurisdiction to deal with the common law contract between an ex-employer and his ex-employee."

However, in Mountain v Winston Gellard Pty Ltd t/a Winston Gellard Real Estate 74 WAIG 2323 at 2324 (FB), the Full Bench (per Fielding AP, with whom Coleman CC agreed) held that whether the jurisdiction existed in relation to an application (in that case for contractual benefits) was to be determined on the basis of the circumstances in existence when the application was instituted, not at some later time. In that case, at the material time, when the application was filed, the applicant was an employee. Indeed, the contract of service was extant.

In Vaughan v Geraldton Tourist Bureau and Promotions Directorate 75 WAIG 1524 (FB) the Full Bench applied that decision and cited, too, the dictum of the Industrial Appeal Court in Kounis Metal Industries Pty Ltd v TWU (op cit) (IAC) at page 19 per Owen J—

> "... unless, at the time when the application is made, the relationship [of employer/employee] actually exists, or is expected to come into existence in the future, or did exist and is to be restored, the key element of an industrial matter is missing."

In that dictum there is a recognition by the Industrial Appeal Court that the time for determination of jurisdiction is when the application is made.

Quite plainly, on those authorities, there is jurisdiction to hear and determine a matter and to deal with the common law contract of employment, even if there is no claim to reinstate a dismissed employee, where the relationship of employer and employee exists at the time when the application is made. Indeed, there is much to be said for the argument that whether the contract of employment is ended or not is not to the point in certain cases. For example, an applicant employee is not an ex-employee if, on the evidence, according to the definition of "employee" in s.7 of the Act, his/her usual status is that of an employee.

In this case, the applications were filed on 20, 24 and 26 May 1994 respectively. The three applicants remained in employment until 27 May 1994 when their employment ceased. At the time when the applications were made the applicants were employees, their contracts of employment not having terminated. Even though there was no claim for reinstatement, there is jurisdiction to hear and determine the application.

FINDINGS

The Commission at first instance made the following findings—

(1) That the policies contained in the manual (exhibit 1), including the policy that two weeks pay be paid on a redundancy for each year of service up to a total amount of 13 weeks, was a company policy.

(2) That the existence and advice of such a company policy did not in this case "give rise to an implied term/s in those contracts".

(3) That the policy was not applied to the three applicants because the respondent took the view that it had arranged suitable alternative employment with the new owner.

(4) That "the offered and accepted alternative employment is, on its merits, suitable alternative employment in all the circumstances", with the exception of the loss of pro-rata long service leave benefits to Ms Lawson who was four months short of a pro-rata entitlement to payment for long service leave accrued at the time of the sale of the business.

(5) That the payment of that amount would then mean that the alternative employment offered to her was to be regarded as suitable employment.

(6) That Ms Lawson was employed pursuant to the provisions of the Clerks Award, and Mr Surace and Mr Hall were "award free and classified as staff employees".

(7) That it was conceded that there was in force a company redundancy policy which provided two weeks pay for each year of service to a maximum of 13 weeks pay.

We note that it is implicit in the Commission's reasons that it did not find that the policy was an express term of the contract, although that was plainly submitted by Mr Lourey to be the case at first instance. This was not pursued on appeal.

IMPLIED TERM

The question arises as to whether a term should be implied whereby redundancy/severance payments were to be paid to an employee whose position became redundant.

In Byrne and Frew v Australian Airlines Ltd 131 ALR 422 (HC) these matters were considered. A majority, consisting of Brennan CJ, Dawson and Toohey JJ, held that in a case where employment contracts such as these were under consideration—

(1) A rigid approach should be avoided in cases such as the present where there is no formal contract.

(2) In those cases the actual terms of the contract must first be inferred before any question of implication arises.

(3) It is necessary to arrive at some conclusion as to the actual intention of parties before considering any presumed or imputed intention.

(4) The court cited with approval the dictum of Deane J in Hawkins v Clayton and Others [1987-1988] 164 CLR 539 at 573 (HC)—

> "The most that can be said consistently with the need for some degree of flexibility is that, in a case where it is apparent that the parties have not attempted to spell out the full terms of their contract, a court should imply a term by reference to the imputed intention of the parties if, but only if, it can be seen that the implication of the particular term is necessary for the reasonable or effective operation of a contract of that nature in the circumstances of the case. That general statement of principle is subject to the qualification that a term may be implied in a contract by established mercantile usage or professional practice or by a past course of dealing between the parties."

This is a case where no formal contract existed between the parties. Accordingly, the Commission was in error insofar as it might be said to have taken the approach taken in BP Refinery (Westernport) Pty Ltd v Shire of Hastings [1978] 52 ALJR 20. The actual terms of the contract are apparent, at least insofar as wages or salary, long service leave and holidays are concerned.

Next, the question arises as to what the actual intention of the parties was before considering any presumed or imputed

intention. However, a term can only be implied on the authority of Hawkins v Clayton and Others (op cit) (HC) and Byrne and Frew v Australian Airlines Ltd (op cit) (HC) if, and only if, it can be seen that the implication of the particular term is necessary for the reasonable or effective operation of a contract of that nature in the circumstances of the case.

The case for the appellant employees was that a term providing for redundancy payments in their contracts with Joyce should be implied. The question is whether such a term can be seen to be necessary for the reasonable or effective operation of a contract of that nature in the circumstances of the case. The answer is that redundancy payments calculated in terms of Joyce's policy were utterly necessary for the reasonable or effective operation of the contracts of employment in the circumstances of this case. If it were necessary and relevant to say so, we would observe that such requirement was recognised by Joyce's policy of and practice of making redundancy payments. As we understand Joyce's case, it includes the argument that if such a term should be implied, then it is a term which would include a proviso that, in a case where suitable or acceptable alternative employment were obtained by Joyce, then the employer may not be liable to pay the whole or part of the severance/redundancy payment. Again, because of the nature of a severance payment, the term to be implied would be necessary for the reasonable or effective operation of the contracts of employment in this case. We would hold that such a term should be implied. We do not think that one can find that there is a past course of dealing between these parties to that effect.

There is another basis for implying such a term. That is the consideration of whether a term should be implied not as the assumed intention of the parties but as a matter of law (see per McHugh and Gummow JJ in Byrne and Frew v Australian Airlines Ltd (op cit) (HC) at page 447 et seq). The terms implied by law are implied in all contracts of a particular class which answer a given description. Typical classes of contract in respect of which terms will be implied by law include "contracts between master and servant" (see per McHugh and Gummow JJ in Byrne and Frew v Australian Airlines Ltd (op cit) (HC) at page 449). The notion of "necessity" has been crucial in the modern cases in which the courts have implied for the first time a new term as a matter of law (see Byrne and Frew v Australian Airlines Ltd (op cit) (HC) at page 450). Many of the terms now said to be implied by law in various categories of case reflect the concern of the courts that, unless such a term be implied, the enjoyment of the rights conferred by the contract would or could be rendered nugatory, worthless, or, perhaps, be seriously undermined. Hence, the reference in the decisions to "necessity" (see McHugh and Gummow JJ in Byrne and Frew v Australian Airlines Ltd (op cit) (HC) at page 450 applying Nullagine Investments Pty Ltd v Western Australian Club Inc [1992-1993] 177 CLR 635 at 647-648 and 659).

Their Honours applied Scally v Southern Health Board [1992] 1 AC 294 (HL), also applied by the Full Bench in Coles Myer Ltd t/a Coles Supermarkets v Sweeting and Others 73 WAIG 225 (FB).

The question whether the terms sought to be implied is a necessary incident of a definable category of contractual relationship is what has to be answered. From the point of view of the employees in this case, if this term were not implied, the contracts of employment would result in the employees' rights being seriously undermined. It would mean that employees with long records of service would not be entitled to redundancy or severance payments, an extraordinary situation in the last five years of the twentieth century. Their rights would be unjustly and seriously undermined.

On both those bases ((ie) implying such a term as a matter of necessity into a contract which was not a formal contract, and implying a term as a matter of necessity into the particular class of contract of employer and employee), we would apply that term. We would hold that the Commission at first instance erred in law in not implying such a term.

As a matter of law, and as a necessary term of a contract between employers and employees in this instance, we would, on the authority of Byrne and Frew v Australian Airlines Ltd (op cit) (HC), imply a term that the employees upon redundancy were entitled to be paid redundancy or severance payments calculated at the rate of two weeks for every year of past service to a maximum of 13 weeks.

Once an implied term was found to have existed requiring the payment of redundancy or severance payment, it was then necessary to consider and give weight to the evidence. That evidence does not seem to have been challenged before the Commission at first instance, and justifies the finding that the respondent did not pay redundancy pay because the respondent believed that it had found suitable or acceptable alternative employment for the applicants.

The Commission at first instance then went on to decide that the employment with NFI was suitable alternative employment, although he also refers to it as acceptable alternative employment. The Commission found that as a matter of merit. It was submitted that this finding was in error because, contrary to initial expectations, the respondent was unable to get the prospective employer to agree to continue its employees in employment without loss of service or benefits, and that the offer of employment made to the appellant employees was identical to that made to any applicant for such employment and did not preserve any service or entitlements accrued by the appellants during their employment with the respondent.

Further, the grounds of appeal allege that the learned Commissioner erred in giving weight to the respondent's submission that it ought not to pay redundancy pay to the appellants because it had found alternative employment for the appellants when the evidence established that the respondent did nothing more than provide the prospective employer with details of the redundant employees so that the prospective employer could choose who it wished to employ.

Further, it was said, the evidence established that the respondent's decision to terminate the appellants had caused the appellants to lose the benefit of their accrued service entitlements such as sick leave and long service leave.

Further, it was said, the evidence established that the offer of alternative employment did not preserve any existing service or accrued entitlements. As a matter of fact, too, and not disputed, the offer made and accepted did not preserve the benefit of any service or entitlements accrued by the applicants during their employment with the respondent, and we would find accordingly. We would also find that the appellant employees lost the benefit of their accrued service entitlements which was clear and not disputed and found at first instance. It is also quite plain and not in dispute that the offer of alternative employment made to the applicants did not preserve any existing service or accrued entitlements.

As to employment, there is no doubt that the respondent did play some part in procuring the alternative employment which commenced for the three employees upon their acceptance on 30 May 1994, the previous employment having ceased on 27 May 1994.

We were referred by Mr Lourey to Joyce Corporation Ltd v FPFAIIU 74 WAIG 2378 which arose out of the sale of its timber division by the respondent to NFI, the same circumstances as this matter. In that case, the applicant, Joyce Corporation Ltd, asserted that it had obtained "acceptable alternative employment" for three employees who became redundant as a result. They refused to accept this employment, and Joyce Corporation Ltd sought to be absolved from payment of redundancy or severance pay on the basis that it had obtained "acceptable alternative employment". In that case, the interpretation of what "acceptable alternative employment", within the meaning of clause 20A(5) of the Furniture Trades Industry Award No A6 of 1984, was before the Commission. The Commission held that the test as to whether the employment was acceptable or not was an objective one, and cited a decision of the Australian Industrial Relations Commission in Clothing and Allied Trades Union v Hot Tuna Pty Ltd (1988) 27 IR 226.

The Commission also observed at page 2379 that in considering whether the objective test had been complied with, it would be necessary to consider whether previous service with the previous employer was recognised as service with the new employer (see Termination, Change and Redundancy Case of 1984 (1984) 8 IR at 75 and AMWSU v Anchorage Butchers and Others 66 WAIG 580 at 584). In this case, as in that case, no such service was recognised and service was commenced

afresh. As in that case, in this case, too, at least two employees have gone a long way towards qualifying for long service leave. One had lost a great deal of sick leave, and all would have to work for some time to qualify for long service leave.

The Commission determined that where the purpose and effort of the employer resulted in acceptable alternative employment being offered to an employee, then the employer is entitled to relief from the requirement to pay redundancy pay to that employee. The Commission there concluded that the applicant did obtain alternative employment for the three employees. However, the Commission found that such employment was acceptable only so far as the necessary wage rates and its immediate availability following the redundancy were concerned.

Accordingly, the acceptability was only partial. The Commission relied on the clause in the award, however, which enabled an employer to have the general severance pay prescription varied if the employer obtained acceptable alternative employment. In this case, no such provision exists nor should it be implied. What the Commission did there was to reduce the employer's liability by reducing it by one week in each case. We were invited to apply that decision.

The question is, however, what was the contractual benefit? What were the applicants entitled to, if anything, under the terms of the contract, express or implied in this case? That, of course, depends on whether these employees were found acceptable alternative employment. "Acceptable" means "acceptable" judged objectively. We would make the same observations about the word "suitable". Such a term is, we think, impliable on the same basis as we have implied the other term. The employment in this case was obtained by the efforts of the employer, or at least sufficiently by those efforts for the Commission to have so found. Where the employee accepts alternative employment found by the employer then in the absence of positive evidence as to unacceptability, including unacceptable features, the alternative may be held to be acceptable (see Rooney v BPA Industries Pty Ltd (1989) 31 AILR 166).

As to an unacceptable alternative position see Re Government Cleaning Service (Privitisation) Award (1994) 36 AILR 411. In that case, alternative employment was arranged for employees to do much the same work at similar and in some cases higher salaries. They received in excess of seven months notice of termination, and those who wished to remain in government employment could seek other positions available in the public sector. However, the superannuation position of some employees would be worse, employment was for a finite term and not on-going in the usual way, and they had had a legitimate expectation of job security in their previous employment. It was held that this was not acceptable alternative employment. On an objective basis, we are forced to the conclusion that, notwithstanding that alternative employment was obtained, employment which did not give credit for past service for the purposes of long service leave, could not, having regard to the purpose of severance or redundancy pay, be said to be acceptable alternative employment. However, in respects such as salary and the nature of the employment, the Commission was correctly able to find that it was a suitable alternative employment. We could not be satisfied, however, that it was, for that reason, suitable alternative employment and that the employer was not bound to pay redundancy or severance payments.

CRYSTALLISED CUSTOM

The circumstances in which a custom may be said to form part of the contract was also considered by Their Honours in Byrne and Frew v Australian Airlines Ltd (op cit) (HC). They said at pages 428-429 that it is not something "so well known and acquiesced in that everyone making a contract in that situation can reasonably be presumed to have imported that term into the contract" (see Con-Stan Industries of Australia Pty Ltd and Another v Norwich Winterthur Insurance (Australia) Ltd [1985-1986] 160 CLR 226 at 236 and 237 (HC)).

The existence of a custom or usage that will justify the implication of a term into a contract is a question of fact, and there must be evidence of its acceptance such that it is "reasonable to assume that the parties contracted on the basis of the custom, and that it is therefore reasonable to import such a term into the contract".

In Con-Stan Industries of Australia Pty Ltd and Another v Norwich Winterthur Insurance (Australia) Ltd (op cit) (HC) the High Court, in a joint judgment, (Gibbs CJ, Mason, Wilson, Brennan and Dawson JJ), at pages 236-237, laid down a number of principles setting out the circumstances in which trade, custom or usage may form the basis for implication of terms into a contract—

(1) The existence of a custom or usage that will justify the implication of a term into a contract is a question of fact.

(2) There must be evidence that the custom relied on is so well known and acquiesced in that everyone making a contract in that situation can reasonably be presumed to have imported that term into the contract.

However, it is not necessary that the custom be universally accepted, for such a requirement would always be defeated by the denial by one litigant of the very matter that the other party seeks to prove in the proceedings.

(3) A term will not be implied into a contract on the basis of custom where it is contrary to the express terms of the agreement.

(4) A person may be bound by a custom notwithstanding the fact that he had no knowledge of it. That is a person would be presumed to know of the usage if it was of such notoriety that all persons dealing in that fear could easily ascertain the nature and context of the custom.

In this case, the answer is that a term allowing redundancy or severance payments was plainly and obviously necessary for the reasonable or effective operation of the contract in the circumstances of the case. Some evidence of that is a policy to that effect which was generally mandatory, and uncontroverted evidence that in the case of other employees such payments had been made.

The next question is whether such a term existed as a matter of custom and usage. The existence of a custom or usage that will justify the implication of a term into a contract is a question of fact, as we have said, and there must be evidence of its acceptance such that it is reasonable to assume that the parties contracted on the basis of the custom and that it is therefore reasonable to import such a term into the contract of service (see per Brennan, Dawson and Toohey JJ in Byrne and Frew v Australian Airlines Ltd (op cit) (HC) at page 429, citing Con-Stan Industries of Australia Pty Ltd and Another v Norwich Winterthur Insurance (Australia) Ltd (op cit) (HC) at pages 236-237, and to which we have already referred).

If it were necessary to determine that matter, then we would remit the matter back to the Commission to make the necessary finding of facts and apply the law as we have outlined it. No finding of fact was made in this connection. We do not think that the Full Bench can make the finding of fact necessary. That is the correct approach, however, for this Bench upon appeal, borne out by Warren v Coombes and Another [1978-1979] 142 CLR 531 (HC), O'Brien and Others v Komesaroff [1981-1982] 150 CLR 310 at 318-319 (HC) and Banque Commerciale SA (En Liq) v Akhil Holdings Ltd [1990] 169 CLR 279 (HC). However, it is not necessary to take this matter further since the appeal is determinable upon the reasons already expressed.

ESTOPPEL

There is another question and that is as to whether the relationship between the applicants and respondent as employees on the one hand and employer on the other were conducted on the footing that the applicants would be entitled to redundancy or severance payment. Estoppel by convention is a form of estoppel founded not on a representation of fact made by a representer, but on the conduct of relations between the parties on the basis of an agreed or assumed state of facts which both will be estopped from denying (see Con-Stan Industries of Australia Pty Ltd and Another v Norwich Winterthur Insurance (Australia) Ltd (op cit) (HC) at page 244). That that was the case was strongly arguable. However, it was not a matter raised at first instance or upon appeal and we therefore make no comment other than that.

AMOUNT OF ORDER

The question arises whether that amount, which can therefore be ordered to be paid by way of contractual benefit, is therefore one which can be fixed as the amount prescribed by the implied term and is irreducible.

Belo Fisheries v Froggett 63 WAIG 2394 at 2396 is authority for the proposition that contractual benefits do not have to be calculated precisely, but can be assessed as a matter of equity, good conscience and the substantial merits of the case. Having regard to the nature of the implied term and the evidence of the quantum not paid in each instance, including loss to long term employees, as well as the obvious partial suitability of alternative employment, all of which we have canvassed, we would calculate the amounts which should be paid to each employee at the full amount claimed, but discounted in each case by an amount equal to one week's pay. That accords with what was submitted to us and what we are persuaded is a proper disposition of the matter.

APPEAL NO 420 OF 1995

It is now necessary to say that, for those reasons, the Commission at first instance erred, the appeal should be upheld, and we would vary the order at first instance after upholding the appeal accordingly to order that the amount of $5374.80 be paid to Ms Ruth Lawson, $6692.40 be paid to Mr Joseph Surace, and $3426.50 be paid to Mr Dean Hall.

APPEAL NO 448 OF 1995

We turn now to deal with appeal No 448 of 1995. That appeal is brought only against that part of the decision relating to Ms Ruth Lawson, in other words that part of the order whereby the Commission at first instance ordered that Ms Lawson be paid by the respondent pro-rata long service leave in accordance with the provisions of the Long Service Leave Standard Provisions (see 75 WAIG 1).

It was submitted that there was a finding by the Commission at first instance that the policy referred to did not make an alteration to existing contracts of employment, nor on the legal tests did such a policy give use to implied terms in those contracts. Having reached that conclusion, the Commission, so the argument went, was right. The appellant's complaint upon this appeal was that he considered merit factors and granted an extra payment to Ms Lawson only based upon pro-rata long service leave. The Commission plainly was of opinion that such an amount should be paid on merit to offset what the Commission saw as the loss of approximately nine years service towards a future long service leave entitlement. The submission was that he considered merit factors in deciding that entitlement. This was in error, so the submission went, because the claims were for redundancy payments and also because the original claim for long service leave was not proceeded with by Ms Lawson.

Mr Lourey, for the respondent to this appeal, Ms Lawson, conceded the substance of the appeal. He specifically acknowledged that he did not argue that there was an entitlement under the standard provisions or under the Long Service Leave Provisions pro-rata. However, the concession was made subject to the appeal by Ms Lawson being disposed of first.

There were other arguments as to other grounds of appeal which it is not necessary to consider.

Ground 3 is made out. The Commission erred in the proper exercise of its discretion. We would uphold that appeal and quash the decision to which we have referred.

However, we would uphold the appeals of Ms Lawson and her co-appellants in appeal No 420 of 1995 and the benefits we would there order to be paid would meet her claim.

GIFFORD C: I have read the Reasons for Decision of His Honour the President concerning the two appeals, and agree with them. I further agree with the variation he proposes to make to the Order of the Commission at first instance, in Appeal No 420 of 1995.

THE PRESIDENT: For those reasons, appeal No 420 of 1995 is upheld and the order of the Commission at first instance varied, and appeal No 448 of 1995 is upheld and the decision of the Commission at first instance quashed.

Appearances: Mr M J Lourey, as agent, on behalf of Ruth Lawson, Joseph Surace and Dean Hall.

Mr J N Uphill, as agent, on behalf of Joyce Australia Pty Ltd.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ruth Lawson, Joseph Surace and Dean Hall

(Appellants)

and

Joyce Australia Pty Ltd

(Respondent)

No 420 of 1995.

and

Joyce Australia Pty Ltd

(Appellant)

and

Ruth Lawson, Joseph Surace and Dean Hall.

No 448 of 1995.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P.J. SHARKEY.
CHIEF COMMISSIONER W.S. COLEMAN.
COMMISSIONER R.H. GIFFORD.

18 December 1995.

Order.

THESE matters having come on for hearing before the Full Bench on the 2nd and 3rd days of November 1995, and having heard Mr M J Lourey, as agent, on behalf of the abovenamed Ruth Lawson, Joseph Surace and Dean Hall, and Mr J N Uphill, as agent, on behalf of the abovenamed Joyce Australia Pty Ltd, and the Full Bench having reserved its decision on these matters, and reasons for decision being delivered on the 18th day of December 1995 wherein it was found that the appeals should be upheld, it is this day, the 18th day of December 1995, ordered as follows—

(1) THAT appeal No 420 of 1995 be and is hereby upheld, and the decision of the Commission in applications Nos 593, 601 and 610 of 1994 made on the 23rd day of March 1995 be and are hereby varied in that the respondent herein do pay to Ruth Lawson the amount of $5374.80, to Joseph Surace the amount of $6692.40 and to Dean Hall the amount of $3426.50 within seven days of the 18th day of December 1995.

(2) THAT appeal No 448 of 1995 be and is hereby upheld, and order (2) of the decision of the Commission made on the 23rd day of March 1995 in application No 593 of 1994 be and is hereby quashed.

By the Full Bench,

(Sgd.) P.J. SHARKEY,
[L.S] President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

State School Teachers' Union of WA (Inc)
(Appellant)

and

The Honourable Minister for Education
(Respondent).

Nos 587 and 723 of 1995.

BEFORE THE FULL BENCH.

13 December 1995.

HIS HONOUR THE PRESIDENT P J SHARKEY.
COMMISSIONER R N GEORGE.
COMMISSIONER P E SCOTT.

Reasons for Decision.

THE PRESIDENT: These were two appeals against the decision of the Commission at first instance, constituted by a single Commissioner, made on 26 May 1995 and 6 June 1995 respectively. Each decision was a "finding" as that is defined in s.7 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act"), since the decisions did not finally determine or dispose of the matters to which the proceedings related.

Appeal No 587 of 1995 is an appeal brought against orders (a) and (b) of the decision of the Commission made on 26 May 1995 in matter No C 149 of 1995. Although it is somewhat lengthy, I reproduce it hereunder because its terms were canvassed in some detail by the parties to this appeal (see pages 7-10 of the appeal book (hereinafter referred to as "AB"), No 587 of 1995)—

> "WHEREAS pursuant to Section 44 of the Act an industrial dispute was referred to the Commission; and
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> WHEREAS on the 24th and 26th days of May, 1995 conferences were held by the Commission pursuant to Section 44 of the Act; and
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> WHEREAS the Commission heard the parties in full as to the industrial matters in dispute between them; and
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> WHEREAS it was demonstrated that industrial action in the form of bans upon the performance of duties outside classroom hours, such duties being directly associated with the list of activities set out hereunder, which were, prior to the imposition of the bans, performed by teachers members of or eligible to be members of the respondent union: School Camps and Excursions; School Sports Activities—Carnivals, In-Term Swimming Lessons, Training, Country Week; Out-of-School Meetings—Parent Nights, School Decision Making Groups, P & C Meetings, Extended Staff Meetings, Finance Committee, Student Committee Meeting, Student Council Activities; School Socials/Balls/Dances; School Graduations; Syllabus-Linked Field Trips; Syllabus-Linked Committees; Cultural Activities—Music Practice (before/after school), LOTE classes (after school), Drama/Dance practice (after school), Book Club, Theatre Sports, Writing Workshops, Performing Arts Festival, Education Week, Business Ed Week, Rock Eisteddfod, Recycling Program, Arts Festival; Concerts/Musicals/Drama; Professional Development, "Pathways Now" Conference, Stepping Out, Oral Language Experience Day; School Fund Raising; Bus Supervision; Detention; Teacher/Parent Contact; Work Experience Co-ordination, Planning for Work Experience; Special Interest Clubs, Tutoring; Academic Competitions, Debating Competition, Maths Week, Share Market Game, Solar Challenge Competition, Coca Cola Competition, Panasonic Video Competition; Driver Training; School Decision Making Groups; Counselling Students; Room Maintenance; Stock Duties; Work on Interim reports; Parent Barbeque; Curriculum Development for Post-Compulsory courses; Computer Repairs and Maintenance; Library closed before school; Assemblies; School Magazine; Examiners Meetings; and
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> WHEREAS, it is now accepted by the Commission that the non performance of the duties, associated with the above setout activities, has a deleterious effect upon the education and development of school children who ordinarily take part in some of the above described activities; and
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> WHEREAS in the opinion of the Commission it is not in the public interest generally nor in the interests of the school children and their parents directly affected by the work bans presently in operation that those bans should continue; and
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> WHEREAS the respondent union has advised the applicant that the following motions have been passed by its Emergency Committee: "That if the Government does not adequately address the SSTU Quality of Education Campaign demand for appropriate funding in the State Budget, there will be rolling stopwork meetings, district-by-district, with teachers (School and TAFE) in each district stopping work for two hours a month and that this will be ongoing month-by-month, or as determined by Executive, up to the next State election if necessary. That the Secondary Education Authority (SEA) be advised that if the Government does not adequately address the SSTU log of claims in the State Budget, it is likely that teachers will decide not to co-operate with the SEA and that the SEA needs to prepare appropriate, contingency plans; and
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> WHEREAS the respondent union has advised the applicant that its so called "Directive One" to its members which bans the performance of duties as above described, is to remain in force; and
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> WHEREAS in the opinion of the Commission it is now necessary to prevent the further deterioration of industrial relations between the parties;
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> The Commission hereby orders:
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> (a) That the SSTU through its executive no later than Tuesday 30th May, 1995 cancel the directive to its members to ban the performance of duties associated with the above listed school activities.
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> (b) THAT the SSTU shall cancel its proposed stoppage of work by its members on 31st May, 1995.
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> (c) THE applicant and respondent shall commence negotiations on all aspects of their respective claims for an enterprise bargaining agreement, such negotiations to commence not later than Friday, 2nd June, 1995 and to continue as necessary until either full agreement is reached between the parties or any matters that remain in dispute at the conclusion of the negotiations are arbitrated by the Commission.
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> (d) THE applicant shall upon commencement of the negotiations described in paragraph (c) above, and in accordance with the schedule of matters which the parties have informed the Commission they have agreed upon and which have resulted in a significant increase in the level of duties and responsibilities of teachers, increase salaries for all teachers in its employment by two and one half percent (2½%) on an interim basis and such interim increase shall be absorbed into the salary rates finally agreed upon or arbitrated by the Commission.
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> (e) EITHER party may apply to the Commission on the giving of twenty four (24) hours notice to the other to vary or set aside the terms of this Order.
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> (f) THE Commission may of its own motion after giving twenty four (24) hours notice to the parties and having heard them vary or cancel the terms of this Order.
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> (g) THIS Order shall commence to operate according to its terms on and from the 26th day of May, 1995 and shall subject to the provisions, of this Order remain in operation until conciliation or arbitration has finally resolved all industrial matters presently in dispute between the parties."

Appeal No 723 of 1995 is an appeal brought against order (a) of the decision of the Commission made on 6 June 1995 in the same matter. The order provides as follows (see pages 7-8 (AB), No 723 of 1995)—

"(a) That the SSTU no later than Tuesday, 13th June, 1995, suspend or cancel the Directive One to its members and shall not implement further industrial action whilst negotiations continue as per paragraph (c) below.

(b) The applicant shall not, except for School Principles, Deputy Principles, Heads of Department and Programme Co-ordinators, further promote or offer workplace agreements to teachers, eligible for membership of the respondent whilst the negotiations as per paragraph (c) below proceed.

(c) The applicant and respondent shall commence negotiations on all aspects of their respective claims for an enterprise bargaining agreement, such negotiations to commence not later than Wednesday, 14th June, 1995 and to continue as necessary until either full agreement is reached between the parties or any matters that remain in dispute at the conclusion of the negotiations maybe dealt with by arbitration.

(d) The negotiations referred to in paragraph (c) above, shall include the issue of what duties, if any, form part of the contract of employment of teachers in State schools.

(e) The applicant shall upon commencement of the negotiations described in paragraph (c) above, increase salaries for all teachers in its employment by two and one half percent (2½%) on an interim basis and such interim increase shall be absorbed into the salary rates finally agreed upon or maybe determined by arbitration.

(f) Either party may apply to the Commission on the giving of twenty four (24) hours notice to the other to vary or set aside the terms of this Order.

(g) The Commission may of its own motion after giving twenty four (24) hours notice to the parties and having heard them vary or cancel the terms of this Order.

(h) This Order shall commence to operate according to its terms on and from the 2nd day of June, 1995 and shall, subject to the provisions of this Order, remain in operation until conciliation or arbitration has finally resolved all industrial matters presently in dispute between the parties."

The grounds of appeal in each case are almost identical. I reproduce hereunder, for convenience, the grounds of appeal in appeal No 587 of 1995 (see pages 2-3 (AB), No 587 of 1995)—

"1. The learned Senior Commissioner acted in excess of jurisdiction in making orders relating to the performance of duties by school teachers outside classroom hours, such duties not forming part of the contract of employment of school teachers and not being an "industrial matter" within the meaning of Section 7 of the Industrial Relations Act, 1979 (WA).

2. The learned Senior Commissioner acted in excess of jurisdiction, erred in law, and denied the appellant procedural fairness in making orders without receiving evidence and submissions thereon relating to those orders.

3. The learned Senior Commissioner erred in law in exercising his discretion under the Industrial Relations Act, 1979 (WA) to make orders in relation to and concerning the employment of State school teachers when such orders should not have been made given that:

(a) there was no evidence or no sufficient evidence to establish that school teachers have any duties associated with the list of activities listed by the learned Senior Commissioner;

(b) there was no evidence or no sufficient evidence as to harmful or deleterious effects of the non performance of voluntary work, described by the learned Senior Commissioner as to duties associated with the activities listed by the learned Senior Commissioner.

4. The learned Senior Commissioner erred in law in exercising his discretion under the Industrial Relations Act, 1979 (WA) to make orders in relation to and concerning the employment of State school teachers when such orders should not have been made given that they:

(a) concern matters currently before, and will adversely impact upon proceedings currently under way in, the Australian Industrial Relations Commission;

(b) will conflict with the rights of members of the State School Teachers' Union of WA (Inc) who are members of the Australian Education Union to undertake protected industrial action in pursuance of negotiating an agreement with the Honourable Minister for Education of Western Australia concerning terms and conditions of employment of State school teachers under Part VIB of the Industrial Relations Act, 1988 (Cth).

5. In making orders (a) and (b) the learned Senior Commissioner acted in excess of jurisdiction and erred in law by making final orders which were not available to him under Section 44(6) of the Act. In particular contrary to Section 44(6)(6b)(i) of the Act, the orders were made in final form and not on an interim basis until conciliation or arbitration had resolved the matter.

The Appellant seeks orders that the Appeal be upheld and that orders (a) and (b) made by the learned Senior Commissioner be quashed.

To the extent that orders (a) and (b) are not final orders the Appellant says the matter is of such importance that, in the public interest, an Appeal should lie on the following grounds—

(a) The Appeal raises questions as to the circumstances in which the Commission may make an order requiring the cessation of industrial action which is of profound significance to the work of the Commission and of such importance that in the public interest an Appeal should lie.

(b) The Appeal raises questions as to whether so called bans on voluntary work amounts to "industrial action" or where such voluntary work does not form part of the Contract of Employment whether it is an industrial matter and whether even if an industrial matter it should as a matter of discretion be the subject of orders of the Commission."

BACKGROUND

The appellant, the State School Teachers' Union of WA (Inc), is an organisation of employees registered under the Act. It had, prior to the proceedings before the Commission at first instance, issued to its members a document called "Directive 1", in which document the appellant organisation banned any activity that would occur before normal school/college start time, after normal school/college finish time, during DOTT

time, or during lunch time. These activities are listed in detail (see page 39 (AB), No 587 of 1995), but include, by way of example, camps, concerts, school dances and fundraising activities, amongst others. In effect, by the ban, members of the union, by Directive 1, which took effect from 1 January 1995, were forbidden to do work which was not directed to teaching and to the learning activities of their students. That included, particularly, what was described as "voluntary activity" during lunch time and outside school hours.

The respondent (applicant at first instance) made application No C 149 of 1995 pursuant to s.44 of the Act on 24 May 1995 complaining that the appellant organisation had directed its members to institute work bans in support of a salary claim in January 1995, and alleging that evidence previously presented to the Commission demonstrated that these work bans were having a significant effect on schools and students. In addition, the respondent complained at first instance that there was a stop work meeting which the appellant organisation proposed to hold.

The respondent sought the following orders (see page 6 (AB), No 587 of 1995)—

"1. That until further Order the SSTUWA, through its executive, no later than 27 May 1995 withdraw the direction to its members to continue industrial action and to direct its members to cease industrial action and not to take further industrial action, but without limiting the generality of the foregoing, forthwith take all such steps as may be necessary to cancel its endorsement of the planned industrial action to commence on Wednesday, 31 May 1995.

2. The SSTUWA and its officials, employees and members are to cease any industrial action no later than 30 May 1995 and are not to engage in any further industrial action in respect of the claims.

3. The parties are to fully and thoroughly confer hereafter with a view to reaching a settlement of the dispute consistent with the State Wage Fixing Principles, and are to report back to the Commission at the end of each fortnight until a settlement is reached.

4. Liberty is reserved to either party to apply on the giving of 24 hours notice to make application to vary or set aside the terms of this Order."

The application was served on the appellant organisation on 24 May 1995 and a conciliation conference took place before Halliwell SC on 24 May 1995. It was not in dispute before us that during that conference the advocate for the appellant organisation had sought and obtained the Senior Commissioner's assurance that, before any orders were issued, the parties would be given the opportunity to adduce formal evidence and to make submissions on the question of jurisdiction.

The evidence of Mr Peter Anthony Malone was received by us without objection in a statutory declaration. The facts set out therein were not admitted but were not disputed.

The Commission at first instance had responded that normally orders would issue from a conciliation conference only if the parties were in substantial agreement with them and where jurisdiction was not in question. The respondent was arguing that jurisdiction did not exist.

By letter dated 24 May 1995 Messrs Dwyer Durack, solicitors, sought to formally intervene in the proceedings on behalf of the Australian Education Union (a federally registered organisation covering school teachers).

On 24 May 1995, the conference concluded with the Senior Commissioner stating he had been unable to assist the parties in reaching agreement. He, however, suggested that they consider his proposition that Directive 1 be lifted, the stop work meeting be cancelled, and in return an interim wage increase of an unspecified amount be granted.

The conference reconvened on 26 May 1995 when two statements were made by the parties' advocates.

The conferences, apart from the statements, consisted merely of assertions and counter-assertions on behalf of the parties. Again, inter alia, the question of jurisdiction was raised. After the statements were made, Halliwell SC handed to those present a copy of fully prepared Minutes of Proposed Orders. He then fixed the speaking to the minutes for 11.00 am on the same day, namely Friday, 26 May 1995.

When the speaking to the minutes occurred on 26 May 1995, Mr A Drake-Brockman (of Counsel) appeared for a federally registered organisation of employees, which organisation sought leave to intervene. The Commission did not give that leave.

The Senior Commissioner advised the advocates for both parties that they would have the opportunity to place on the transcript those reservations which they had as to the Commission's jurisdiction.

Mr Adams indicated, for the applicant, that the respondent organisation did not take strong exception to the submission that there were some jurisdictional difficulties with the orders proposed (see page 16 (AB), No 587 of 1995).

Mr Malone, for the then respondent organisation, submitted that there were at least two areas which put in doubt the jurisdiction of the Commission. Firstly, it was submitted that Directive 1 related to voluntary activities of teachers, and even though there had been no opportunity to formally put evidence, the Directive did not deal with activities or duties which were industrial matters for the purposes of the Commission. Hence, Mr Malone submitted that the orders sought were outside the Commission's jurisdiction. However, he submitted that there was a "considerable" issue which required considerable evidence by both parties. The orders put in jeopardy, so it was submitted, the ability of the parties to deal with the matter and adduce evidence. Mr Malone also submitted that the question of voluntary activities of teachers in this State was one which the parties themselves should never have reached agreement on and never formally sought to include in any contract of employment (see page 19 (AB), No 587 of 1995). The order was nonetheless made without further hearing.

There was at no time any formal determination under s.24 of the Act by the Commission that it had jurisdiction to hear and determine the matters before it. Indeed, there is no express finding to that effect, formal or not.

On 1 June 1995, the respondent sought to vary the order of 26 May 1995. That application was adjourned to 2 June 1995 at 9.00 am.

Mr Malone, on 2 June 1995, denied that there was "power for" the Commission to involve itself in the substance of Directive 1, and he sought to preserve the right to give evidence on it at a future time (see page 37 (AB), No 723 of 1995). That was said in relation to order (a).

Evidence was adduced from the appellant organisation's secretary, Mr Peter Quinn, but not in relation to matters of jurisdiction, on that day. In fact, at no time was evidence adduced on matters of jurisdiction.

On 6 June 1995, the Commission at first instance issued an order which purported to vary the order of 26 May 1995 and which contained a varied order (a). The order was further varied on 9 June 1995.

On 20 June 1995, by order (see page 41 (AB), No 587 of 1995), the Commission ordered, formal parts omitted, as follows—

"THAT the Order issued in matter No. C 149 of 1995 on 26th May, 1995 as varied on the 6th and 9th days of June, 1995 be and is cancelled on this day the 20th June, 1995."

Counsel for both parties expressly informed us that they did not regard the operation of the order as having effect beyond that date ((ie) the cancellation did not take effect before 20 June 1995).

SUBMISSIONS, ISSUES AND CONCLUSIONS

S.49(2a) OF THE ACT

That section provides that an appeal does not lie under s.49 (this was a s.49 appeal) from a finding unless, in the opinion of the Full Bench, the matter is of such importance that in the public interest an appeal should lie. The appellant must establish that the appeal should lie.

The appellant organisation's case was that the orders were in force from 26 May 1995 to 20 June 1995 when they were cancelled on the application of the respondent. During this period the appellant organisation received notice from the Registrar inquiring into an allegation that the appellant

organisation had breached the orders. As a result, the appellant organisation is in jeopardy of being brought before the Full Bench for breach of an order and dealt with in accordance with s.84A(5) of the Act, or pursuant to s.73 of the Act. Next, it was submitted that if the appeals were successful then the appellant organisation would not be placed in this jeopardy because if the Commission exercised its power and quashed the decision appealed against then the orders would be void ab initio. As a result, proceedings based on s.84A would not be competent and proceedings seeking a deregistration under s.73 would be less likely to succeed.

Further, it was submitted questions were raised as to what extent parties in conferences should have the opportunity to adduce evidence and make submissions prior to an order being made. That was also an issue of such importance that, in the public interest, an appeal should lie.

The question which it was said satisfied the requirements of s.49(2a) of the Act was whether the so-called work bans amounted to industrial action, or whether such voluntary work, when it did not form part of the contract of employment, could be said to be an industrial matter.

There was also a submission that the appeal raised questions as to what, if any, orders are available to the Commission under s.44(6)(ba) of the Act in the context of enterprise bargaining.

The question of sufficient public importance cannot be decided on case law in these matters. Each case will be a question of impression and judgment whether the appeal has the required degree of importance. It is, indeed, impossible to express any general standard or degree of importance which would satisfy the test of importance under the section (see RRIA v AMWSU and Others 69 WAIG 1873 at 1879 (FB)).

This case involved challenges to an order because the order was presently being used as a basis for action under the award, which, if carried through, might result in the appellant organisation having a penalty imposed on it or being deregistered. It is quite true that if the appellant organisation were successful and the orders were quashed, becoming void ab initio, the s.84A proceedings would not be competent and s.73 proceedings, at least insofar as they might be based on non-compliance with the order, would be less likely to succeed, as was submitted.

The appeals raise these questions. Was the order void as being contrary to procedural fairness, without natural justice being afforded? Was the order made without jurisdiction in that the matter before the Commission was not an industrial matter? The question is therefore whether an order which might cause jeopardy to a party, as is plainly the case here, should be allowed to stand if it were made in error. That is a matter of very substantial importance. In any event, an appeal which raises questions as to whether an order was made in a procedurally fair manner and within jurisdiction will more often than not be a matter of such importance that in the public interest an appeal should lie.

As to how procedural fairness is to be applied to s.44 conferences, another question raised, that is also of importance such as to satisfy the test in s.49(2a) of the Act in this case.

For all of those reasons, I was satisfied that the appeals are of such importance than in the public interest an appeal should lie.

JURISDICTION AND S.24 OF THE ACT

The appellant organisation, as was submitted, raised its objection to the jurisdiction at the commencement of or during a s.44 conference on 24 May 1995 and expanded those objections at the conference on 26 May 1995. Once a question of jurisdiction is raised, the Commission is bound to determine the question under s.24 of the Act before exercising the power to resolve it. This requires the Commission to identify what it is within the description of work, privileges, rights or duties of the employer or employee or employers and employees that are said to be affected by or related to the claimed industrial matter. If that cannot be identified, then the issue does not concern an industrial matter (see Minister for Police and Commissioner of Police v WA Police Union of Workers 75 WAIG 1504 at 1508 per Franklyn J (IAC)).

The Act makes specific provisions by s.24(1) giving to the Commission jurisdiction to determine in any proceedings before it whether any matter to which those proceedings relate is an industrial matter. A finding by the Commission on that question, subject to s.49 and s.90 of the Act, is final and conclusive with respect to those proceedings. In order to determine a question of jurisdiction, the Commission has the powers contained in s.27(1) of the Act.

As Rowland J said in Springdale Comfort Pty Ltd t/a Dalfield Homes v BTA 67 WAIG 325 at 330 (IAC)—

> "Once a question of jurisdiction is raised, the Commission must determine that question under section 24 before exercising power to resolve the dispute before it under section 44."

Brinsden J in the same case at page 327 said—

> "I am satisfied that section 44 presupposes that what is the subject of the compulsory conference is an industrial matter or something relating to an industrial matter. Where a compulsory conference has been called, as in this case, and the point is taken by one of the parties that there is no industrial matter about which the conference can proceed to consider, the Commissioner must immediately enquire into and determine whether he has jurisdiction, for only if he concludes that the matter before him involves an industrial matter should (he) continue to proceed with the compulsory conference."

(See also per Kennedy J at page 329).

That accords with other authority (see per O'Dea P in Springdale Comfort Pty Ltd v BTA and Others 67 WAIG 466 at 467 (FB) citing R v Bolton (1835-1842) All ER Rep 71).

It therefore is quite plain, on those authorities, that once a question of jurisdiction is raised the Commission must determine it before exercising any powers to resolve a dispute.

In this case, at the very first conference on 24 May 1994, held pursuant to s.44 of the Act, it was not disputed that the parties sought and obtained the Senior Commissioner's assurance that before any orders were issued the parties would be given the opportunity to adduce formal evidence and to make submissions on the question of jurisdiction. In fact, however, the Commission issued Minutes of Proposed Orders without hearing any submissions as to jurisdiction, and certainly without determining whether it had jurisdiction or not. The Commission made a decision ((ie) by issuing orders) under s.44 of the Act which was committed to Minutes in accordance with s.35 of the Act without hearing and determining the question of jurisdiction first, as Springdale Comfort Pty Ltd t/a Dalfield Homes v BTA (op cit) (IAC) required it to do.

Before any order was issued, but after the Minutes issued, the applicant made submissions as to lack of jurisdiction and foreshadowed the calling of evidence. The Commission heard no evidence. The applicant did not call evidence, and there was no overt concession as to jurisdiction. In any event, jurisdiction cannot be conferred by waiver. There was no hearing and determination of the question with or without evidence. There is no record, nor was it suggested to the Full Bench that the Commission determined that it had jurisdiction or that it did not.

Indeed, the Commission, as I have related above, made three other orders, including the final order, cancelling the original order of 26 May 1995, as varied, without determining the question of jurisdiction, formally or informally. Indeed, the Commission heard no evidence in relation to the same. Insofar as the record reveals, the Commission failed to decide that the matter was an industrial matter or was not, did not deliberate concerning this question, and failed to discharge its duty. That duty was to determine whether the Commission had jurisdiction to deal with the matter before it (see Springdale Comfort Pty Ltd t/a Dalfield Homes v BTA (op cit) (IAC)). That duty was to be discharged before the conference was embarked upon or continued, and certainly before any purported orders issued pursuant to any invalidly assumed jurisdiction under s.44 of the Act. However, the Commission went on to make such orders without any hearing or determination as to jurisdiction.

The mere making of orders as if the Commission had jurisdiction could not be read to be a finding of jurisdiction.

The Commission has jurisdiction under s.24 of the Act to determine in any proceedings before it whether any matter before it is an industrial matter. Since the Commission has no

jurisdiction under s.7(1) of the Act (the definition of "industrial matter") and s.23 of the Act, unless the matter is an "industrial matter" as defined, that determination is a determination of jurisdiction, or of no jurisdiction, as the case may be. That is an important finding because it is final and conclusive and enables the Commission to determine the proceedings without an appeal lying as to jurisdiction until the proceedings have concluded or the Commission has given leave to appeal. Not only has it that jurisdiction, but it is required on the authority of Springdale Comfort Pty Ltd t/a Dalfield Homes v BTA (op cit) (IAC) to exercise it immediately the question is raised. Once the Commission exercises its jurisdiction to determine jurisdiction and finds that it has jurisdiction, the matter being an industrial matter (or even if it finds no jurisdiction), then it is required to express that finding in the form of an award, order or declaration prescribed by s.34(1) of the Act and deal with it in terms of s.35 of the Act. (Neither section was complied with here so that there was no evidence of any statutorily valid finding as to jurisdiction in that sense. There was no express or implied informal finding, although such a view is not essential to a finding that the Commission acted ultra vires and without statutory validity). This demonstrates that the Commission acts (and acted) ultra vires until it determines jurisdiction as Springdale Comfort Pty Ltd t/a Dalfield Homes v BTA (op cit) (IAC) and s.24 of the Act require. Any orders made in the absence of such a finding are made ultra vires and/or without statutory validity.

In short, the Commission did not decide that it had jurisdiction before it made any order. More importantly, the Commission failed to determine the question as required under s.24 of the Act once the question of jurisdiction was raised which it was (see Springdale Comfort Pty Ltd t/a Dalfield Homes v BTA (op cit) (IAC)). It follows that all that occurred was done ultra vires and/or without statutory validity so that the question of whether there was natural justice afforded, etc, is not relevant. The Commission erred in law in issuing the orders which it did, since the orders were made ultra vires and/or were made without statutory validity. Having so decided, it is unnecessary to decide the other grounds of appeal.

I am satisfied, therefore, that the Commission erred in law, that the appeals should be upheld, and that orders (a) and (b) of the decision of the Commission made on 26 May 1995 and order (a) of the decision of the Commission made on 6 June 1995 should be quashed.

GEORGE C: I have had the opportunity of reading the reasons for decision of His Honour the President in draft form and agree with his conclusion that the matter is of such importance that, in the public interest, an appeal should lie.

These appeals essentially raise four questions. The first is whether the learned Senior Commissioner acted in excess of jurisdiction in making Orders (a) and (b) in that they were said to not relate to industrial matters and because there was no evidence or sufficient evidence to establish that school teachers have any duties associated with the list of activities listed by the learned Senior Commissioner (Appeal Grounds 1 and 3). The second is whether the Appellant was denied procedural fairness (Appeal Ground 2). The third is whether the learned Senior Commissioner erred in law in exercising his discretion to make the Orders he did in that they were said to concern matters before the Australian Industrial Commission and conflicted with the rights under part VIB of the Industrial Relation Act 1988 (C'wealth) of members of the State School Teachers Union of WA (Inc) who are also members of the Australian Educational Union (Appeal Ground 4). The fourth is whether Orders (a) and (b) were in the nature of final Orders (Appeal Ground 5). Both Appeals raise essentially the same issues and it was agreed that they ought be dealt with together.

The background to this matter is set out in detail by His Honour the President and may be briefly summarised as follows.

The learned Senior Commissioner at first instance had before him an Application pursuant to Section 44 of the Industrial Relations Act 1979 (the Act) for orders in relation to alleged bans instituted by the State School Teachers Union of WA (Inc) in support of a salary claim. A conference concerning that Application was convened on 24 May 1995. The evidence before the Full Bench as to what occurred in the course of conference proceedings and subsequently is contained in what is headed as an "Affidavit" declared by Mr P. Malone on 30 May 1995, transcript of proceedings on 26 May 1995 relating to the speaking to the minutes of the order subject to appeal No. 587 of 1995, Transcript of proceedings convened on 1 June 1995 to consider an application by the Respondent in these proceedings to vary the terms of the Order the subject of Appeal No. 587 of 1995 and the recitals to Order No. C 149 of 1995 issued on 28 May 1995. While the "Affidavit" was included in the record of proceedings without objection, its contents were neither admitted or denied by the Respondent.

From the material before the Full Bench it would seem that at the conference before the learned Senior Commissioner on 24 May 1995 Mr Malone sought an assurance that prior to any Order being issued the parties be given the opportunity to put formal evidence and submissions. According to Mr Malone he understood the response to be that normally an Order would issue from a conciliation conference only if the parties were in substantial agreement and where jurisdiction was not in question and given that the union in particular was arguing that jurisdiction did not exist, then no such Order would issue without the parties being formally heard.

In the course of the conference the learned Senior Commissioner heard an application on behalf of the Australian Education Union seeking intervention in order to make submissions that Application C 149 of 1995 should not proceed as the matters to which it referred were properly before the Australian Industrial Relations Commission. Having heard the application, including brief clarification of the jurisdictional point sought to be pursued, the learned Senior Commissioner allowed the representative of the Australian Education Union observer status only.

At the conclusion of the conference on 24 May 1995 the learned Senior Commissioner put a proposition to the parties that the union lift what is referred to as its Direction 1 (see Appeal Book 587 of 1995 pp 39/40) and cancel its proposed stop work meeting in return for an interim wage increase. Direction 1 relates to a number of the issues identified in the fourth recital of Order No. C 149 of 1995 dated 26 May 1995 and now the subject of Appeal 587 of 1995.

The conference was reconvened at 9.30am on 26 May 1995, at which time the matters in dispute were unable to be resolved in terms of the 24 May 1995 proposal or otherwise. The parties were then provided with already prepared 'Minutes of Proposed Order' and advised that a Speaking to those Minutes would take place at 11.00am that same morning. At points 8 and 9 of his "Affidavit" Mr Malone declared that.

> "(8) Throughout the two short conciliation proceedings Senior Commissioner Halliwell heard nothing more than assertions and counter-assertions by the parties, with little if any agreement reached.
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> (9) At no point throughout the swift conduct of C No. 149 of 1995 were the parties afforded the opportunity to submit proper evidence to prove their assertions, despite the general expectation that this would happen and the specific undertaking given by Senior Commissioner Halliwell to the Union that this would occur prior to any orders being issued."

At the speaking to the Minutes of the proposed Order the learned Senior Commission permitted the union to record briefly its jurisdictional concerns as well as address the terms of the Order itself. In the course of those submissions it was recorded that the union had been given no opportunity to call formal evidence on the question of jurisdiction and that considerable evidence was required. It was not asserted that there had been no opportunity to raise and make submissions on the question of jurisdiction. In fact in the third recital to the Order dated 26 May 1995 the learned Senior Commissioner records as follows.

> "Whereas the Commission heard the parties in full as to the industrial matters in dispute between them."
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> [Appeal Book 587 of 1995 p7]

Mr Hodge, in his submissions on behalf of the Appellant, drew the attention of the Full Bench to page 8 of the transcript of the speaking to the Minutes of the Order dated 26 May 1995 where the learned Senior Commissioner said in response to submissions from Mr Malone—

> "I understand that, Mr Malone. Mr Malone, I am somewhat puzzled. The first part of your submission as to

jurisdiction seems to have inherent in it that the commission either in the recitals in the minutes of proposed order and/or in the actual order itself has made a finding that the outside classroom hours duties were part and parcel of the contract of employment of teachers.

If you read the words of both the recital and the order that simply isn't the case. I don't wish to take it any further than that now but, for example, in paragraph 4 it simply says:

> Whereas it was demonstrated that industrial action in the form of bans upon.....list of activities set out hereunder—

and then in the actual minutes of the proposed order the order is directed to the State School Teachers Union of WA Inc to take the action that is there set out.

As I said, I just find it odd that you would have, at this point in time in any event, reached the conclusion that the order purports to find that the outside classroom hours duties undertaken by teachers are found by the commission at this point in time to be part and parcel of their contract of employment. Because if that is your view it isn't the case."

[Appeal Book p.19]

In Mr Hodge's submission the point that the union wished to argue before the Commission at first instance was that the matters the subject of Directive 1 did not form part of the contract of employment and that what had to be determined was firstly that question and secondly, if not, whether they could properly be classified as matters affecting or relating to the work privileges, rights or duties of the employers or the employees. According to Mr Hodge this was not done and led the Commission into error in the manner described in Appeal Grounds 1, 2 and 3.

The Industrial Appeal Court in Springdale Comfort Pty Ltd trading as Dalfield Homes and Building Trades Association of Unions of Western Australia (Association of Workers), makes it clear that when in proceedings under Section 44 of the Act a point is taken as to whether the matter before the Commission involves an industrial matter, the Commission must immediately enquire into and determine the matter before proceeding. In the leading judgement in that appeal Brinsden J. said

> "Where a compulsory conference has been called, as in this case, and the point is taken by one of the parties that there is no industrial matter about which the conference can proceed to consider, the Commissioner must immediately enquire into and determine whether he has jurisdiction, for only if he concludes that the matter before him involves an industrial matter should continue to proceed with the compulsory conference.
>
> The Act makes specific provisions by section 24(1) giving to the Commission jurisdiction to determine in any proceedings before it whether any matter to which those proceedings relate is an industrial matter and a finding by the Commission on that question subject to sections 49 and 90, is final and conclusive with respect to those proceedings. Section 49 deals with appeals to the Full Bench and section 90 appeals to this Court. It is properly conceded by the appellant that in order to determine a question of jurisdiction the Commission has the powers contained in section 27(1). The application for the compulsory conference in my view is a proceeding and in that proceeding the Commission has jurisdiction to determine whether any matter to which the proceeding relates in an industrial matter.

[67 WAIG 325 at 327]

That view was supported by Kennedy J. and Rowland J. in their separate judgements. (See 67 WAIG 325 at 329 and 330 respectively).

The requirement for a record and for reasons in relation to Section 44 proceedings is set out by the Industrial Appeal Court in Robe River Iron Associates and Amalgamated Metal Workers and Shipwrights Union of Western Australia and others in the following observations of Nicholson J.

> "-Requirement for a Record
>
> Examination of these provisions leads me to the conclusion that the Commission is not under any obligation at law to maintain a full record of all that occurs at a conference held pursuant to section 44. In my view the statutory structure of such conferences is more akin to the situation in Oldfield (*supra*) and is to be distinguished from the position in Magistrates' Courts referred to in the other cases discussed. Neither the Act nor any other enactment provides for the keeping of a record by the Commission although, when kept, its records have the effect appropriate to a Court of Record. The Commission is enjoined to act without regard to technicalities or legal forms. The conference procedure itself is stamped with the hall-mark of informality in that it is usually held in private, in that the Commission is at large to do what it considers right and proper to assist the parties to reach a settlement, and in that the Commission may make suggestions. The combined effect of a consideration of these provisions leads me to the conclusion that the factual situation is more akin to that in Oldfield with the result that there is no obligation at law to maintain a full record. In my view the appellant cannot therefore succeed on its two subsidiary grounds of appeal directed to the absence of a record. I add that those same provisions indicate to me that a section 44 conference is not the place for the taking of evidence so that the absence of a record cannot obtain the significance which it has in the cases relating to Magistrates. The whole force of the provisions is to structure the section 44 conference as a vehicle for informal exchange and suggestions which may culminate in directions, orders or declarations based on a free exchange between the parties.
>
> I also add that in my opinion it would be preferable if the role of the conference in that respect were made clear by inclusion of it in the exception to subsection 35(1) and the role of the appellate court in relation to both section 32 conferences and section 44 conferences were clarified.
>
> -Requirement for Reasons
>
> From a consideration of the same statutory provisions I have reached the conclusion that the obligation to give reasons in respect a decision of the Commission cast by subsection 35(1) is a mandatory obligation applicable to an order made at a section 44 conference. I confine my opinion to that point because I am less clear whether subsection 35(1) applies to any "suggestions" or "directions" given pursuant to—subsection 44(6) but it is unnecessary to decide that matter. Nor does doubt on that matter cause me to reach a contrary conclusion in relation to orders under—subsection 44(6). It is apparent that where that—subsection was amended by the introduction of paragraphs (ba) and (bb) to permit orders being made in the same terms as subsection 32(1)(c) the exception afforded to directions, orders or declarations under section 32 in subsection 35(1) was not extended to orders under subsection 44(6). An order under that subsection is *prima facie* a "decision" so that it falls within the description of the "the decision of the Commission" in subsection 35(1) and outside the stated exception in that subsection.
>
> In my view, however, the statement made in the Order by way of preamble satisfied that obligation. I am unable to see how the statement in the preamble (in which I include all the words prefaced by the word "whereas" as well as the words which prefaced the Order and which begin "now therefore") can be said to be improper or inadequate given the statutory nature of a section 44 conference. The duty to give reasons must be construed in relation to the proceedings to which the reasons relate. As has been seen, the section 44 conference procedure is one characterised by great informality. The reasons are formulated in a setting in which, in my opinion, there is no obligation to maintain a record and in which the taking of evidence is either inappropriate or unlikely. In that context I am unable to conclude that the preamble is inadequate as a statement of reasons in discharge of the obligation pursuant to subsection 35(1)."

[69 WAIG 990 at 998/9]

In the matter now before the Full Bench it is clear that questions of jurisdiction were posed before the Commission at first instance, albeit that this would seem to have occurred

by way of what was described by Mr Malone in his "Affidavit" as assertion and counter assertion and without the opportunity being afforded to submit evidence. The Grounds of Appeal and the submissions on behalf of the Appellant contend that this is where the learned Senior Commissioner fell into error and that he should have taken some other course which would have allowed for formal evidence and submissions to be placed before the Commission for determination firstly as to which the matters the subject of Directive 1 did or did not form part of a teacher's contract of employment and secondly whether they could properly be classified as matters affecting or relating to the work privileges, rights or duties of the employers or the employees. In my view this misconstrues what is required in Section 44 proceedings.

It is the case that Section 23(1) of the Act gives the Commission cognisance of and authority to enquire into and deal with any industrial matter. What is an "industrial matter" is defined in Section 7 of the Act to mean "any matter affecting or relating to the work, privileges, rights or duties of employers or employees in any industry or of any employer or employee therein" (Section 7(1) of the Act). Section 24 provides the Commission with the power to decide whether a matter is an "industrial matter" and the Industrial Appeal Court has made it plain that once a question of jurisdiction is raised in Section 44 proceedings the Commission must determine that question before proceeding. It is trite to say that the manner in which the Commission exercises its power is conditioned by Section 26 of the Act. This is recognised by the Industrial Appeal Court in the passage quoted immediately above.

In the proceedings at first instance the learned Senior Commissioner had before him questions relating to jurisdiction. He also had before him what are described as assertions and counter assertions and Directive 1 which lists the matters which it was claimed by the Respondent union at first instance did not form part of a teacher's contract of service and therefore did not constitute "industrial matters". He also had prior knowledge of the issues in dispute through his participation in Commission in Court Session and other proceedings relating to the dispute between the parties (See Appeal Book 587 of 1995 at p.34). In the recitals to Order No. C 149 of 1995 it is recorded that "the Commission heard the parties in full as to the industrial matters in dispute between them;" (Appeal Book 587 of 1995 at p.7) and I can find nothing in what the learned Senior Commissioner said in proceedings to suggest that he had not considered and determined that he had jurisdiction to proceed in the manner he did. While Mr Hodge drew support in his submissions from the words of the learned Senior Commissioner quoted above from the speaking to the Minutes of the 26 May 1995 Order in which he confirms that he had reached no conclusion about whether duties undertaken by teachers outside classroom hours formed part of their contract of employment, this does not in my view advance the argument for the Appellant. That substantive matter, as noted by the learned Senior Commissioner, was a matter for determination elsewhere. It was only necessary in the Section 44 proceedings for the Commission to determine that the matters in dispute were "industrial matters" as defined under Section 7 of the Act. While the Commission at first instance made no express finding in this regard that fact, in my view, is not fatal. Clearly the question of jurisdiction was raised before him and he had available to him material which permitted proper consideration of the question. In addition he allowed the parties to record their concerns as to jurisdiction on transcript in the course of speaking to the minutes of the proposed Order. The learned Senior Commissioner proceeded from that point to issue Orders which required certain things of the parties "until either full agreement is reached between the parties or any matters that remain in dispute at the conclusion of the negotiations are arbitrated by the Commission." (Appeal Book 587 of 1995 p.9). I am satisfied that this action, when viewed in conjunction with the recitals to the Order, indicates that the Commission at first instance, without formally doing so, had in effect determined that jurisdiction had been found to exist and there is nothing to establish that such is not the case. While it might be argued that the Commission at first instance could have dealt with matters differently and made explicit findings, what occurred is not inconsistent, in my view, with the statutory structure of Section 44 of the Act as explained by the Industrial Appeal Court in Robe River Iron Associates and Amalgamated Metal Workers and Shipwrights Union of Western Australia and others (Supra).

To adopt the course suggested by the Union at first instance and through this Appeal would in my view require an approach different from that envisaged under the scheme of the Act and by the Industrial Appeal Court. It is for the Commission to decide in Section 44 proceedings the extent of submissions and evidence necessary to determine questions before it and the manner in which such submissions and evidence are to be received. As observed by the Industrial Appeal Court, reasons in such proceedings are formulated in a setting in which "there is no obligation to maintain a record and in which the taking of evidence is either inappropriate or unlikely" (Supra at 998). It would be untenable if it were otherwise and against the objects of the Act if the Commission was able to be delayed in promptly dealing with disputes through Section 44 proceedings by the need to accommodate demands for time to put formal submissions and evidence on the substance of the matters before it while a serious dispute, such as the one before the Commission at first instance, continued without any capacity to bring the coercive powers of the Commission to bear through interim Orders.

Further, it is clear that the matters before the Commission at first instance were "industrial matters". They involved existing bans on certain work in support of a salary claim and a proposed a stop work meeting. The work bans related to work identified in the recitals to the Order dated 26 May 1995 and included work encompassed in the so called Directive 1. Questions were raised about whether such work formed part of the employees contract of service. Clearly this concerned the work and duties of employees and the rights of employers in respect of such work and duties. These matters fall within the definition of "industrial matter" under the Act being matters affecting or relating to the work, privileges, rights or duties of employers or employees in what is also clearly an "industry". The Industrial Appeal Court in the Minister for Police and the Commissioner of Police v WA Police Union (1995) 75 WAIG 1504, is authority for the proposition that, merely because those matters do not form part of the contract of employment, it does not exclude them from being industrial matters. To have accommodated the Union's request for an adjournment to put formal submissions and to call evidence would not have altered that conclusion and would have been of no consequence.

For these reasons I would dismiss Appeal Grounds 1 and 3.

As to Appeal Ground 2 that "The learned Senior Commissioner acted in excess of jurisdiction, erred in law, and denied the appellant procedural fairness in making orders without receiving evidence and submissions thereon relating to those orders", the Full Bench was taken by the Respondent to the Decision of the High Court in Stead v SGIC (1986) 161 CLR 141 as authority for the proposition that where there has been a denial of natural justice an Appellant needs to show that the denial deprived him/her of the possibility of a successful outcome. If there had been a denial of natural justice in this instance, which I doubt for reasons set out above relating to the conduct of Section 44 proceedings, it is plain in my view that there was no possibility of an outcome other than a finding that the matters before the Commission concerned "industrial matters". Any submissions made or evidence called for the purpose for establishing that the bans subject of the dispute before the Commission formed part of the contract of service for teachers would be of no consequence because the matters in issue were "industrial matters" as defined.

For these reasons I would dismiss Appeal Ground 2.

As to Appeal Ground 4 it was confirmed by Mr Hodge for the Appellant that while the substance of that ground was not addressed in either his substantive submissions or in his written outline submitted to the Full Bench, it was nevertheless not abandoned. In Ms Smith's submission for the Respondent, this Commission cannot make orders binding upon any person who is not a party to proceedings and as the Australian Education Union was not a party to the proceedings of first instance, it could not be affected by the Order. If that is the point of Appeal Ground 4, and I am not sure that it is, then I would agree with Ms Smith that it cannot be sustained. If Ms Smith has misconstrued the point of Appeal Ground 4 I am unable to find any other substance to it and would agree that it is unable to be sustained.

Appeal Ground 5 asserts that Orders the subject of the Appeals now before the Full Bench were made ultra vires Section 44 (6) of the Act because they were made in final form and not as interim Orders until conciliation or arbitration had resolved the matter. With respect I am unable to find any support for that argument. When the Order is read in its entirety it is my view that it is not finally determinative of the matters before the Commission at first instance.

In the State School Teachers Union of WA Inc and the Hon Minister for Education the Full Bench reviewed a number of authorities on the matter and observed—

> "it will be clear from all the authorities set out above that an order made "until further order" is not a final order, and is, on its face, within power under Section 44(6) (ba) and (bb)."
>
> (70 WAIG 21 at 28)

In the matters before the Full Bench, both Orders appealed against contained a provision in the following terms—

> "this order shall commence to operate according to its terms on and from the 2nd day of June, 1995 and shall, subject to the provisions of this Order, remain in operation until conciliation or arbitration has finally resolved all industrial matters presently in dispute between the parties."
>
> (see Appeal Book 587 of 1995 p10 and appeal book 723 of 1995 p 8)

When read in the context of the Orders as a whole it is apparent that Orders (e) and (f) of the Order dated 26 May 1995 and Orders (f) and (g) of the Order dated 6 June 1995, which are in identical terms, provide that the Orders may be varied, set aside or cancelled and further that they are to remain in operation only until conciliation or arbitration has finally resolved all the industrial matters in dispute between the parties. In these circumstances it cannot be said that the Orders made were in final form and I therefore conclude that Appeal Ground 5 is not made out.

For all of the reasons set out above I would dismiss both Appeals.

SCOTT C: I have had the benefit of reading, in draft form, the Reasons for Decision of His Honour the President, which set out the orders appealed against and the grounds of appeal in each matter, and there is no need to repeat them.

The first issue which arises is whether or not there is a matter appropriate to be the subject of an appeal in the public interest when the matters appealed against constitute findings not decisions. This is such a matter as it relates to the Commission's powers in attempting to conciliate, and the types of orders which it may issue whilst exercising powers pursuant to section 44.

It was argued that the appeals are moot on the basis that the Commission subsequently issued an order cancelling both orders the subject of the appeals. However, the orders were cancelled from the date of cancellation and had a life in law from their date of issuance until that cancellation and therefore there was an obligation to comply with those orders whilst they were alive. It may be that there will be action to prosecute for breach of those orders. It is only the striking down of the orders by the appeal decisions which can remove that life. On that basis, there is also a matter of some significance in relation to compliance with those orders during their life.

On that basis, there is an important issue which should be tested on appeal notwithstanding that what is appealed against are findings, not matters finally determining the matter, and further, although the orders have been cancelled, the matters are not moot.

The circumstances before the Commission at first instance included that two conferences were convened upon the application of the Hon Minister for Education. The application stated that there were work bans in place in support of a salary claim. The Commission had before it, in conference, a list of areas where the Minister was claiming that industrial action was occurring, and also had a copy of a document headed Quality of Education Campaign—Directive 1 in which the appellant's State Council directed members of the appellant to do and not do certain things. It was argued by the appellant that it wished to submit that the Commission had no jurisdiction to deal with the matter on the basis that the matters listed were not included in the contract of employment of a teacher and therefore no industrial matter arose.

During the hearing of the appeals, the appellant sought to submit into evidence an affidavit by Peter Anthony Malone that during the conciliation proceedings the Commission indicated that at the Speaking to the Minutes of the Proposed Orders, "the parties could utilise that hearing to formally record any reservation they had with the Proposed Order".

Ms Smith, for the respondent, says the matters stated in the affidavit as having been said by the Commission were said in the absence of the respondent, so were not matters within the knowledge of the respondent. On this basis, no objection was taken to the document.

It should be noted that the document does not indicate that the Commission undertook to hear the parties, in full, in respect of their arguments as to jurisdiction. It is clear from the transcript of the Speaking to the Minutes that while an opportunity was given for the parties to record their concern regarding jurisdiction, the Commissioner clearly indicated that it was not his intention to hear and determine the issue of jurisdiction at that point, and he made no finding as to jurisdiction.

The appellant says that it was denied natural justice by not having an opportunity to put its argument regarding jurisdiction during the hearing of the Speaking to the Minutes. It was made clear to the appellant during that hearing that no opportunity was to be allowed for it to argue that matter in detail, but could record, briefly, its views. It is noted that during the hearing for the Speaking to the Minutes for the second order the appellant called evidence as to certain matters but did not call evidence as to the jurisdictional issue.

In any event, orders, as set out in the reasons for decision of His Honour, the President, then issued.

The dicta of the *Springdale Comfort Decision (67 WAIG 325)* requires the Commission where jurisdiction is challenged to determine whether jurisdiction exists prior to proceeding or continuing to proceed with a conference pursuant to section 44.

In particular, Brinsden J said at page 327:

> "Where a compulsory conference has been called, as in this case, and the point is taken by one of the parties that there is no industrial matter about which the conference can proceed to consider, the Commissioner must immediately enquire into and determine whether he has jurisdiction, for only if he concludes that the matter before him involves an industrial matter should continue to proceed with the compulsory conference."

At page 330, Rowland J notes:

> "Once a question of jurisdiction is raised, the Commission must determine that question under section 24 before exercising power to resolve the dispute before it under section 44."

It is clear that the Commission at first instance had a significant amount of material before it in conference, and based on comments at page 34 of the Appeal Book in appeal 587 of 1995, had prior involvement, as a member of the Commission in Court Session, with other proceedings regarding the dispute between the parties. However, no finding as to jurisdiction was made, and in this respect the Commission fell into error. The Commission is required when jurisdiction is challenged, to deal with that matter before proceeding. In the context of a section 44 conference this may be done expeditiously and through an informal process but none the less is required to be done.

It may be that there was sufficient before the Commission on this occasion to enable a finding as to jurisdiction. As none was made, the Commission was not entitled to proceed and to issue the orders it did.

On this basis I would uphold the appeals and quash the orders. Having so found, there is no need to deal with the remaining grounds of appeal.

THE PRESIDENT: For those reasons, the appeals are upheld and orders (a) and (b) of the decision of the Commission made

on 26 May 1995 and order (a) of the decision of the Commission made on 6 June 1995 are quashed.

Order accordingly

Appearances: Mr A S Hodge (of Counsel), by leave, and with him Mr M B Bennett (of Counsel), by leave, on behalf of the appellant.

Ms J H Smith (of Counsel), by leave, on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

State School Teachers' Union of WA (Inc)
(Appellant)

and

The Honourable Minister for Education
(Respondent).

Nos 587 and 723 of 1995.

BEFORE THE FULL BENCH.

13 December 1995.

HIS HONOUR THE PRESIDENT P. J. SHARKEY.
COMMISSIONER R.N. GEORGE.
COMMISSIONER P.E. SCOTT.

Order.

These matters having come on for hearing before the Full Bench on the 6th day of November 1995, and having heard Mr A S Hodge (of Counsel), by leave, and with him Mr M B Bennett (of Counsel), by leave, on behalf of the appellant and Ms J H Smith (of Counsel), by leave, on behalf of the respondent, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 13th day of December 1995 wherein it was found that the appeals should be upheld, it is this day, the 13th day of December 1995, ordered as follows—

(1) THAT appeals Nos 587 and 723 of 1995 be and are hereby upheld.

(2) THAT orders (a) and (b) of the decision of the Commission in application No C 149 of 1995 made on the 26th day of May 1995 and order (a) of the decision of the Commission in application No C 149 of 1995 made on the 6th day of June 1995 be and are hereby quashed.

By the Full Bench

(Sgd.) P. J. SHARKEY,
[L.S] President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Honourable Minister for Education
(Appellant)

and

State School Teachers Union of Western Australia
(Respondent).

No. 937 of 1995.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P.J. SHARKEY.
COMMISSIONER R.N. GEORGE.
COMMISSIONER P.E. SCOTT.

18 December 1995.

Reasons for Decision.

THE PRESIDENT: This is an appeal against the decision of the Commission at first instance made on 2 August 1995, which, formal parts omitted, was in the following terms (see page 15 of the appeal book (hereinafter referred to as "AB"))—

"(1) THAT the dispute between the parties be referred for hearing and determination and become CR 173 of 1995.

(2) THAT the matter be listed for hearing on a date to be fixed.

(3) THAT the inquiry being conducted pursuant to s.7C of the Education Act into allegations made about Ms K. Levy not be concluded until the decision of the Commission in CR 173 of 1995 is made.

(4) THAT either party has liberty to apply to vary the terms of this Order upon the giving of 48 hours' notice to that effect."

The appeal is against the decision of a single Commissioner and is properly brought under s.49 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act"). The appeal came before us by leave of the Commission under s.24 of the Act.

BACKGROUND

The background to the matter was this. The appellant is the employer of teachers under the Education Act 1928 (as amended) (hereinafter referred to as "the Education Act"). The respondent is an organisation which represents teachers.

On 10 April 1995, Ms Katja Levy, a teacher employed by the appellant, was suspended without loss of pay following allegations made against her by various persons. The appellant then initiated an inquiry pursuant to s.7C of the Education Act.

A Mr Lowther was authorised to conduct the inquiry. On 19 May 1995, Mr Lowther presented a report to the appellant. A copy of the report was provided to Ms Levy seeking her comments on it.

On 13 June 1995, the respondent organisation, of which Ms Levy is a member, applied for a conference to be held pursuant to s.44 of the Act. The application alleged that the procedures employed by the employer in the course of the investigation were unfair, and the denial of natural justice and procedural fairness had occurred. The respondent organisation sought the assistance of the Commission to resolve the dispute. The respondent organisation alleged a reasonable apprehension of bias on the part of Mr Lowther and sought that a number of issues be referred for hearing and determination, as well as that the inquiry be stayed pending that hearing and determination. The Commission at first instance, as a result, made the orders which I have set out above. They are obviously not final orders.

Before the Commission it was submitted that there was no jurisdiction because the matter was not an industrial matter. The Commission held that it was. It was submitted that s.23B(1)(a) of the Act deprived the Commission of jurisdiction which s.23 otherwise conferred on it to hear and deal with this matter. The Commission held that s.23B dealt with a set of circumstances peculiar to another Act, namely the Education Act, and created a code for an appeal by a "teacher" against the matters set out in that section. For those and other reasons the Commission held that s.23 permitted it to deal with an industrial matter, the matter before the Commission not being within the scope of s.23B.

The Commission also rejected a submission that it use its powers under s.27(1)(a) of the Act to dismiss the application as premature.

S.49(2a) OF THE ACT

If this is a decision which is a finding, as that is defined in the Act, as it would appear to be, then the questions raised on the appeal and the effect of the answers to those questions are matters of importance for teachers, for the Minister and their employers and for the public whom teachers serve and teach. The questions raised are of such importance that in the public interest an appeal should lie and I would so hold (see RRIA v AMWSU and Others 69 WAIG 1873 (FB) for the test which I apply).

INDUSTRIAL MATTER

The Commission at first instance decided that the matter in dispute, because it pertained to an employer-initiated inquiry

conducted pursuant to s.7C of the Education Act concerning Ms Levy's conduct as an employee, was a matter affecting or relating to the work of an employee in an industry. This finding was submitted to be in error because the commencement of the inquiry under s.7C of the Education Act was not the subject of the dispute. The dispute, so it was submitted, was as to the manner in which the inquiry was conducted.

At the heart of the submissions for the appellant was this. The respondent organisation sought the Commission's intervention in the conduct of an inquiry by an administrative tribunal established pursuant to s.7C of the Education Act. Such a matter cannot be considered an "industrial matter" as defined in s.7 of the Act. This was because the tribunal is entitled to carry out its statutory function as it sees fit, in accordance with the requirements of the Education Act, and the appellant is not involved in a s.7C inquiry until such time, if it does occur, that the Chief Executive Officer makes a report and recommendation to the Minister that the teacher has been guilty of misconduct and should be dismissed.

This case was submitted to be analogous with RRIA v MEWU 75 WAIG 2478 (IAC). In that case, the Industrial Appeal Court held that a Local Court common law claim, which was the subject of the dispute, was not an industrial matter for the purposes of s.23 of the Act, and, accordingly, that orders made by the Commission restraining the plaintiff employer in those proceedings from continuing with the proceedings for the time being were made outside jurisdiction.

For the respondent organisation upon this appeal it was submitted that this was an "industrial matter" as that is defined in s.7 of the Act. It was submitted that the definition is wider in its coverage under the Act than the jurisdiction conferred on the Australian Industrial Relations Commission by the Industrial Relations Act 1988 (Cth) and its predecessors.

We were taken to Minister for Police and Commissioner of Police v WA Police Union of Workers 75 WAIG 1504 at 1508 (IAC) where Franklyn J considered the definition of "industrial matter" in s.7 of the Act. Franklyn J, with whom Kennedy and Rowland JJ agreed, said at page 1508—

> "Unlike the Commonwealth definition, its terms are not directed initially to the question whether the matter in issue "pertains" (ie belongs to or is within the sphere of) the relations of employers and employees as such. Rather, it is directed to the question whether the matter in issue affects or relates to the work, privileges, rights or duties of employers or employees or an employer or employee in any industry. It seems to me that this requires initial identification of what it is, within the description of "work, privilege, rights or duties" of the employer or employee or employers or employees (as the case may require), that is said to be affected by or related to the claimed industrial matter. If that cannot be identified, then the issue does not concern an industrial matter. If, however, it can be identified, then the inquiry is next directed to establishing whether the matter in issue does, as a matter of fact, affect or relate to the identified "work, privilege, right or duty". Only if it can be found so to do can it be an "industrial matter" within the meaning of the Act."

The Full Bench is bound to use that approach, and I will do so in these reasons.

Counsel for the respondent organisation submitted that an inquiry instituted pursuant to s.7 of the Education Act is capable of constituting an "industrial matter" within s.7 of the Industrial Relations Act 1979 (as amended). This is because such an inquiry deals with the behaviour and/or performance of its teachers and has the potential ultimately to result in the punishing of and even the termination of the employment of the teacher who is the subject of an employer-initiated inquiry.

Further, an inquiry undertaken pursuant to s.7C of the Education Act is a process or procedure undertaken for the purpose of deciding whether disciplinary action should be taken by the employer as employer against a teacher in his or her capacity as an employee.

It was submitted that this was an industrial matter or that it necessarily concerned and involved such a matter or matters in that the inquiry directly affected or related to the work, privileges, rights or duties of a teacher as an employee and the Minister as an employer.

It was also submitted that the fact that the inquiry is pursuant to a statute, namely the Education Act, does not preclude its conduct from constituting (or at the very least) giving rise to an industrial matter which may then be made or become the subject of proceedings before the Commission (see Gudgeon v Black (Application No CIV 1077 of 1994), delivered 10 November 1994, (unreported) (FC-SC) and Minister for Education v SSTU 75 WAIG 2684 (FB)).

S.7, and, indeed, all of the provisions of the Act, including s.23, should be interpreted having regard to the objects of the Act prescribed in s.6, in particular s.6(b) which states that it is a principal object of the Act to encourage and provide means for conciliation with a view to amicable agreement, thereby preventing and settling industrial disputes, and s.6(c) which states that it is a principal object of the Act to provide a means for preventing and settling industrial disputes not resolved by amicable agreement, with the maximum of expedition and the minimum of legal form and technicality. An object section, such as s.6, indicates how the Act is to operate. It alone will not, however, represent the object of the legislation. Intention is to be gleaned from the whole of the Act and regard must be had to other sections (see Pearce and Geddes "Statutory Interpretation in Australia" (3rd Edition) at page 90).

The Minister for Education, who is the Minister referred to in the Education Act, is assisted by a department of the Public Service in the administration of that Act (see s.3 of the Education Act). The Chief Executive Officer is the person holding or acting in the office of Chief Executive Officer of the department. The Minister is empowered to appoint teachers as defined and employees of the department (see s.7 of the Education Act). The Minister is the employer of teachers.

S.7C of the Education Act prescribes what is misconduct and provides that the Chief Executive Officer, where it appears to him or her that a teacher may be guilty of misconduct, shall cause an inquiry to be held by an authorised person (see s.7C(2) and (3) of the Education Act). It is not necessary for such an inquiry to be formal (see s.7C(4) of the Education Act). An authorised person is a person authorised by the Chief Executive Officer for the purposes of s.7C (see s.7C(1) of the Education Act). There is nothing that prescribes that an authorised person should be an employee of the Minister. Where an inquiry is being held under s.7C, the Chief Executive Officer may suspend the teacher from duty. Where, after an inquiry has been held under s.7C(3) of the Education Act, the Chief Executive Officer is not satisfied that the teacher has been guilty of misconduct, then the Chief Executive Officer shall remove the suspension (see s.7C(8) of the Education Act). However, once as a result of the inquiry the Chief Executive Officer determines that a teacher is guilty of misconduct, the Chief Executive Officer may by order in writing impose any one of a number of prescribed punishments from reprimand to suspension (see s.7C(12) of the Education Act). He/she may also make a report and recommend to the Minister that the teacher may be dismissed. The Minister may then, upon considering the report and recommendation, order in writing that the teacher be dismissed.

What those provisions demonstrate is this. The Minister is the employer of Ms Levy. He has the power to dismiss her. The Chief Executive Officer administers the department which assists the Minister in the administration of the Education Act. Under the Education Act, the Minister may appoint teachers. The Chief Executive Officer's duties under the Education Act are carried out on the Minister's behalf by way of assisting him.

Misconduct, for the purposes of teachers employment, is defined in s.7C of the Education Act, as I have said. The Chief Executive Officer, as the Minister's agent, is required by the Education Act to cause an inquiry to be held by an authorised person where it appears to him or her, that is the Chief Executive Officer, that a teacher may be guilty of misconduct as prescribed. Presumably that is what occurred here. An "authorized person" is defined as "a person authorized by the chief executive officer for the purposes of this section" (see s.7C(1) of the Education Act). Accordingly, it is the Chief Executive Officer who is responsible for and is required to be responsible for causing an inquiry to be held, and for indeed appointing the person who carries out that inquiry. The Chief Executive Officer, in so doing, is not carrying out a separate function. His role is indivisible from his role as an agent of

the Minister who is the employer. The Chief Executive Officer is setting in train on behalf of the Minister a process whereby the alleged misconduct is investigated. Any alleged misconduct which is investigated is misconduct which is alleged to have been committed by a person who is a teacher and is misconduct because he or she is employed as a teacher by the Minister. If misconduct is established, then the teacher may be punished. Indeed, the Minister may dismiss a teacher upon recommendation of the Chief Executive Officer. Such an inquiry under the Education Act is no different in its application from the duty of an employer to afford his or her employee procedural fairness before he or she disciplines or dismisses such an employee. That requirement for procedural fairness is often satisfied by an inquiry, albeit an informal one, being conducted by an employee or agent of the employer or by the employer him or herself. However, the process of inquiry leading to dismissal or punishment by the Chief Executive Officer, the employer's agent, or a failure to satisfy the Chief Executive Officer that misconduct has been committed, relates to nothing except an allegation of misconduct in employment, the right of the employer and his duty to follow certain processes, the right to punish and the right to dismiss. The process also deals with the duty of the employee not to commit misconduct, the right not to be dealt with for misconduct without a proper inquiry as prescribed by the Act, and the right not to be punished otherwise than in accordance with the provisions of the Education Act.

All of these rights and duties are prescribed by the statute, but only because the Minister is the employer and the teacher an employee. The inquiry is a matter affecting or relating to the work, privileges, rights or duties of employers or employees. The matter before the Commission was an inquiry directed to matters of alleged misconduct by a teacher as an employee and the rights and duties of the Minister as employer acting in part through the statutorily prescribed agents of the Minister. Those rights and duties are what are affected by or relate to the claimed industrial matter ((ie) the conduct of the inquiry and its future does, as a matter of fact, affect the rights of the employee to be dealt with fairly in such a case, and in this case her right not to be punished or dismissed until there has been an inquiry (see Gudgeon v Black (op cit) (unreported) (FC-SC) and Kioa and Others v West and Another [1985] 159 CLR 550 (HC) and Shire of Esperance v Mouritz 71 WAIG 891 (IAC)).

I have already observed that the matter in issue affects or relates to the right of the Minister to dismiss or for his agent, the Chief Executive Officer, to punish after misconduct has been found by such an inquiry. This case was quite distinguishable from RRIA v MEWU (op cit) (IAC). That case was not one of a disciplinary inquiry directly related to and affecting the rights and duties of an employer and employee, and, indeed, the work of an employee. Such an inquiry could operate only because the contract of service existed. Its results affect an employer as employer and the employee as employee. Its results could end in the termination of the contract of employment. The inquiry was not a separate action in a common law court occurring after a contract of service had been terminated, as was the case in RRIA v MEWU (op cit) (IAC), and this case is distinguishable from that case for these reasons.

I would also add that it is irrelevant that this inquiry occurred because the statute empowers it to occur. The statute, in fact, prescribes a disciplinary process similar to that prescribed in some awards. Indeed, the effect of the statute in this case in relation to the contract of service is the same as that of an award. The statute provides like an award for matters not covered by the contract of employment, but they are not terms of the contract. They nonetheless bind the parties to the contract of employment (see Byrne and Frew v Australian Airlines Ltd [1995] 69 ALJR 797 at 800 (HC) per Brennan CJ, Dawson and Toohey JJ). For those reasons, there was jurisdiction because what was before the Commission was an "industrial matter" as defined in s.7 of the Act.

S.23 AND S.23B OF THE ACT

I now turn to s.23 and s.23B of the Act. S.23(1) provides as follows—

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

S.23B is exclusively concerned with aspects of the employment relationship between teachers and the Minister and reads as follows—

> "(1) The Commission has jurisdiction to hear and determine—
>
> (a) an appeal by a teacher against any punishment for alleged misconduct imposed on the teacher under the Education Act 1928 other than a punishment that is a reprimand or a fine that does not exceed $50;
>
> (b) an appeal by a teacher (not being a person to whom subsection (2) applies) against the dismissal, or reduction to a position carrying a lower salary or remuneration, of the teacher for inefficiency under any regulations relating to the assessment of inefficiency and made under the Education Act 1928; and
>
> (c) an appeal under section 7D(4) of the Education Act 1928.
>
> (2) This subsection applies to a person who is—
>
> (a) a teacher appointed on probation; or
>
> (b) a teacher who is reduced to a position carrying a lower salary or lower remuneration but whose salary or remuneration is not by reason only of that reduction reduced to the level of the lower salary or lower remuneration.
>
> (3) Without limiting the generality of subsection (1) the Commission may confirm, modify or reverse any decision, determination, finding or declaration appealed against.
>
> (4) No record relating to an appeal against a punishment imposed on a teacher shall be open to public inspection."

S.23(2)(a) is relevant and reads as follows—

> "(2) Where by or under any other Act power is conferred on a person or body to appoint officers or employees for the purposes of that Act or to fix or determine the salaries, wages, or other remuneration, or other conditions of employment, of officers or employees appointed for those purposes, or to do both of those things—
>
> * (the Industrial Appeal Court held that the Act should be read as if the above heading was placed before S.22A)
>
> (a) the jurisdiction that the Commission would have but for that other Act to hear and determine any matter or dispute relating to the salaries, wages, or other remuneration, or other conditions of employment, of those officers or employees is not affected by that power conferred by or pursuant to that other Act; and"

S.23(3)(d) is also relevant and reads as follows—

> "(3) The Commission in the exercise of the jurisdiction conferred on it by this Part shall not—
>
> ...
>
> (d) regulate the suspension from duty in, discipline in, dismissal from, termination of, or reinstatement in, employment of any employee or any one of a class of employees if there is provision, however expressed, by or under any other Act for or in relation to a matter of that kind and there is provision, however expressed, by or under that other Act for an appeal in a matter of that kind;"

It was the appellant's contention that, in any event, it was the intention of Parliament expressed in the legislation that the jurisdiction of the Commission should not extend so far as to permit it to inquire into the conduct of a s.7C inquiry, particularly at this stage.

S.23B of the Act, it was submitted, would be largely superfluous if the Commission already had jurisdiction to inquire into the conduct of a s.7C inquiry because it came within the definition of "industrial matter". This is because s.23B is a specific provision which sets out the Commission's jurisdiction to hear Education Act appeals, including those in relation to s.7C of the Education Act.

The jurisdiction of the Commission under s.23 of the Act is expressed in general terms, and s.23 is expressly made "subject to this Act". Accordingly, if one applies the principle of statutory interpretation "generalia specialibus non derogant", the general provision, which is s.23, must give way to the specific provision which is s.23B, so the submission went. The authority for that proposition was cited as Anthony Hordern and Sons Ltd and Others v Amalgamated Clothing and Allied Trades Union of Australia [1932] 47 CLR 1 at 7 (HC) per Gavan Duffy CJ and Dixon J and at page 20 per McTiernan J. What Gavan Duffy CJ and Dixon J said was applied by the whole of the High Court per Gummow J in David Grant and Co Pty Ltd v Westpac Banking Corporation [1995] 69 ALJR 778 at 783-784 (HC). The principle is—

> "When the Legislature explicitly gives a power by a particular provision which prescribes the mode in which it shall be exercised and the conditions and restrictions which must be observed, it excludes the operation of general expressions in the same instrument which might otherwise have been relied upon for the same power."

Against that, it was submitted that when the Industrial Relations Act 1995 effected the repeal of Division 1 of Part IIA of the Act and also brought teachers within the general jurisdiction of the Commission by the deletion of the separate definition of "industrial matter" for teachers formerly existing in s.7 of the Act, then it was made clear that there was a general untrammelled jurisdiction in the Commission over teachers. Accordingly, it was submitted, the Act, therefore, apart from s.23B, did not prescribe specifically for teachers. Then, whilst s.23B is exclusively concerned with certain aspects of the employment relationship between teachers and their employer, it was submitted that the preservation of a pre-existing right of appeal in respect of a limited range of matters did not have the effect of restricting the Commission's jurisdiction to those matters. This, it was submitted, was supported by the plain wording of the statute, together with, by implication, the terms of s.23(2)(a) and s.23(3)(d) of the Act, the amendment to the general definition of "industrial matter" and the repeal of the special definition of "industrial matter" in s.7(1) of the Act relating to teachers.

We were also referred to Gudgeon v Black (op cit) (unreported) (FC-SC) and Minister for Education v SSTU (op cit) (FB) as implicit authorities for this proposition. It was submitted that this conclusion is consistent with the view that the jurisdiction of the Commission as set out in s.23 of the Act must be generally interpreted so as to facilitate the effective discharge of the functions conferred by the Act on the Commission and the achievement of the objects set out in s.6 of the Act. With that latter submission I agree.

S.23B of the Act, therefore, it was submitted, even though it provides for a right of appeal against any punishment for alleged misconduct imposed on a teacher under the Education Act, is not repugnant to or inconsistent with the general jurisdiction of the Commission, embracing disputes about the conduct (including issues of fairness) of an inquiry pursuant to s.7C of the Education Act which might lead to the imposition of punishment, including a dismissal.

Accordingly, it was submitted that the generalia specialibus rule is not relevant and therefore has no particular relevance to the question before the Full Bench on this appeal. It is correct to say that s.23 of the Act, which confers jurisdiction generally on the Commission, must be read subject to this Act.

The overriding idea, however, is that an Act should be read as a whole and this has the effect of making all provisions subject to one another. What must be avoided is treating the phrase as if it indicates that there is a conflict between sections of the Act (see Pearce and Geddes "Statutory Interpretation in Australia" (op cit) at page 82). The words "subject to", which appear in s.23(1) of the Act, do not necessarily make the provision subject to s.23B of the Act. In fact they do not. This is fortified by s.23(2)(a) which provides that the Education Act, which confers on the Minister the power to appoint teachers for the purposes of that Act, does not affect the Commission's jurisdiction to hear and determine any matter or dispute relating to, inter alia, "other conditions of employment" of teachers.

Then I turn to s.23(3)(d) of the Act. That provision does not preclude the Commission from exercising its jurisdiction under s.23, because that can only occur if there is a provision expressed by or under any other Act for or in relation to a matter such as discipline, dismissal from employment, etc, and more there is a provision expressed by or under that other Act for an appeal. There is, of course, none expressed in the Education Act.

I turn, too, to the effect of s.23B of the Act. The Commission is expressly given jurisdiction to hear and determine an appeal against any punishment for alleged misconduct imposed on the teacher under the Education Act, other than a punishment that is a reprimand or a fine that does not exceed $50.00. S.23B(1)(b) seems to enable the Commission to hear and determine an appeal against dismissal, as well as a reduction in position for inefficiency.

The provision is quite precise. Appeals lie against punishments under s.7C(12) of the Education Act, for example, or against dismissals. There is no prohibition, nor could there be, upon the Commission dealing with an industrial matter which is a dispute covering the inquiry, the need for the inquiry, the bona fides of the inquiry, and the fairness of process of the inquiry which is plainly an industrial matter as I have said above. I do not think that s.23B is such a provision as would enable the maxim generalia specialibus non derogant to apply. In particular is that so in relation to s.44(6)(b) and (ba) orders where the power should not be read down because interim orders are made advancing the objects of the Act to enable arbitration and conciliation and to prevent the deterioration of situations. The Commission at first instance was not therefore deprived of jurisdiction to hear and determine this matter by the operation of s.23B of the Act.

I would add these further comments. S.23B decisions are not the subject of appeal to the Full Bench (see s.49(2b) of the Act). S.23B of the Act provides no right of appeal against any punishment which is a reprimand or fine of $50.00 or less. In other words, the section does not provide a complete right of appeal against punishment imposed under s.7C(12) of the Education Act. Neither is there any exclusion of the exercise of the general powers of the Commission contained in the Act, if such exercise is to occur before the right of appeal under s.23B exists. That right exists only when punishment for misconduct is imposed. Also it does not permit appeal against all punishments. Thus, when a s.7C inquiry commences, there is no knowledge in the teacher concerned or the Chief Executive Officer what the result will be, that is whether there will be any misconduct found, or, if there is, what punishment will be imposed. Thus, no-one can know whether a right of appeal will exist.

Accordingly, s.23B cannot and was not intended to operate given the objects of the Act (see s.6) to exclude a teacher seeking a remedy before the inquiry is completed by the application of the Commission's general power. In any event, nothing excludes the Commission from dealing with and the Act enables the Commission to deal with industrial disputes which arise from action under s.7C, which could not be dealt with if the appellant's counsel's submissions were right. In other words, the objects of the Act could not be furthered (see s.6(b) and (c) of the Act).

S.23B did not prevent the general exercise of the Commission's jurisdiction and power in this case.

S.44 OF THE ACT

The order staying the inquiry came under attack upon this appeal, the submission being that, because the order, in essence, stayed the inquiry pending the decision of the Commission, there was no power in s.44(6)(b)(ba) or elsewhere in the Act which supported the making of the order. This submission was based in part on the principle that the Commission is a court of record of limited jurisdiction pursuant to s.12 of the Act, not endowed with inherent jurisdiction. Accordingly, so the submission went, its powers are confined to the powers found within the Act. That is, of course, so. There is only limited express power to order a stay, but that, of course, relates to the Commission's own decision (see s.49(11) of the Act), and does not relate to its powers and the exercise of them which are conferred by a section such as s.44 of the Act where the powers are not to be read down.

The Commission, it was submitted, was not akin to a superior court with supervisory jurisdiction to stay the disciplinary inquiries of inferior tribunals, unlike the Supreme Court.

(We were referred to Walton v Gardiner and Others [1992-1993] 177 CLR 378 (HC) and Herron v McGregor and Others (1986) 6 NSWLR 246 (SC)).

It was further submitted that it would be an absurd result if an applicant, by application to the Commission, could stay by application to the Commission at any time, an inquiry being held into the conduct of that teacher, and by which application the further conduct of the inquiry would be under the control of the Commission (see RRIA v MEWU (op cit) (IAC) at pages 2480 and 2482).

Further, the jurisdiction possessed by superior courts to stay a disciplinary inquiry can only be exercised where there is a specific finding or there are specific findings justifying a stay. No such findings were made or attempted.

Further, by virtue of s.44(6)(b)(ba) of the Act, Parliament has clearly not intended that the powers conferred by it not be exercised in such a way as to amount to interference with the conduct of inquiries by other tribunals of whatever nature. Orders under s.44(6)(b)(ba) may bind only parties to the s.44 conference. Since the order made by the Commission at first instance effectively stayed the conduct of the inquiry, then the order was not valid because it applied to parties other than the appellant or respondent who were the only parties to the s.44 proceedings.

The submission in response was that a conference under s.44 having been properly held and there being jurisdiction to deal with an industrial matter, the Commission properly exercised its powers. In deciding to refer the question, dispute or agreement for hearing and determination, the Commission's order that the incomplete s.7C disciplinary inquiry be stayed until it had finally heard and determined the matter before it was within the powers conferred by s.44(6)(b)(bb) and (c) of the Act.

The exercise of the discretion was sound and to do what the Commission did was within power. As I understand the case for the appellant, it is not submitted that an order such as this could not be made under s.44(6)(b)(ba) to bind parties to a dispute. Indeed, the Commission did make it clear that it was making these orders in order to enable conciliation or arbitration to resolve the matter in question (see page 11 (AB)). S.44(6)(b)(bb) and s.27(1)(v) of the Act may also assist.

However, the appellant really says this. The Commission has no power conferred on it to order an administrative tribunal to halt its hearing or to restrain it from continuing with proceedings. Further, the authorised person is not a party and no order can validly be made binding him or her.

The "authorised person" under s.7C of the Education Act is not an independent administrative tribunal. The authorised person exists statutorily as part of disciplinary proceedings which exist because of the contract of employment appointed by the Chief Executive Officer to conduct the inquiry after the Chief Executive Officer has decided that there ought to be an inquiry. The Chief Executive Officer is, of course, the agent of the employer. The inquiry then reports to the Chief Executive Officer who may act. If there is to be a dismissal the employer effects the dismissal.

The inquiry exists because it is applied by the statute to the contract of employment, but not as a term, as I have said above (see Byrne and Frew v Australian Airlines Ltd (op cit) (HC)). It operates because the employer causes it to operate and is in effect an internal disciplinary apparatus prescribed by statute. The Commission in restraining the inquiry is, in fact, making an order which binds the employer who caused it to proceed and who is able to act on its findings. The Commission is entitled to so restrain the inquiry through the employer. Even if that were not right, the Commission could restrain the Minister and his Chief Executive Officer from in any way acting on the report. For those reasons, the order was made within power.

S.27 OF THE ACT

It was also submitted for the appellant that the Commission at first instance erred in not dismissing the application under s.27(1)(a) of the Act. The decision not to dismiss the application was a discretionary decision as that is defined in Norbis v Norbis 65 ALR 12 (HC), and the Full Bench cannot substitute its decision unless the appellant establishes that the Commission at first instance erred in terms of House v The King 55 CLR 499 (HC).

It was submitted that the application made was premature because it was not as yet able to be determined whether the errors alleged to have been made by the investigating officer would taint any decision made as a result of the s.7C process. Until that was known, so the submission went, it was inappropriate for the Commission to be involved. In addition, there was a real possibility that by becoming involved prior to such time as the Commission had run its course, the Commission would provide a teacher, the subject of a s.7C inquiry, with a means of thwarting such an inquiry.

The respondent organisation's submission was that the order was properly made within the discretion of the Commission, and, further, that the Full Bench does not readily generally interfere in decisions made in the course of s.32 or s.44 proceedings ((ie) interim or temporary orders made in the course of such proceedings). That, of course, is the case.

It was also submitted that where the circumstances warrant, the Commission is entitled to deal with an industrial matter or dispute arising out of a disciplinary inquiry under s.44 or under s.32 of the Act, rather than leaving the aggrieved teacher to pursue a possible remedy, having suffered prejudice by way of appeal. Certainly, inquiries pursuant to s.7C of the Education Act must be conducted in accordance with the principles of procedural fairness. I agree with that submission, and Gudgeon v Black (op cit) (unreported) (FC-SC) is authority for that proposition. I also agree with the submission that the teacher should have a lawful decision in the first place, and thus, where the circumstances warrant it, the Commission should be able to proceed to deal with the matter or dispute arising out of a disciplinary inquiry under s.44 or s.32, rather than permitting the flawed proceedings to run their course. Smith v Allan (1993) 31 NSWLR 52 at 59-62 per Kirby P supports my taking that view. It is obvious, of course, that the Commission should, in deciding such a matter, be on its guard so as not to allow a teacher to lightly thwart such proceedings. However, if there is an industrial matter, particularly one which revolves around a dispute of some heat, concerning an inquiry under s.7C of the Education Act, a Commission's duty requires it to deal with the matter, and it has the jurisdiction to do so under s.7 of the Act, further enlightened by objects such as s.6(a) and s.6(b) of the Act.

It is to be borne in mind in this case that the Commission has not decided the merits of the claim. It is merely making orders to enable the matter to be arbitrated. Nothing has been put to the Full Bench which would persuade me that the Commission's refusal to dismiss the application under s.27 of the Act constituted an error in the exercise of its discretion. For all of those reasons I would hold that no ground of appeal is made out and would dismiss the appeal.

GEORGE C: I have had the opportunity of reading the Reasons for Decision of His Honour the President in draft form. I agree with the conclusions reached that firstly the questions raised on appeal are of such importance that in the public interest an appeal should lie and secondly, that no ground of appeal has been made out and the appeal should be dismissed.

SCOTT C: I have had the benefit of reading the reasons for decision of His Honour the President and I agree that no ground of appeal is made out and I would also dismiss the appeal.

THE PRESIDENT: For those reasons, the appeal is dismissed.

Appearances: Ms J C Pritchard (of Counsel), by leave, and with her Mr R McLeod on behalf of the appellant.

Mr W J Ford (of Counsel), by leave, on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Honourable Minister for Education
(Appellant)
and
State School Teachers Union of Western Australia
(Respondent).

No. 937 of 1995.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY.
COMMISSIONER R N GEORGE.
COMMISSIONER P E SCOTT.

18 December 1995.

Order.

THIS matter having come on for hearing before the Full Bench on the 14th day of November 1995, and having heard Ms J C Pritchard (of Counsel), by leave, and with her Mr R McLeod on behalf of the appellant and Mr W J Ford (of Counsel), by leave, on behalf of the respondent, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 18th day of December 1995 wherein it was found that the appeal should be dismissed, it is this day, the 18th day of December 1995, ordered that appeal No 937 of 1995 be and is hereby dismissed.

By the Full Bench

(Sgd.) P.J. SHARKEY,
[L.S] President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

State School Teachers Union of Western Australia (Inc)
(Appellant)
and
The Honourable Minister for Education
(Respondent).

No 1127 of 1995.

BEFORE THE FULL BENCH.

21 December 1995.

HIS HONOUR THE PRESIDENT P J SHARKEY.
SENIOR COMMISSIONER G G HALLIWELL.
COMMISSIONER C B PARKS.

Reasons for Decision.

THE PRESIDENT: These are the unanimous reasons for decision of the Full Bench.

This is an appeal against the decision of the Commission at first instance, constituted by a single Commissioner, whereby the Commission, following some s.44 conferences, dismissed an application made by the appellant organisation of employees. It is against that decision that the appeal is brought on the following amended grounds—

"1. The Learned Commissioner erred in exceeding his discretion to dismiss Application No. C251 of 1995 ("the Application") when he had not given the applicant the opportunity of presenting evidence to support its case of denial of natural justice.

2. The Learned Commissioner erred in exercising his discretion not to refer the application for hearing and determination pursuant to Section 44(9) of the Industrial Relations Act, 1979 ("the Act") when—

   (a) The industrial matter the subject of the Application had not been settled by agreement at the conclusion of the Section 44 conference; and

   (b) There was sufficient material before the Learned Commissioner to justify the referral of the dispute for hearing and determination.

3. The Learned Commissioner erred in failing to exercise his discretion to intervene in the course of Section 7C Enquiry the subject of the Application when there was sufficient material before him to justify intervention and the making of directions or orders pursuant to Section 44(6)(ba) and (bb) of the Act.

4. The Learned Commissioner erred in law and fact in finding that he was not satisfied that the Section 7C Enquiry was being conducted in a manner that denied natural justice to the teachers the subject of the enquiry when—

   (a) He had heard no evidence on the matter; and

   (b) The matter had not been the subject of hearing and determination.

5. The appellant seeks an order that the appeal be upheld and the decision of the Learned Commissioner be quashed.

6. The Learned Commissioner erred in law in finding that the Commission had no jurisdiction to enquire into and deal with the appellant/applicant's claim that the Minister or his delegate instituted the Section 7C Enquiry for an improper purpose or improper purposes."

BACKGROUND

The background to the matter is this. The applicant organisation, the State School Teachers Union of Western Australia (Inc) (hereinafter referred to as "the SSTUWA"), applied to the Commission by application dated 24 August 1995 seeking an urgent compulsory conference.

What had occurred was that five teachers, Eileen Burns, Christina Pavlovic, Wendy Bond, Lorne Hrycan and John Mackin, all employed as school teachers by the Minister of Education at Willetton Primary School (and members of the appellant organisation), were served with a notice from the Director General of Education alleging misconduct under s.7C(2)(a) of the Education Act 1928 (as amended) (hereinafter referred to as "the Education Act").

In July-August 1995, there was, and had been for some time, an on-going industrial dispute between the appellant organisation and the respondent. It is alleged that on or about 31 July 1995 or 1 August 1995 those teachers participated in a mail-out of information or campaign materials from the appellant organisation to parents of students of that school. This is the incident which became the subject of the inquiry.

An inquiry pursuant to s.7C of the Education Act commenced, and the applicant organisation claimed that the procedures employed in the course of that investigation were unfair and a denial of procedural fairness. The applicant organisation also claimed that the Director General's investigation was an abuse of the Education Act and not made in good faith. In fact, the investigation as such had not occurred.

In particular, the Principal at Willetton was alleged to have made some inquiries into the conduct of the teachers arising from allegations of misuse of time, resources and children for the distribution of union material relating to a dispute between the parties to this appeal. The complaint was that there were no written allegations to which the teachers were asked to respond, and the teachers were not informed that the issue of the alleged use of school time, resources and children for the distribution of union material was the subject of investigation by the Head Master.

The case for the respondent was that the investigation conducted by the Head Master of Willetton Primary School was part of the normal running of the school.

It would seem that the Chief Executive, pursuant to s.7C of the Education Act, had set in train an inquiry.

On 6 September 1995, at a s.44 conference, copies of correspondence to be sent to the five teachers detailing the nature of the alleged misconduct was made available on behalf of the respondent. That conference was adjourned with a direction that the SSTUWA provide reasons why it ought to be reconvened. A letter of 8 September 1995, annexure 6 to

the affidavit of Deborah Ann Blaskett, sets these reasons out, from the point of view of the appellant organisation.

After a further conference on 19 September 1995, the Commission at first instance dismissed the application on 20 September 1995 and gave reasons for so doing on the same date.

REASONS OF THE COMMISSION

The reasons for dismissal of the application as given by the Commission were as follows—

(1) This was a matter concerning whether the Chief Executive Officer had properly called an inquiry under s.7C of the Education Act as a consequence of the outcome of a preliminary inquiry which itself may have been flawed.

(2) The Commission was not satisfied in this matter that the current s.7C inquiry was being conducted in the manner that denied natural justice to the teachers, the subject of the inquiry.

(3) If the inquiry were conducted properly, then it would not repeat any flaw as was alleged to have occurred in the preliminary inquiry.

(4) If the inquiry repeated that flaw then that might provide grounds for the Commission to intervene. That, however, was not the case here.

(5) The Chief Executive Officer has a right under the Education Act to initiate an inquiry and the Commission is not able to remove that right.

THE EXISTENCE OF PREROGATIVE RELIEF

There was a submission that the existence of an alternative remedy by way of prerogative writ issued out of the Supreme Court appeared to have caused a fundamental departure from the fundamental and necessary inquiry as to whether the Commission had jurisdiction. We did not extract such a reason from the Commission's reasons for decision. In any event, such was not a ground of appeal, and we would not uphold that argument as a ground of appeal.

WAS THE INQUIRY INSTITUTED FOR AN IMPROPER PURPOSE?

That this was the case was argued before us. However, that was not a reason for decision. In any event, it was not before the Commission at first instance as a matter properly dealt with on the merits of the case. Further, it was not the subject of a ground of appeal. The amendment which would have effected this was not pursued (see pages 2-3 of the transcript on appeal). We are not persuaded by the argument for those reasons.

SOME OBSERVATIONS

It was submitted to us that the Commission at first instance erred in not finding that this was an industrial matter and that therefore it had jurisdiction to make orders. It is probably implicit from the Commission's finding that an issue whether the Chief Executive Officer had properly called an inquiry under s.7C of the Education Act as a consequence of the outcome of a preliminary inquiry, which itself may have been flawed, was a different matter from the Commission previously having held that it might intervene in the course of an inquiry being conducted under s.7C of the Education Act. As we understand it, there was a submission that this was not an industrial matter and that what we have just referred to was the Commission's findings to that effect. Accordingly, the Commission, it was said, had found that it had no jurisdiction to deal with the matter. We will consider that issue in due course.

It is first necessary to consider the statutory provisions and the application itself.

THE APPLICATION

The application which brought the matter before the Commission referred to a dispute which arose because an investigation pursuant to s.7C of the Education Act had commenced, alleged that the procedures employed by the employer in the course of that investigation were unfair and a denial of procedural fairness, and, further, that the teachers were being victimised as part of the government's political campaign.

Further, it was alleged in the application that the investigation was an abuse of the Education Act and was not conducted in good faith.

It was submitted, too, that the Commission, properly applying the test in Minister for Police and Commissioner of Police v WA Police Union of Workers 75 WAIG 1504 (IAC), would have found that there was an industrial matter.

The dispute before the Commission related to what occurred under s.7C(3) of the Education Act. S.7C(3) requires, by the use of the mandatory word "shall", the Chief Executive Officer of the Department of Education to cause an inquiry to be held where it appears to the Chief Executive Officer that a teacher may be guilty of misconduct (see s.56 of the Interpretation Act 1984 (as amended)). S.7C(3) reads as follows—

"(3) Where it appears to the chief executive officer that a teacher may be guilty of misconduct the chief executive officer shall cause an inquiry to be held by an authorized person."

As we understand this dispute, a Principal made inquiries of certain teachers, as we infer, as part of the Chief Executive Officer ascertaining whether it might appear to him that a teacher may be guilty of misconduct in terms of s.7C(3) of the Education Act. If one examines the words of s.7C and gives them their ordinary and natural meaning, in the context of the whole of the Act, s.7C(3) requires the Chief Executive Officer to reach the decision that it appears to him that a teacher may be guilty of misconduct. That is before he can do what he is mandatorily required to do under s.7C(3). Once he or she decides that, the Chief Executive Officer is required to cause an inquiry to be held by an authorised person.

An "authorized person" is defined in s.7C(1) of the Education Act to mean "a person authorized by the chief executive officer for the purposes of this section".

Patently, then, what the Chief Executive Officer does under s.7C(3) is not part of any inquiry which he/she causes to be made. It is merely the Chief Executive Officer complying with s.7C(3). (If he or she does not, he or she cannot cause an inquiry to be made). This matter was not concerned with the inquiry proper, which can only be conducted by an authorised person as defined, and not by the Chief Executive Officer who is the instrument whereby it is set in train. Of course, once an inquiry is being held under s.7C(3) by an authorised person, and not before it commences, the Chief Executive Officer may suspend the teacher concerned from duty. That, however, is a separate power exercised under s.7C(5)(a) and at a different time, namely when an inquiry is being held.

The Minister is and was the employer of those teachers who were the subject of the application under s.44 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act") in this matter to the Commission.

The "chief executive officer" (see s.3(1) of the Education Act) is defined to mean "the person holding or acting in the office of chief executive officer of the department". The "department" is defined to mean "the department of the Public Service principally assisting the Minister in the administration of this Act" (see s.3(1)). The Minister employs teachers under the Education Act and the Chief Executive Officer (see s.7A(3) of the Education Act) may have delegated to him certain of the Minister's powers to transfer or promote any teacher and employees not officers. The Chief Executive Officer is therefore the Chief Executive Officer in the department which assists the Minister to administer the Act and assist him to carry out his function as employer of teachers and other employees. The Chief Executive Officer is also required to carry out certain duties under the Education Act in relation to employees, namely teachers, under a section such as s.7C of the Education Act. A s.7C inquiry may lead to the Chief Executive Officer not being satisfied that a teacher is guilty of misconduct (see s.7C(9) of the Education Act). However, if the inquiry results in the Chief Executive Officer determining whether a teacher is guilty of misconduct, the Chief Executive Officer may impose various punishments or make a report to the Minister that the teacher be dismissed (see s.7C(12) of the Education Act).

It is to be noted that the Chief Executive Officer is the instrument by statute of the employer, the Minister, in relation to these statutory powers which arise from and are integrally

part of the contract of service. We have outlined the nature of the processes under s.7C(12) to demonstrate that what the Chief Executive Officer is required to do under s.7C(3) is not part of the inquiry which he causes to occur. However, an inquiry caused to be held in circumstances where it could not be said that it had appeared to the Chief Executive Officer that there was misconduct, or where it did not so appear, would not be validly constituted. It is a condition precedent to the constitution of an inquiry under s.7C of the Education Act that it appears to the Chief Executive Officer that a teacher may be guilty of misconduct.

The next question is in whether satisfying him or herself that it appears to him or herself that a teacher may be guilty of misconduct, the Chief Executive Officer is required to afford natural justice or procedural fairness. The law is that when a statute confers power upon a public official to destroy, defeat or prejudice a person's rights, interests or legitimate expectations, the rules of natural justice regulate the exercise of that power unless they are excluded by plain words or necessary intendment (see Annetts and Another v McCann and Others [1990] 170 CLR 596 at 598 (HC) per Mason CJ, Deane and McHugh JJ).

Certainly, that duty exists in that before a teacher is suspended under s.7C(5) of the Education Act because the Chief Executive Officer was a public official and is defeating the teacher's legitimate expectation that he or she would work under the contract of employment or is prejudicing that expectation.

Of course, what was urged upon us by Ms Smith (of Counsel), for the respondent, was that the Chief Executive Officer did not need to hear from anyone until the inquiry was completed. The inquiry must be conducted according to the rules of natural justice (see Gudgeon v Black (Application No CIV 1077 of 1994), delivered 10 November 1994, (unreported) (FC-SC). It was submitted to us that this was such an inquiry and that the requirements of natural justice are different. Certainly, the requirements of natural justice vary according to the circumstances of the case (see National Companies and Securities Commission v News Corporation Ltd and Others [1984] 156 CLR 296 (HC) and R v Commonwealth Conciliation and Arbitration Commission and Others; ex parte Angliss Group [1969] 122 CLR 546 (HC)). There it was held that the Commission was conducting an investigation and its processes were inquisitorial. There was, however, a statutory mandate requiring compliance with the rules of natural justice. In Bond and Others v Australian Broadcasting Tribunal (No 2) 84 ALR 646 (FC) per Wilcox J, it was held that the confines of particulars were inconsistent in principle with the performance of a statutory duty to follow the evidence wherever it leads. The effect of any investigation undertaken and raised under s.7C(3) of the Education Act is that it may lead to an inquiry into the conduct of a teacher and it may lead to suspension of the teacher from duty.

Within the principles expressed in Annetts and Another v McCann and Others (op cit) (HC), the Chief Executive Officer, as a public official, has power to prejudice a teacher's rights, etc. It follows that any investigation which takes place under s.7C of the Education Act should be conducted according to the principles of natural justice. However, of necessity, this itself is an inquisitorial process and we do not see any necessity to provide particulars on the authority of National Companies and Securities Commission v News Corporation Ltd and Others (op cit) (HC). Thus, there was no denial of natural justice insofar as particulars were not provided. In any event, particulars were provided by the letter of 5 September 1995 from Mr Black to the teachers concerned.

Further, apart from any question of natural justice, an employer whose agent the Chief Executive Officer is, and who derives his or her powers not only from the statute but because what he is doing is concerned with the contract of employment, namely the power to discipline and dismiss, is required to act with fairness towards his/her employee ((ie) to be good and considerate) (see Minister for Police and Commissioner of Police v WA Police Union of Workers (op cit) (IAC) and the cases cited therein, and see also Russian v Woolworths (SA) Pty Ltd [1995] ALLR 90-305 (SA IRC), as well as Woods v WM Car Services (Peterborough) Ltd [1982] ICR 693 at 698 (CA) and Auckland Shop Employees Union v Woolworths (NZ) Ltd [1985] 2 NZLR 372 (CA)).

IS THE DUTY EXTINGUISHED BY THE RIGHT OF APPEAL?

It was submitted that because there was a full scale right of appeal de novo constituted under s.23B(1) and (2) of the Act, then the requirement to afford natural justice could not be breached. In our opinion, applying Twist v Council of the Municipality of Randwick [1976] 136 CLR 106 (HC) and the cases cited therein, because a decision to cause an inquiry to be instituted is followed by the inquiry which must be conducted according to the rules of natural justice and which may then be the subject of an appeal under s.23B of the Act, it may be that there is no duty to afford a right to be heard in any investigation conducted under s.7C of the Education Act. It is noteworthy that the right of appeal does not include a right of appeal against a fine of $50.00 for misconduct or a reprimand (both s.7C(12) punishments) which follow a finding of misconduct. However, we must approach the matter on the presumption that the legislature does not intend to deny natural justice to the citizen (see Twist v Council of the Municipality of Randwick (op cit) (HC)). In this case, however, the existence of an inquiry at which the teacher may be heard, and an added right of appeal under s.23B of the Act, means that a teacher is not required to be heard at the s.7C stage, it being plain that it is not intended that that be the case. As a matter, however, of the employer's duty as an employer to be good and considerate, that obligation may well exist for those reasons, removed from an obligation in natural justice. That, however, is not a question which was raised for decision here.

NATURAL JUSTICE

The issue of natural justice should, however, be treated in this way in this matter. Firstly, no natural justice was demonstrated to the Commission at first instance as having been denied. Secondly, there was no requirement to provide particulars. Thirdly, there was no requirement that a teacher be given an opportunity to be heard at the s.7C investigation stage.

JURISDICTION

A question arose as to whether the Commission had jurisdiction to deal with the matter. We have already foreshadowed the arguments which related to that. We have no doubts that this was an industrial matter as defined in s.7 of the Act. The definition is directed to the question whether the matter in issue affects or relates to the work, privileges, rights or duties of the employer or employee or employers or employees in any industry. This requires initial identification of what it is within the description of work, privileges, rights or duties of the employer or employee or employers or employees as the case may require that is said to be affected by or related to the claimed industrial matter. If that cannot be identified then the issue does not concern an industrial matter. If, however, it can be identified, then the inquiry is next directed to establishing whether the matter in issue does, as a matter of fact, relate to the identified "work, privilege, right or duty". Only if it can be found so to do can there be an "industrial matter" within the meaning of the Act (see Minister for Police and Commissioner of Police v WA Police Union of Workers (op cit) at page 1508 (IAC) per Franklyn J).

The matter in issue here related to the process whereby an employee teacher becomes the subject of an inquiry and the fairness or otherwise of that process. That depends on the Chief Executive Officer forming an opinion that there appears to him that there may have been misconduct on the part of the teacher. The matter in turn relates or affects the work of the teacher, the right of the employer to dismiss or punish, the right of the employer to discipline, the right not to be disciplined without such an inquiry, the right to suspend and the duty of the teacher not to misconduct him or herself. Without doubt, it affects or relates to the work of the teacher. In this case, the fairness or otherwise of the process involved under s.7C of the Education Act was plainly a matter which affected or related to the rights, privileges, etc, of both employer and employee. In particular, could it be said to relate to the dismissal of a teacher, since that is where the process can lead. (The definition of "industrial matter" in s.7 of the Act specifically refers to dismissals).

This matter was and is an integral part of the employer/employee relationship. This was an industrial matter as defined, and there was jurisdiction on that basis (see Honourable

Minister for Education v SSTUWA (Appeal No 937 of 1995) (unreported) delivered 18 December 1995 (FB)).

CAN THERE BE RESTRAINT OF THE CHIEF EXECUTIVE OFFICER UNDER S.7C OF THE EDUCATION ACT?

The matter before the Commission is an industrial matter. It is not a matter arising after the termination of a contract of employment and pertaining to proceedings in a common law court, as was the case in RRIA v MEWU 75 WAIG 2478 (IAC). The contracts of employment were alive in this case. The action of the Chief Executive Officer related to disciplining and perhaps dismissal of teachers in employment. It related to allegations of misconduct which might be found to be in breach of their contracts of service. The dispute which arose is over the commencement of that process. However, the problem which arises is that the Chief Executive Officer is required by the Act to institute the inquiry once a situation has arisen which complies in his view with s.7C of the Education Act.

The word "shall" is mandatory and is used in s.7C, as we have said. It was not alleged that s.7C was not complied with here. Once it appears to the Chief Executive Officer that a teacher may be guilty of misconduct, the Chief Executive Officer is bound to institute an inquiry. Because of the mandatory terms of the section, it might be said that the Chief Executive Officer cannot be restrained, unless it can be shown that s.7C(3) of the Education Act was not complied with. However, because this is an industrial matter and s.6 of the Act designates the objects for which the jurisdiction is to be exercised, there is, in our opinion, jurisdiction to restrain the Chief Executive Officer in a proper case. One such proper case would be where the requirements of s.7C are not complied with by the Chief Executive Officer. In this case, there was no ground upon which to do so. In particular, was there no denial of natural justice and no procedural unfairness.

S.23B OF THE ACT

Some attention should be paid to s.23B. S.23B(1)(a) and (b) read as follows—

"(1) The Commission has jurisdiction to hear and determine—

(a) an appeal by a teacher against any punishment for alleged misconduct imposed on the teacher under the Education Act 1928 other than a punishment that is a reprimand or a fine that does not exceed $50;

(b) an appeal by a teacher (not being a person to whom subsection (2) applies) against the dismissal, or reduction to a position carrying a lower salary or remuneration, of the teacher for inefficiency under any regulations relating to the assessment of inefficiency and made under the Education Act 1928; and"

S.49(2b) of the Act specifically prohibits any appeal from a decision of the Commission on an appeal under s.23B.

It was submitted that because of special powers conferred by s.23B, then the Commission cannot exercise its general power to deal with a matter which should be a s.23B matter. The power contained in s.23B, however, gives the right of appeal from only some punishment. There is no appeal from punishment imposed in the form of a reprimand or a fine not exceeding $50.00, findings which are detrimental to a teacher. Accordingly, the general power is applicable at any time and not excluded by the special power, because at the time the general power is invoked it is before an appeal is instituted, or, more accurately, once punishment has been imposed. Before that occurs, there is no right of appeal ((ie) the only remedy available is contained in the general powers vested in the Commission under the Act). Indeed, if the punishment is a reprimand or a fine of $50.00 or less, there will never be a right of appeal. The general power is therefore not excluded until there is a right of appeal, which is once the punishment is imposed, because the appeal is against the punishment. Further, s.23B makes no provision for an order to exclude the Commission from dealing with an industrial matter, particularly a dispute under s.44 of the Act by way of conciliation and arbitration of the dispute before any appeal has actually been instituted or before the s.7C inquiry has been completed. One would not expect it to. Indeed, it would be contrary to the objects of the Act to say that it did (see s.6(a), (b) and (c) of the Act) (see also the discussion of this issue in Honourable Minister for Education v SSTUWA (Appeal No 937 of 1995) (op cit) (FB)).

We are not persuaded that any of the grounds of appeal are made out or that the Commission erred. There was no denial of natural justice, in particular, in any event.

We should add that grounds 3 and 4 were not pressed before us. There was no argument put which would persuade us that those grounds ought to be upheld. As to ground 2, we have, in part, referred to that above.

There was, for the reasons which we have set out above, sufficient material before the Commission to dismiss the appeal.

The Commission did not err in dismissing the application, and we would, for those reasons, dismiss the appeal.

Order accordingly

Appearances: Ms S L Brown (of Counsel), by leave, on behalf of the appellant.

Ms J H Smith (of Counsel), by leave, on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

State School Teachers Union of Western Australia (Inc)

(Appellant)

and

The Honourable Minister for Education

(Respondent).

No 1127 of 1995.

BEFORE THE FULL BENCH.

21 December 1995.

HIS HONOUR THE PRESIDENT P.J. SHARKEY.
SENIOR COMMISSIONER G.G. HALLIWELL.
COMMISSIONER C.B. PARKS.

Order.

This matter having come on for hearing before the Full Bench on the 27th day of November 1995, and having heard Ms S L Brown (of Counsel), by leave, on behalf of the appellant and Ms J H Smith (of Counsel), by leave, on behalf of the respondent, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 21st day of December 1995 wherein it was found that the appeal should be dismissed, it is this day, the 21st day of December 1995, ordered that appeal No 1127 of 1995 be and is hereby dismissed.

By the Full Bench

(Sgd.) P. J. SHARKEY,
[L.S] President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

State School Teachers Union of Western Australia (Inc)

(Appellant)

and

The Honourable Minister for Education

(Respondent).

No 1127 of 1995.

BEFORE THE FULL BENCH.

21 December 1995.

HIS HONOUR THE PRESIDENT P.J. SHARKEY.
SENIOR COMMISSIONER G.G. HALLIWELL.
COMMISSIONER C.B. PARKS.

Order.

This matter having come on for hearing before the Full Bench on the 27th day of November 1995, and having heard Ms S L Brown (of Counsel), by leave, on behalf of the appellant and Ms J H Smith (of Counsel), by leave, on behalf of the respondent, and the appellant having sought leave of the Full Bench to amend the grounds of appeal, and there being no objection to such amendment by the respondent, and whereas the Full Bench found it necessary to make such an order as was necessary or expedient for the expeditious and just hearing and determination of the matter, it is this day, the 21st day of December 1995, ordered that leave be and is hereby granted to the appellant herein to amend the grounds of appeal by inserting ground 6 in terms of ground 6 of the schedule headed "Amended Grounds of Appeal", filed herein on the 23rd day of November 1995.

By the Full Bench
(Sgd.) P. J. SHARKEY,
[L.S] President.

FULL BENCH—
Appeals against decision of Industrial Magistrate—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Leonie Nicol
(Appellant)

and

Milena Filomena Iacuso and Guiseppe Iacusso
t/a La Plaza Decor
(Respondents).

No. 784 of 1995.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P.J. SHARKEY.
SENIOR COMMISSIONER G.G. HALLIWELL.
COMMISSIONER R.H. GIFFORD.

6 December 1995.

Reasons for Decision.

THE PRESIDENT: These are the joint reasons for decision of Halliwell SC and myself.

This is an appeal against the decision of the Industrial Magistrate, sitting in the Industrial Court at Perth, given on 12 June 1995, whereby he dismissed complaint No 37 of 1995 made by Leonie Nicol, a machinist employed by Milena Filomena Iacusso and Guiseppe Iacusso, trading as La Plaza Decor. By the complaint she complained that on 30 December 1994, at Perth, the defendants, being a party bound by The Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977, No R 32 of 1976 (hereinafter referred to as "the award"), failed to pay Ms Nicol, their employee, sick leave contrary to clause 27(1) of the award and claimed the sum of $324.16, the amount of sick leave not paid.

A Statement of Agreed Facts was filed as exhibit A (see page 41 of the appeal book).

The background is this. Ms Nicol's services were terminated by the defendant employer on 16 December 1994. She was entitled to two weeks notice. On 19 December 1994 the complainant rang the defendant's shop premises and advised she was sick and would be off work for a number of days, which was subsequently confirmed by a medical certificate (see exhibit B) in which Dr N E Burrows, a medical practitioner, on 17 December 1994, declared the complainant to be unfit for work for two weeks, that two weeks coinciding precisely with the period of notice which ran from 16 December 1994 to 30 December 1994.

On or about 22 December 1994 one week's sick leave was paid, but at the same time the defendant asked the complainant to specify the precise nature of the illness. There was no response to that request. It was common ground that the complainant notified the employer as soon as reasonably practicable and advised of the estimated duration of the illness. The defendant maintained that it had a right to know the nature of the illness or injury over and above the production of the medical certificate, and that in the absence of that occurring there was no liability to pay the second weeks sick leave. The defendant did not therefore pay the amount of $324.16, being the second weeks sick pay.

The Industrial Magistrate, having considered the matter, seems to have accepted that the award, and, in particular, clause 27(3) of the award, applied, and therefore held that the employer was entitled to withhold sick leave pay if the requirements of clause 27(3) had not been met, which they had not been in this case. No finding was made as to the effect or lack of effect of the Minimum Conditions of Employment Act 1993 which had been referred to in submissions.

Clause 27 of the award prescribes for a maximum of two weeks sick leave per annum which can be claimed with the unused proportions of the entitlement to paid sick leave in any one year to accumulate from year to year by the worker if he/she is absent by reason of personal ill health or injury. The limit to such an entitlement, including accrued leave from year to year, is ten weeks in any one year of service.

We now set out the terms of clause 27(3) of the award which are important to this matter—

> "(3) To be entitled to payment in accordance with this clause the worker shall as soon as reasonably practicable advise the employer of his inability to attend for work, the nature of his illness or injury and the estimated duration of the absence. Provided that such advice, other than in extraordinary circumstances shall be given to the employer within 24 hours of the commencement of the absence."

We should add that clause 27(4) of the award requires the production of a certificate from a medical practitioner with respect to absences of two days or more.

Clause 27, of course, provides for these benefits in cases of "a worker" being unable to attend or remain at his place of employment during the ordinary hours of work by reason of personal ill health or injury. If the award therefore applied, then the worker was not entitled to sick leave because she had failed to advise the employer of the nature of her illness or injury. That is an express requirement as can be seen from the words of clause 27(3) of the award. If, however, the award did not apply then the situation might be different. No reason was advanced before the Industrial Magistrate as to why the award should not apply, except for the provision of the Minimum Conditions of Employment Act 1993.

S.5(1) and (2) of that Act read as follows—

> "5. (1) The minimum conditions of employment extend to and bind all employees and employers and are taken to be implied—
>
> (a) in any workplace agreement;
>
> (b) in any award; or
>
> (c) if a contract of employment is not governed by a workplace agreement or an award, in that contract.

(2) A provision in, or condition of, a workplace agreement, an award or a contract of employment that is less favourable to the employee than a minimum condition of employment has no effect".

That means that the minimum conditions of employment set out in the Act are implied in any award where a provision in or condition of such award is less favourable to the employee than a minimum condition of employment, because such a less favourable provision or condition has no effect.

The relevant minimum conditions were contained in the following sections—

(1) S.19(1)(a) of the Minimum Conditions of Employment Act 1993 which provides as follows

"19. (1) Subject to sections 20 and 22, an employee, other than a casual employee, who is unable to work as a result of the employee's illness or injury, is entitled to be paid for periods of absence from work resulting from the illness or injury—

(a) in the case of a full-time employee, up to 10 working days or 80 hours, whichever is the lesser, each year; or"

(2) S.22 of the Minimum Conditions of Employment Act 1993 which provides as follows-

"22. An employee who claims to be entitled to paid leave under section 19(1) is to provide to the employer evidence that would satisfy a reasonable person of the entitlement."

It is noteworthy that by s.21 of the Minimum Conditions of Employment Act 1993 there is no provision for an employee's untaken entitlement to sick leave under s.19 to be carried over from the year in which the entitlement arose to the next year, unlike the award. That represents a substantial difference and we would suggest a less favourable provision than is contained in clause 27 of the award. However, clause 27(3) represents a less favourable provision in the award than s.22 of the Minimum Conditions of Employment Act 1993. It can be said quite unequivocally that it is less favourable than what would be required under s.22 of the Minimum Conditions of Employment Act 1993 if one were to find that the employee was required to do less than clause 27(3) requires in order to "provide to the employer evidence that would satisfy a reasonable person of the entitlement".

In this case there was a certificate from a medical practitioner in the usual form which unequivocally stated that the complainant was unfit for work for the 14 days concerned. In the absence of evidence to the contrary, then the medical practitioner's certificate was sufficient. Indeed, on the evidence, there seems to have been no substantial reason why the certificate should in any way have been questioned. Although this decision is confined to the facts of this case, and there may be a number of instances in which a medical certificate might not be sufficient evidence without stating the reason for the illness, we do not think that it is fatal to an entitlement to sick leave if the nature of illness or injury is not stated. For example, there may be genuine confidential matters which an employee would not wish to state. On the other hand, if they are not genuine confidential matters, it seems to us that it would save a lot of difficulty for the claimant if the reason for unfitness were stated. In many instances, a reasonable person might expect it. Certainly, in the case of any lengthy absence, it would be rare for a reasonable person to be satisfied if the nature of illness or injury were not stated. In this case, we are satisfied that the evidence by the medical practitioner concerned would satisfy a reasonable person of the entitlement.

The authorities cited are of some assistance in that regard, but subject to the observations that we have expressed above.

However, essentially, because clause 27(3) of the award requires more detail, particularly the nature of the illness or injury, it is obviously less favourable. For those reasons, s.22 of the Minimum Conditions of Employment Act 1993 was an implied term of the award in lieu of clause 27(3). Clause 27 was breached by a non-payment of sick leave entitlements as claimed.

We would find for those reasons that the learned Industrial Magistrate erred, and would make the following orders, having upheld the appeal. We would set aside the decision of the learned Industrial Magistrate and substitute for it the following—

(1) We would find the complaint of breach of the award proven.

(2) We would order that the sum of $324.16, being sick leave not paid, be paid within seven days to the complainant, Leonie Nicol.

(3) We would remit the matter back to the Industrial Magistrate to hear and determine the questions of penalty and of costs according to law.

GIFFORD C: I have read the Reasons for Decision in draft form of His Honour the President, and agree with them. I have nothing further to add.

THE PRESIDENT: For those reasons, the appeal was upheld and orders made.

Appearances: Mr G Giffard, as agent, on behalf of the appellant.

Mr T C Crossley, as agent, on behalf of the respondents.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Leonie Nicol
(Appellant)

and

Milena Filomena Iacuso and Giuseppe Iacusso
t/a La Plaza Decor
(Respondents).

No. 784 of 1995.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.
SENIOR COMMISSIONER G G HALLIWELL.
COMMISSIONER R H GIFFORD.

22 November 1995.

Order.

THIS matter having come on for hearing before the Full Bench on the 20th day of November 1995, and having heard Mr G Giffard, as agent, on behalf of the appellant and Mr T C Crossley, as agent, on behalf of the respondents, and the Full Bench having determined that its reasons for decision will issue at a future date, it is this day, the 22nd day of November 1995, ordered and directed as follows—

(1) THAT time be and is hereby extended to and including the 31st day of July 1995 for the appellant herein to file an application to extend time for lodging appeal books.

(2) THAT time be and is hereby extended to the appellant herein to lodge appeal books until and including the 31st day of July 1995.

(3) THAT appeal No 784 of 1995 be and is hereby upheld, and the decision of the Industrial Magistrate made on the 12th day of June 1995 in the Industrial Magistrate's Court at Perth be and is hereby set aside.

(4) THAT the following orders be and are hereby substituted for the said decision of the Industrial Magistrate—

(a) that the breach of the award herein alleged in Complaint No 37 of 1995 be and is hereby proven.

(b) that the amount of the underpayment of $324.16 not paid to the Complaintant, Leonie Nicol be paid to the said Complaintant within seven days of the date hereof.

(5) THAT the matter be remitted to the said Industrial Magistrate to hear and determine the questions of penalty and of costs according to law.

By the Full Bench

(Sgd.) P.J. SHARKEY,
[L.S] President.

COMMISSION IN COURT SESSION— Awards/Agreements— Variation of—

THE POLICE AWARD 1965
No. 2 of 1966.

THE ABORIGINAL POLICE AIDES AWARD
No. R 31 of 1979.

POLICE CADETS' AWARD
No. R 7 of 1976.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

Western Australian Police Union of Workers
and
Honourable Minister for Police.
No. 363, 1259 and 1260 of 1994.

Police Award, 1965
No. 2 of 1966.
Aboriginal Police Aides Award
No. 31 of 1979.
Police Cadets Award
No. R 7 of 1976.

COMMISSION IN COURT SESSION
CHIEF COMMISSIONER W.S. COLEMAN.
COMMISSIONER R.N. GEORGE.
COMMISSIONER C.B. PARKS.

22 November 1995.

Reasons for Decision.

CHIEF COMMISSIONER: These are the unanimous Reasons for Decision of the Commission in Court Session.

By these applications the Police Union intends to secure in awards covering the employment of Police Officers, Aboriginal Police Aides and Cadets entitlements that are currently set out in Police Regulations and in the case of non-work related medical benefits, those which applied before the relevant Regulation was repealed.

The existing conditions which would, to a significant extent, replicate provisions in the Regulations go to travel concessions when officers located in special areas proceed onleave, sick leave, entitlements to leave and allowances when officers become incapacitated while on duty or when an injury or incapacity arises out of, or in the course of, their employment and arrangements for the retirement, removal from office or the death of an employee.

The amendments which arise from the repeal of Regulation 1307 on 18 November 1994 go to establishing award provisions for reimbursement of non-work related medical and pharmaceutical expenses.

Immediately prior to 18 November 1994 the Regulations provided inter alia:

"Medical and hospital expenses where members' illness results from duties

1306. Subject to regulation 1308 (2), the Commissioner shall pay the reasonable medical and hospital expenses incurred by a member as a result of illness or injury arising out of or in the course of his duties or suffered by him in the course of travel to or from a place of duty.

Medical and pharmaceutical expenses generally

1307. (1) Subject to regulation 1308 (2) and (3), a member or cadet who receives—

(a) any consultation, treatment or other service by a medical practitioner, or

(b) any X-ray or other service not provided by a medical practitioner but provided under a referral given by a medical practitioner,

may claim from the Commissioner reimbursement of the amount paid for that service, less the amount of any Medicare benefits paid or payable, and the commissioner may pay the claim.

(2) A member or cadet is entitled to reimbursement by the Commissioner of the cost of a medicine supplied by a pharmaceutical chemist on the prescription of a medical practitioner if the medicine was at the time of the issue of the prescription specified in the Commonwealth Schedule of Pharmaceutical Benefits for Medical Practitioners.

(3) A member or cadet claiming reimbursement of expenditure shall submit with his claim-

(a) in the case of expenditure of a kind referred to in subregulation (1)—

(i) a receipt for the amount paid;

(ii) a statement of the amount received or receivable as Medicare benefits; and

(iii) where applicable, documentary evidence that the health service not provided by a medical practitioner was provided under a referral given by a medical practitioner;

and

(b) in the case of expenditure of a kind referred to in subregulation (2), a receipt for the amount paid,

and the Commissioner, before approving payment, may require the member or cadet to supply additional information as to the identity of the person treated, the amount paid or, where applicable, the prescription.

Ineligibility for benefits where incapacity own fault

1308. (1) A member who suffers illness or injury through his fault or misconduct is not entitled to paid leave in respect of absence from duty resulting from that illness or injury.

(2) A member who suffers illness or injury through his fault or misconduct is not entitled in respect of that illness or injury to receive the benefits provided for by regulation 1306 or 1307.

(3) Except to the extent that an entitlement arises under the Award, a cadet who suffers illness or injury through his fault or misconduct is not entitled in respect of that illness or injury to receive the benefits provided for by regulation 1307."

(Police Act 1892
Police Amendment Regulations (No. 6 of 1989)
Government Gazette WA 17 November 1989
(Exhibit 3A)

It was the suspension and subsequent repeal of Regulation 1307 on 18 November 1994 that led to the applications presently before the Commission.

In pursuing these award amendments the Police Union has acted to remove what it sees as the potential for unilateral variations to the terms and conditions of employment of Police Officers, Aboriginal Police Aides and Cadets by any subsequent repeal of or amendments to Regulations.

Developments which culminated in these proceedings are summarised below:

On 25th February 1994 the Commissioner of Police wrote to the General Secretary of the Police Union in the following terms:

> "Reimbursement of Non Work Related Medical Expenses
>
> It is with regret that I advise that funds allocated for reimbursement of non work related medical expenses have been expended and payments have been suspended for the balance for the 1993/94 financial year.
>
> A notice to this effect will appear in the first available W.A Police Gazette.
>
> Advice from Health Services Division indicates that a number of aspects in respect of such reimbursements should be reviewed and I have directed that a review be conducted with recommendations to reach the Assistant Commissioner (Personnel) by March 31, 1994."
>
> (Exhibit 7)

This position was confirmed in the Police Gazette of 9 March 1994. Members and cadets were advised that Police Force Regulation 1307 and 1308 were to be reviewed "in respect of continuation of such reimbursements". (Police Gazette, 9 March 1994 [Exhibit 8]).

It is the Police Union's submission that at the time this action was taken, there was no suggestion that the benefit was not justified as a matter of merit. It was seen as a "cost cutting exercise".

In March 1994 conference proceedings were initiated before the Commission. The Police Union sought to have the suspension lifted and for the Commissioner of Police to reinstitute the practice of reimbursing medical payments. The Union's claim was opposed by the Commissioner of Police and the Minister. The preliminary issue of whether or not the Union's applications constituted an "industrial matter" for the purpose of the Industrial Relations Act 1979 was determined in Matter No. C 81 of 1994 (74 WAIG 1580). The Commission's jurisdiction to deal with the non-work related medical expenses was confirmed in subsequent appeal proceedings. (See Full Bench 74 WAIG 2928 and Industrial Appeal Court 75 WAIG 1504).

The Commission at first instance also held that the practice of the Commissioner of Police reimbursing members of the Police Force for their non-work related medical expenses was so well established as to constitute a contractual entitlement (74 WAIG 1980). On 13 July 1994 the Commission declared that the action of the Commissioner of Police in suspending without notice the payment of any reimbursement of medical expenses for "non work related" medical expenses was unfair. The Commission then ordered that the suspension be lifted and any duly raised claims for reimbursement already filed and affected by the suspension were to be "dealt with in accordance with the standards as to what applied immediately prior to that suspension unless and until those standards are changed by due process". (74 WAIG 1980).

In a letter to General Secretary of the Police Union dated 20 July 1994 the Commissioner of Police addressed the issue:

> "NON-WORK RELATED MEDICAL REIMBURSEMENTS
>
> Careful consideration has been given to all factors in respect of the suspension of non-work related medical reimbursements, including consultation with union representatives. I advise that I intend to honour the past conditions and reinstitute reimbursements from the date of suspension.
>
> However, I believe that such reimbursements cannot continue indefinitely as they are unfunded for the 1994/95 financial year and other areas of budget must be affected. Therefore, I have requested the Hon Minister for Police to commence proceedings to delete Police Force Regulation 1307 and where necessary, amend other regulations to remove provision for non-work related medical reimbursements.
>
> You are aware that management of this force is addressing a range of items to improve the protection of members, including the application of a workers' compensation type of coverage, and the provision of legal representation of members subject to civil litigation arising from the performance of their duties."
>
> (Exhibit 13)

In the Government Gazette, of 18 November 1994 the Police Force Amendment Regulation 1994 were varied to repeal Regulations 1307 (Exhibit 3A).

On 25 March 1994 the Police Union had lodged application No 363 of 1994 to amend the Police Award No 2 of 1996. Applications No 1259 of 1994 and 1260 of 1994 were filed in the Commission on 9 December 1994. Conference proceedings under Section 44 of the Industrial Relations Act 1979 were conducted from November 1994 through to January 1995 concerning the payment of non-work related medical benefits. (Refer to matters No. C 511 of 1994 and C 460 of 1994). A holding position was established pending the outcome of the appeal against the Commission's finding in April 1994 that it had jurisdiction to deal with the dispute between the parties.

The applications now before the Commission proceeded following the delivery of the Industrial Appeal Court decision on 27 March 1995 on the Commission's jurisdiction to deal with the reimbursement of non-work related medical expenses as an "industrial matter".

Mr Le Miere QC for the Police Union emphasises that a distinction has to be drawn between the claims that go to reimbursement of non-work related medical benefits on the one hand and the other claims. He submits that the Respondents have not at any time contested the merits of the other allowances. Indeed the undertaking has been given by the Commissioner of Police that he has "no intention of amending those conditions contained within Police Force Regulations which relate to Travelling Concessions, Entitlement to Leave and Allowances through illness or injury, Medical and Hospital Expenses through Illness or Injury resulting from duties, retirement, removal or death of an employee, which are the subject of applications Nod 363, 1259 and 1260 of 1994, without consulting with the Western Australian Police Union" (letter dated 15 June 1995).

On the ground that the merit of the claims for these allowances is not challenged, it is submitted that the only issue is whether or not they ought to be included in the award.

With respect to the claims for reimbursement of non-work related medical (and pharmaceutical) expenses, the Police Union understands that they are opposed on the basis of cost. The funds involved could be expended in other operational or non operational areas.

The Union's case is summarised by Mr Le Miere QC as follows:

> "We say first that non-work-related medical benefits are a proper allowance for police officers because of the nature of police work and the requirement that police officers maintain a high level of general health and fitness.
>
> Secondly, we say that the benefits are a proper allowance because of the stressful nature of police work. The stress manifests itself in all aspects of police officer's lives. It is not confined to the carrying our of their duties. It manifests itself in a range of, to use the medical term, symptoms, a range of ways, and it is not clear that those effects are work-related. It is difficult, if not impossible, to diagnose the effects of the stressful occupation as being work-related.
>
> Thirdly, police officers are expected to participate in community activities. That is another aspect of the job which makes the boundaries between work-related activities and other activities hard to distinguish. Fourthly, the benefit has in substance been part of the conditions of employment for police officers since 1979 and indeed for many years before that.
>
> Fifthly, the benefit was agreed to in 1979 after negotiations between the parties. It was accepted by the respondents at the time as being justified as a matter of merit and indeed the benefit has been confirmed on a number of occasions since then, including after the deliberations of the working party which led to the 1989 amendments.
>
> Sixthly, the allowance was unilaterally withdrawn by the Commissioner for Police in February 1994 and restored by order of the Commission. It was then removed in

November of 1994 by the respondents repealing the regulations. Again, that was done without negotiation with the union.

Seventhly, and perhaps an elaboration of the same point, the withdrawal of the allowance was found by Kennedy C to be unfair unless and until it was removed, following what the Commissioner described as "due process", that is, a proper process of consultation and negotiation. The Commissioner of Police and the Minister refused to go through that process and, in our submission, unfairly unilaterally removed the allowance.

Eighthly, the reason given for the withdrawal of the benefit is to save money. It is, in the language of structural efficiency, a negative cost-cutting exercise."

(Transcript @ pages 29-30)

On the question of the application of the Wage Fixing Principles (74 WAIG 40) it is argued that the claims should be considered as a Special Case in that:

- conditions of employment of police officers, aboriginal police aides and cadets are regulated by, amongst other things, Regulations as well as awards.
- the allowances being sought, (other than non-work related medical benefits) are all entitlements under the Regulations and accordingly are part of the existing regulated conditions of employment.
- the entitlements set out in the Regulations form part of the "safety net of conditions" for police officers, aboriginal police aides and cadets underlining enterprise bargaining.
- the inclusion of the allowances (other than the non-work related medical benefits) in the various awards involve no additional cost as they are an existing part of the regulated conditions of employment.
- the benefits associated with medical care have been part of the conditions of employment since 1979 and for many years prior to that.
- reimbursement of non-work related medical expenses were conditions agreed to following negotiations in 1979. They were accepted as being justified as a matter of merit. They were included in the Regulations rather than the award to overcome any possibility of "flow on".
- non-work related medical benefits were withdrawn unilaterally by the Respondents without consultation.
- non-work related medical benefits are more relevant to the conditions of employment of these officers than any other employees because of the nature of police work, the hazardous and stressful nature of their employment and the requirement to maintain a high level of general health and fitness.
- the withdrawal of non-work related medical benefits was not done under structural efficiency but merely as a cost cutting device.

In addressing the particular requirements of a Special Case, Mr Le Miere QC for the Applicant Union noted that the matters to which regard is to be given ie, public interest, flow-on and the need for the continued implementation of structural efficiency initiatives at the enterprise level, was not exhaustive. The issues to be considered in the case of a variation to a paid rates award are not, it is argued, relevant to the applications presently before the Commission although it is agreed by the parties that the awards in question have "paid rates status". The determination of a Special Case involves the exercise of discretion; it is not to be determined by a "check list" approach.

It is submitted that the maintenance of a high level of health and fitness for police officers is in the public interest. This was encouraged and facilitated by the provision of the entitlement formerly covered under Regulations. The removal of the entitlement will hinder recruitment as a position in the force is less attractive. A decline in morale will compound the problem. These factors conspire to act against the public interest. It is argued that it is not in the public interest that an entitlement "which has merit, which became a condition of employment after negotiation and which formed part of the conditions of employment for at least 16 years should be unilaterally withdrawn by a public authority without negotiation in circumstances which are unfair merely as a result of a negative cost-cutting exercise". (Transcript page 32). It is implicit if not express that the decision of the Industrial Appeal Court (op cit) that the entitlement to non-work related medical expenses was a right or privilege flowing from employment. On this premise it is submitted that it is not in the public interest that the Commissioner of Police should have the absolute power to make, amend or delete existing conditions of employment. All or most conditions of employment have budgetary consequences. The Industrial Relations Commission has a statutory duty to resolve disputes and if necessary to arbitrate. It follows that, with the determination of the jurisdictional issue by the Industrial Appeal Court, it is, in the Union's view, in the public interest that the matter of non-work related medical expenses be determined by this Commission. The potential for the exercise of "absolute and unilateral power" to determine conditions of employment will undermine the efficacy of the enterprise bargaining process under the Wage Fixing System. This, it is submitted, is contrary to the public interest.

On the question of "flow on", it is submitted, that the circumstances of employment in the police force are unique. Public servants have worked along side police officers for more than 16 years, the period for which the non-work related medical entitlement operated under the form negotiated between the parties in 1979. It has not been the source of complaint nor the basis of claims from that quarter. It is argued that the position of the police officer is quite different from public servants. Their position under workers compensation legislation, the "24 hours a day" responsibility and the stress and hazardous of their employment make police officers unique.

So far as Structural Efficiency is concerned it is submitted that the restoration of the non-work related medical entitlement and the insertion of existing allowances in the award does not hinder or impede the implementation of reform at the workplace level. On the contrary it is asserted that the inclusion of those provisions in the award will enable enterprise bargaining. The amended awards will be a proper safety net to enable negotiations to take place. A comprehensive award structure is consistent with the thrust of Structural Efficiency.

On the Wage Fixing Principles generally, it is submitted the Special Case Principle allows enterprises and industries to obtain arbitrated allowances above the award safety net if the application is consistent with the general thrust of the State Wage Decision and the Principles. This is said to be based on the assumption that conditions of employment are regulated by awards. In the circumstances of employment covered by the awards the subject of these claims, it is necessary to have regard to the Regulations. It is the award plus statutory regulation that provides the safety net. Where, as here, the employer unilaterally withdraws an existing condition of employment by the use of statutory power and without engaging in enterprise bargaining, the objectives of the Principles have been frustrated. It is argued that this could continue in the circumstances of employment in the police force if the situation is not addressed by making the award the comprehensive safety net. Recourse to amending Regulations will undermine the process of enterprise bargaining.

Finally, it is submitted, the Commission is obliged to follow the Wage Fixing Principles in arbitrating the dispute pursuant to the jurisdiction conferred upon it by Section 23 of the Industrial Relations Act 1979. The Commission is required by Section 26 to consider equity, good conscience and the substantive merits in a particular case. Here it is argued these requirements are met by restoring the entitlement which was unilaterally withdrawn and by inserting that entitlement and the other allowances claimed into the various awards.

Through Mr Stingemore, the former General Secretary of the Union, evidence was presented on negotiations in 1979 with the Police Department on the non-work related medical benefits. At that time there was a review of the Regulations in which the Union had been invited to participate. Mr Stingemore explained why the entitlement was covered under the Regulations and not the award at the time. He put the non-work related medical benefits within the context of "the package" of conditions which took into account the position of police

officers under workers compensation legislation, sickness benefits and a police officer's commitments and responsibilities as a member of the force. In Mr Stingemore's view the merit of the entitlement to non-work related medical benefits had been recognised in 1979. In his view this has been reaffirmed over the years.

The discussions between the Union and the Commissioner of Police on the suspension of the entitlement and the circumstances which existed in February 1994 were covered by Mr Stingemore. He also commented on the Minister's position and that of the Commissioner of Police with respect to budgeting constraints. The Union's position on enterprise bargaining and the impact that the 'Delta Project' could have on the process of restructuring were also the subject of comment. It is Mr Stingemore's belief that the non-work related medical benefits are a condition of employment. In his view, this was consistent with the commitment given by the previous Commissioner of Police to the Union that the Regulation would not be changed.

Mr Stingemore was also able to speak with authority on the rationale and development of other allowances the subject of claims under these applications. This information was given from Mr Stingemore's knowledge and his experience of the operational requirements of the force, policies and practices on country service, housing, the policy for participation in community activities and health and fitness requirements.

Mr Stirling, the General Secretary of the Police Union presented evidence on his involvement in negotiations on non-work related medical benefits from November 1993 and the action taken by the Union to secure what it considers to be the conditions of employment which are at risk under the Regulations. Mr Stirling considers that there is no alternative to seeking to amend the awards presently before the Commission in order to protect existing conditions of employment. The relevance of the non-work related medical benefit to the employment of police officers and their "24-hour" responsibilities was explained. From his contact with police officers, Mr Stirling was able to give evidence on the concerns of members about the removal of this benefit, the stress associated with policing and the nature of their work including periods of unpaid overtime. Mr Stirling gave evidence on the need for police officers to maintain fitness and about the levels of absenteeism within the force.

The Police Union called on Professor L W Savery, Professor in Human Resource Management at Curtain University to give evidence on a study he had undertaken in 1988 concerning morale within the Police Force. Information on the incidence of marriage breakdown, job stress and perception of community attitudes towards police officers were canvassed. A paper published in 1993 "Stress and the Police Officer" which Professor Savery co-authored was presented to the Commission (Exhibit 24). In Professor Savery's view there is nothing to indicate that a police officer's lot is any less stressful now than it was when the first study was undertaken in 1988.

In answering the claims the Respondent asserts that provisions sought by the Police Union with respect to non-work related medical expenses are inadequate in that they fail to accommodate the administrative processes which were previously incorporated by administrative requirements set out in the Police Gazette (see Exhibit 4). Furthermore, it is stated that if the objective is to secure in awards all of the terms and conditions of employment, the attempt has been deficient. It is submitted that notwithstanding these applications, most of the conditions are still to be found in the Regulations. The awards as they stand at present contain "fairly bare standard conditions and substantially reflect what is contained in similar provisions in the public service awards". (Transcript pp 179-180). Ms Smith for the Respondent to each award goes on to state that:

> "The regulations tell a different story. Quite clearly under the regulations the police force is established as a highly disciplined, highly regulated group who are, because of their special position, vested with common law powers of exercising the peace officers of the Crown. They are directly vested with upholding the law and they cant be directed by anyone not to uphold the law. So consequently they are in a very special position as a result of the historical nature of their duties but also because of the Police Regulations".
>
> (Transcript page 180)

As a consequence of the special position of police officers and the role that Regulations play in maintaining their recognition and responsibilities there has never been a danger of "flow on" conditions to other areas of public sector employment. It is argued that this will no longer be the case if these applications are granted.

It is acknowledged that the non-work related medical benefits were withdrawn unilaterally. It is claimed that as a matter of law that was open to the Commissioner of Police. However, it is argued that "due process" was followed. This together with the fact that the decision of Kennedy C on 20th April, 1994 (74 WAIG 1580) to reinstate the entitlement was not stayed pending the appeal process, goes to the merit of the Respondent's position.

As far as the Union's case is concerned, the Respondent argues that on the claim for non-work related medical benefits, the evidence does not support the proposition that payments promote good health and fitness. The "fringe benefit tax" ("FBT") has had significant impact on the cost of the entitlement. The "grossing up of FBT doubled the cost to the Department. Budgetary restraint is a fact of life. It is submitted that the Police Department's health services budget had been fully expended towards the end of 1993. It would have been inappropriate to cut the work related medical entitlement. The Government decided not to make an allocation for non-work related medical expenses in 1994. It is submitted that while the Industrial Appeal Court found the entitlement to non-work related medical expenses to be a right or privilege, it did not go so far as to find that it was an "actual condition of employment". When there was provision for reimbursement of non-work related medical expenses in the Regulations, the right which existed was for police officers to make an application for payment.

Police officers are holders of a public office and rights and obligations are imposed on them by the express provisions of the Police Act and by the Police Regulations. From this it is submitted that:

> "So really they are in a special position and we say that because of the nature of the common law position and of the specific provisions of the Police Act they are legislative conditions which by the nature of our system of government can be removed and changed unilaterally in the same way with the Workers' Compensation Act".
>
> (Transcript p 184)

In these proceedings the Commissioner of Police reaffirms the undertaking that the Regulations that are presently the subject of the claims ie, the work related sick leave and other allowances, will not be changed or amended without prior consultation with the Union. It is submitted that it is in the public interest to retain the work related sick leave provision in the Regulations because, in effect, that provision constituted a "workers compensation" scheme for police officers.

Turning to the Wage Fixing Principles the Respondent submits that:

- the Commission is as a matter of law obliged to give effect to the December 1994 Principles.
- the Applicant's submission that the award safety net should include not only the award provisions as they currently stand but should also incorporate provisions from the Regulations is rejected. It is argued that, as a matter of law, this cannot be correct. It is the nature of public sector employment that conditions of employment are not solely regulated by awards. There are a range of statutory acts and administrative instructions which together with an award form the conditions of employment of government officers. Police officers are in the same situation. The award could not be the comprehensive safety net that the Applicant is arguing for.
- the clear implications of the December 1994 Wage Fixing Principles are that the award safety net is simply a set of minimum conditions with other terms and arrangements being found in agreements or elsewhere. On this basis the Commission is limited in

this matter to taking into account "those awards of wages and conditions". Any variation to conditions in the awards in this matter will have to be dealt with as a Special Case having regard to the Structural Efficiency Principle.

The Respondent argues that the Applicant Union must satisfy the Commission, not only as a matter of merit, but also under the requirements of the Principles that the entitlement to non-work related medical benefits is justified. The cost implications of these expenses must not detrimentally affect structural efficiency. The variations sought must be in the public interest.

It is argued that as a matter of public interest the Commission must consider not only non-work related medical expenses but also the sick leave provisions under the claim for the "Entitlement to leave and allowances through illness or injury". Given that all other employees in Western Australia are covered by Workers Compensation, the sick leave claims for police officers are in effect a scheme of workers compensation. It is conceded that in respect to sick leave there is no prospect of "flow on". However, the Respondent submits that the Commission must be satisfied that there is no prospect of "flow on" from the claims as they relate to non-work related medical expenses.

The provisions which exist at present under the Regulations for sick leave and the payments to be made during that leave are more extensive than the statutory entitlements under the Worker's Compensation Act. Consequently, there are not the same restrictions on "stress" related claims nor those associated with travelling to and from work.

It is argued that it is in the public interest for these arrangements to continue under the specific legislative enactment through which the Regulations operate and not the award. A change to the position of police officers under the Workers Compensation Act could have implications for the work related claims for sick leave.

When non-work related medical expenses are considered under Structural Efficiency, the proposed award provisions are said to discriminate against public servants and other employees with whom police officers work. In particular as an award provision the claims would discriminate against the public servants who work along side and carry out substantially the same duties as police officers. Furthermore, when considering the structural efficiency implications of the claims for non-work related medical expenses, it is submitted that it should be seen that the applications could interfere with flexibility and efficiency as no funds have been allocated by the Government for this proposed benefit and there will be no "supplementation". The effect is that by diverting funds to meet this expense, the operational needs of the police service could be affected. This aspect of the claims also goes to the issue of public interest.

It is submitted that provision for non-work related medical expenses does nothing to promote health and fitness including stress management and relief. It is merely a form of insurance which is intended to meet the "gap" between the Medicare rebate and the doctors' fees. The Respondent argues that there is nothing presented by the Applicant Union which shows that the level of physical fitness and health for police officers is "over and above other sectors" and indeed it is submitted that it is below that required of fire fighters. This again gives rise to this issue of "flow on" if non-work related medical expenses were to become an award entitlement.

Through evidence provided by Sergeant Newman, a Police Welfare Officer in the Department's Health Services Division, the Commission is informed on the assistance that is rendered upon the death of a serving or retired member of the force and to officers with long term illnesses which could result in premature retirement. Under the Employee Assistance Programme, officers have access to an on-going health and fitness screening programme. An occupational health physician, clinical psychologist and police councillors are available for the management of stress problems and other health related issues. The physician conducts the recruitment medical and fitness examinations. It is noted that certain positions within the force require fitness standards above those expected of police officers generally eg. appointments to the Tactical Response and Protective Service Units. Also the Commissioner of Police can require an officer to undergo an "advanced medical test". The only health assessments specified under the Regulations are those required on recruitment and at the completion of the police officers' probationary period. Sergeant Newman acknowledges that there is concern among police officers about the level of violence encountered in the community and that they must maintain a reasonable level of health and fitness in order to carry out their operational duties.

The financial burden that the reimbursement of non-work related medical expenses imposes on the Department was the subject of evidence from Mr D.W.M. Harris the Acting Manager, Financial Planning. From 1 April 1994 the "grossing up factor" used to determine the level of fringe benefits tax under the Commonwealth requirements has, in effect, meant a tax rate of 93.5% on the actual cost of a service or benefit provided. Cost projections for the reimbursement of non-work related medical expenses for 1994/95, 1995/96 and 1996/97 were submitted. However, it is acknowledged by Mr Harris that the basis upon which these costs were extrapolated was unrepresentative (see Exhibit F).

Mr Kelly, a public servant and Industrial Consultant to the Commissioner of Police explains that at the time of the hearing there are 4294 sworn Police Officers, 64 Aboriginal Police Aides and approximately 120 Cadets. (There are 925 Public Servants employed by the Police Department). At present 32 Police Officers and some additional Cadets are being recruited each month. Under the "civilianisation project" it is intended that over the next 3 financial years the number of public servant will increase by 300 employees. This is part of the Delta Project which will involve the deployment of police officers on operational duties and public servants picking up all non operational duties.

It is Mr Kelly's understanding that at present sworn and unsworn personnel ie. police officers and public servants work together in "just about every location in the Police Department or Police Service except perhaps in "one or two-man stations in the country". In some areas such as computing, communications, records and employee relations, police officers and public servants are currently performing the same or similar duties. (refer to Exhibit L). The work arrangements extend to operational areas where public servants generally provide clerical and typing support. (see Exhibit L).

Mr Kelly explains that under the "civilianisation project" restructuring will open up a number of areas and positions to more senior public servants. Examples of this process will see a Level 8 public servant replacing an Inspector of Police as manager of the employee relations branch and the legal services unit being staffed by unsworn personnel.

The budgetary position within the Department concerning expenditure of funds for the reimbursement of non-work related medical expenses and the Commissioner of Police's communications to members of the Police Force over the issue were cited by Mr Kelly. (see Exhibits M and N). He explains that the Department is undertaking a current review "about getting workers compensation coverage for police officers". However, Mr Kelly is not fully conversant with developments as he is not heavily involved in this area. It is his belief that if the Police Union's application is successful with respect to the reimbursement of non-work related medical expenses, there will be potential for the entitlement to flow on to other areas of employment in the Police Department. This will increase over the next two to three years with the implementation of the "civiliansation project". While the provision was in the Regulations, Mr Kelly considers that there is not the same pressure from the public service sector of employment for the benefit. Being located in the Police Award would in the short term excite the possibility of the provision being sought in an enterprise agreement by public servants. Mr Kelly advises that it is the Department's long term objective to bring conditions of employment for sworn and unsworn employees into line wherever possible.

Mr C.M. Beeck, the Physical Fitness Officer with the Western Australian Fire Brigade Board explained the health requirements, annual fitness testing and individualised training programmes run by the Board. Fire fighters are required to maintain a level of fitness in accordance with the standards set by the Board as a condition of their employment. A copy of the Board's "Physical Fitness Policy" was tendered (see

Exhibit Q). Time is allocated on each shift for fire fighters to undertake physical training. They are covered by workers compensation legislation. From research material he has reviewed, Mr Beeck believes that the physical demands of fire fighting and stress levels are "quite high". It is not only the fact of heat and physical stress when actually fighting a fire but stress associated with "operating through night shift and being on constant call with alarms .....". It is acknowledged that for the majority of their time fire fighters are doing things other than fighting fires. This affords them opportunity to relax.

The implication for "flow-on" of the non-work related medical benefits for police officers to fire fighters was raised by the Respondent. Mr A.J. Clark, an Industrial Relations Officer with the Brigade explained that at present fire fighters do not have any entitlement comparable with that being sought by Police Officers. Nor do they have any entitlement over and above the provisions under workers compensation legislation. With award negotiations being undertaken on the Firefighting Award at present , Mr Clark believes that a similar claim to that now being pursued by the Police Union with respect to non-work related medical expenses will be lodged by the United Firefighters Union of Western Australia very soon. Mr Clark only became aware of the claim twenty four hours before giving evidence and although the issue of non-work related medical expense has never been raised with the Brigade it appears that his knowledge of this application forebodes a claim which could materialise when he completed his evidence and returned to his office. His concern about "flow-on" is that strong.

With the Police Unions' reliance on the levels of stress experienced by officers and the necessity to maintain physical fitness in order to perform properly, the Respondent submits that with respect to the claim for reimbursement of non-work related medical expenses fire fighters experience more strenuous requirements. Success in the Police Union's claim could flow the same provisions to fire fighters.

As "industrial matters" the applications for non-work related medical benefits come within the jurisdiction of the Commission. As a matter of law they must be considered under the Statement of Principles—December, 1994 (75 WAIG 40).

The fact that the Commissioner of Police has power pursuant to the Police Act to make, amend and repeal regulations for the "general government of members of the Police Force" does not derogate from the Commission's power. Indeed, that has not been a position which was taken by the Respondent with respect to these applications. Nor has the Applicant pressed the argument that the right or privilege that existed under the Regulations prior to the repeal of Regulation 1307 was a term of the contract of employment unilaterally withdrawn in breach of that contract.

Both parties have focussed on the merits of their respective positions given matters of public interest generally and the requirements of the Wage Fixing Principles in particular. The potential for tension between the Commission's power to regulate the terms and conditions of employment of police officers, aboriginal police aides and cadets pursuant to awards to which the Minister of Police is Respondent and the authority of the Commissioner of Police, not a named party to the awards, to establish, vary and delete provisions which go to matters the subject of the employment relationships, has not been raised. It appears that this is not an issue with which the Commission needs be concerned.

From the Union's perspective, the matters which go to the merit of reinstituting an entitlement to non-work related benefits are synonymous with public interest. The health and fitness of police officers, the incentive that those conditions of employment provide for recruitment and the contribution they make to morale serve the public interest. The stress and demands placed on police officers has previously been recognised through these entitlements. The arrangement complements and indeed was part of the scheme recognised and accepted for more than 15 years for the protection of police officers, aboriginal police aides and cadets. It was an integral part of the sick leave and "workers' compensation package".

While it is not denied that the operational requirements of police officers demand a reasonable level of fitness and health, in the Respondent's view the reimbursement of non-work related medical expenses does nothing to promote that objective. Furthermore, the level of fitness required of a police officer should not be taken out of perspective. In the Respondent's view the physical demands and fitness levels of fire fighters are greater. The wider public interest is served by the authority to regulate sick leave and entitlements generally residing with the Commissioner of Police. That is the character of the Police Force as a disciplinary body. It is for the Commissioner of Police acting in the public interest to determine the allocation of resources. This was the thrust of the Respondent's argument in opposing these aspects of the claims.

To improve the entitlement to reimbursement of non-work related medical expenses (and to include sick leave provisions in awards) interferes with the scheme for the statutory protection of police officers and pre-empts changes that may be legislated through the Workers' Compensation Act. This interference, it is argued, is not in the public interest.

In our view there is overwhelming merit in favour of the claim for the re-establishment of the entitlement to reimbursement for non-work related medical expenses. The payment is not unrelated to the health and physical well-being of police officers. The entitlement that existed previously recognised the particular nature of their employment and the stresses inherent in the discharge of the office. In this respect, Mr Stingemore and Sergeant Newman were most persuasive. Provision for sick leave, work related medical care and reimbursement of non-work related medical expenses form a cogent and comprehensive scheme that complements police officers' exclusion from the Workers' Compensation Act and accommodates the directions to which officers can be subjected with respect to their place of residence, the duties and the level of performance expected of them. The degree of scrutiny from within the Police Force and from the community gives rise to special considerations. These merit the particular compensation that has previously been recognised by way of free or heavily subsidised medical care.

In our view, it is insufficient to claim that matters of public interest that go to the authority of the Commissioner of Police to regulate the circumstances of employment should override the merit of the claims with respect to reimbursement of medical expenses. However, it is acknowledged that there are other factors which impinge upon consideration of public interest.

The cost of the entitlement under the burden of an increase in the Fringe Benefit Tax, the deployment of limited resources in meeting operational requirements, the implication of the entitlement for the policy of "civilianisation" and the availability of alternative arrangements for dealing with stress and welfare issues within the Police Force; these are matters which must also be considered within the wider scope of public interest.

While the "grossing up factor" has lifted the Fringe Benefit Tax to an additional 93.5% of the cost of reimbursing non-work related medical expenses, the total financial burden of the claim could not be ascertained with any certainty. The calculations submitted by the Department were inadequate (See Exhibit F). The extent to which the Fringe Benefit Tax would increase the cost of the entitlement does not, in our view, outweigh those aspects of public interest served by the provision of an entitlement which recognises the special nature of an appointment to the Police Force.

Just as a claim for a wage increase to offset an increase in income tax must fail, so to does an argument that the impost of the Fringe Benefit Tax undermines the merit of an entitlement. There are limited resources available for the operational needs of the Department. However, it is a matter of judgement as to how best those funds are deployed. In the absence of submissions which identify the alternatives between re-establishing an entitlement which goes to the care and well-being of police officers on the one hand and those for unspecified operational and non-operational items on the other, then it is difficult to sustain the argument that the public interest is best served by rejecting the claims.

Policy initiatives to implement the "civilianisation" of the Department to facilitate the deployment of police officers on operational duties is in the public interest. The Commissioner of Police sees this as a strategy to improve the Department's efficiency and to be able to respond better to the demands the community places on law enforcement services. To the extent

that the provision of an entitlement to non-work related medical expenses (and the inclusion of other allowances in awards) impedes the implementation of this strategy can be questioned. The complete segregation of conditions of employment of police officers from public servants would serve to ensure that the distinction between the two classes of "employees" is maintained for industrial purposes. How that translates to an issue of public interest is tenuous. Even separation of police officers conditions under Regulations is not a guarantee against claims under enterprise bargaining from public servants who may draw on a range of proposals including those taken from the Police Act Regulations.

However, it is not the Department's objective under the "civilianisation process" to establish conditions of service for police officers in complete isolation from those that apply to public servants. Indeed, the idea is to establish as far as possible a standard which is common to both areas of employment. The distinctive features of employment for law enforcement officers would, on the Respondent's proposal, be secured in the Regulations. However, this is the position which has given rise to these claims. It is the authority of the Commissioner of Police to unilaterally vary the Regulations that is the basis of the Union's grievance. The position is not ameliorated by the Commissioner's undertaking to consult. Indeed, the Union's concern is no doubt heightened by the statement given in evidence by Mr Kelly that a review is being undertaken of the position of police officers with respect to workers' compensation. The implications of any legislative initiative in that regard could have repercussions for sick leave entitlements. Repeal or amendment under the Regulations may follow. The package of entitlements that go to sick leave, medical treatment and leave associated with injury or incapacity arising in the discharge of duty and reimbursement for non-work related medical expenses are a package which the Union sees as reflecting the "status quo" of the relationship that has existed for many years. The public interest served in facilitating the implementation of the "civilianisation process" is in our view insufficient to displace that which arises from the security that existing entitlements provide together with the re-establishment of the benefit which reflects the circumstances of police officers at present.

In finding merit in the claims for re-establishing the entitlement to non-work related medical benefits and in determining that the public interest is served by that arrangement, the Commission in no way impugns the integrity of the services provided by the Department for the health and welfare of police officers through the Health Services Division. We believe that arrangements to reimburse medical expenses will complement the services provided and enable the Commissioner of Police to continue to exercise the control necessary to maintain his interest in ensuring that standards of health and fitness are achieved.

While the merits of claims for reimbursement of non-work related expenses and matters of public interest are extrinsically linked in the circumstances of the employment relationship of police officers, the remaining tests under the Special Case Principle stand alone.

The Respondent's concern about the "flow on" of the non-work related medical benefits is manifested on two fronts. First is the possibility of flow on to public servants in the Department and next to other areas of public sector employment particularly to fire fighters. It has to be acknowledged that within the context of enterprise bargaining there is always the possibility of a party seeking to negotiate some arrangement which has previously been unrelated to the terms of employment. The provision of motor vehicles, the payment of private health insurance or improved contributions to superannuation are examples of the possibilities. The establishment of an entitlement to the reimbursement of non-work related medical expenses in police officers awards does not in itself herald the possibility that such an initiative will be sought and agreed to by other employers. The possibility of such a condition being arbitrated in favour of a claim is more remote given the requirements of the Wage Fixing System, the unique character of employment of police officers upon which the merit of the arrangement is based and the existing scheme for their protection for sick leave in the absence of workers compensation. In our view, these factors are sufficient to secure a limitation on the applicability of this entitlement to police officers. It is not the fact of stress and the physical rigours associated with the discharge of a police officer's duty which has alone determined the merit of the entitlement to reimbursement of medical expenses. Those factors have been considered within the context of all of the characteristics of a career within the Police Force. There are the unique features of the law enforcement officers position which no other group within the community can claim. The existence of this entitlement for many years albeit within the Regulations provided no incentive for "flow-on". The existence of the provision in an award does not alter the circumstances with respect to the unique character of an appointment to the Police Force nor the scheme for protection in the absence of workers compensation. The possibility for flow-on is remote given these circumstances.

The remaining matter for consideration under the Special Case Principle is the need for continued implementation of Structural Efficiency initiatives at the enterprise level. In this regard it is appropriate to note:

- the extent to which the process of Structural Reform has been undertaken;
- whether there is a programme for the process to continue and to what extent is the Applicant Union committed to that course; and
- whether award amendments will facilitate these initiatives.

A review of the recent history of award variations discloses a three phase programme of restructuring. This commenced in September, 1991 and has included changes to work practices, the introduction of merit promotion, "horizontal pay scales", restructured classifications and productivity initiatives (See 72 WAIG 257, 72 WAIG 2031, 73 WAIG 1279, 73 WAIG 1521 and 73 WAIG 2048).

In August 1993 the McCarrey Report on Public Sector finances addressed an initial review of the Police Department. Arising from this a more comprehensive study was undertaken to identify areas of change (the Scoping Review; February, 1994). A programme for the implementation of changes has been established by the Commissioner of Police. The areas to be addressed under the "Delta Project" are set out in a Memorandum of Understanding entered into between the Commissioner of Police and the Applicant Union. Therein it states:

> "To review the purpose and direction of Western Australian policing and integrate the revised purpose and direction into the organisation's management practices and functions.
>
> To enhance the management of the organisation by ensuring that an efficient and effective promotion system for sworn officers is in place.
>
> To investigate opportunities/benefits/risks of civilianisation/limited function policing/outsourcing within Western Australian Policing and develop an implementation programme.
>
> To investigate opportunities for productivity enhancement through previous agreements and current options.
>
> To amalgamate the Personnel Departments to ensure an effective and efficient human resource function which enhances the management of the organisation.
>
> To develop an appropriate organisation structure which is aligned to the redefined purpose and direction and core business.
>
> To develop strategies for best management practice.
>
> To develop strategies for financial and resource management.
>
> To develop strategies for human and physical resource management."
>
> (Memorandum of Understanding—Exhibit 18)

The Applicant Union's commitment to participate in the "Delta Project" has been reiterated before the Commission in conference proceedings (See Exhibit 14) and in this hearing.

It is the case that during the period of award restructuring from September, 1991 to July, 1993 and at the time the Memorandum of Understanding was entered into (August, 1994) to effect changes under the "Delta Project", the entitlement to non-work related medical expenses was a term of employment pursuant to the operation of Regulation 1307. It was

within the context of entitlements which included this provision that award restructuring and the commitment to focus on enterprise bargaining was given. It is our view that the process of Structural Efficiency will be facilitated by the re-establishment of the entitlement to reimbursement of medical expenses.

It is submitted by the Respondent that as a matter of law, the Award Safety Net established under the Wage Fixing Principles cannot include conditions of employment not already included in the Award. On this basis any claims based on entitlements already covered by Regulation would be excluded from consideration as an award provision. This argument is particular to those aspects of the claims which seek to incorporate "Travelling Concessions", "Entitlement to Leave and Allowances through Illness or Injury", "Medical and Hospital Expenses Through Illness or Injury Resulting from Duties", and the "Retirement, Removal or Death of an Employee" (Refer to Regulations 1107, 1303, 1304, 1308, 1309, 1305, 1306, 1401, 1402, 1403 and 1404).

If this is so, then the notion of the Award Safety Net would frustrate the process of Structural Efficiency. Nothing in an award could be changed. The Award Safety Net established by operation of the Principles would negate the application of Work Value Changes etc. The Special Case Principle would cease to operate. This inflexibility is contrary to the objectives of the Wages System under the Statement of Principles.

However, while the provisions which exist under the Regulations and which the Applicant Union seeks to transpose into the awards are part of the framework of conditions of employment for police officers, the claim to include those provisions in awards necessarily attracts consideration as a Special Case.

The merit of these claims has not been questioned by the Respondent. The issues concern public interest, flow-on and Structural Efficiency.

The question is whether the public interest is best served by these provisions remaining under the authority of the Commissioner of Police or reposing in awards.

In support of retaining existing arrangements is the argument that as a disciplinary force it is in the public interest to have the Commissioner of Police in the position of being able to regulate the conditions which directly or indirectly affect the deployment of police officers. The particular arrangements for sick leave form part of the scheme for the protection of injured or ill police officers that operates in the absence of the general application of Workers' Compensation legislation. The arguments for including allowances in awards go to the public interest being served by having certainty in entitlements for police officers.

In our view the most persuasive public interest argument is that which is tied in with Structural Efficiency. The thrust of the Wage Fixing System has been for structural reform. The initiatives which parties are now expected to pursue are those which will encourage and promote enterprise bargaining "about wages and conditions of employment within the framework of the award system ....". While the amendment of awards to secure existing provisions covered by Regulation will establish an Award Safety Net, that is a position from which enterprise bargaining can gain momentum. The inclusion of these provisions in awards will give impetus to these aspects of the review under the "Delta Project". That review has wide scope; all matters are to be considered. The public interest will be served by creating the environment in which issues, including conditions of employment, are addressed.

Given that the provisions sought reflect terms and conditions in public sector employment generally, there is limited scope for flow-on. This is conceded by the Respondent.

After taking all matters into account, we consider that the public interest will be the served by the inclusion of provisions the subject of these claims.

Apart from where specific reference has been made to "police officers, aboriginal police aides and cadets", no distinction has been made between the various categories of appointments within the Department. Within the scheme of the Regulations and Routine Orders, a distinction is drawn between "members" and "cadets".

The matters which went to deciding in favour of the applications with respect to the reimbursement of non-work related medical expenses were particular to "members" and do not appear to apply to cadets. The extent to which the cadets' performance, duties, responsibilities and stresses associated with an appointment do or do not parallel that of "members" was not identified or argued. In the absence of specific information about the nature of a cadetship in these respects, it is difficult to recognise their eligibility to the same entitlement as a "member".

However, the qualification that applies to cadets about the application of non-work related medical expenses does not appear relevant to other allowances the subject of these claims. They should be incorporated in the Police Cadets' Award.

Finally, there is the question of operative date. The only matters to which this is relevant are claims for reimbursement for non-work related medical expenses under the Aboriginal Police Aides Award and the Police Award. In our view, the history of this matter which is summarised in this Decision gives rise to special circumstances. With respect to the Police Award there should be continuity of the entitlement from the date upon which Regulation 1307 was repealed. As far as the Aboriginal Police Aides Award is concerned the statutory provision for retrospectivity should apply.

Before effect can be given to varying the awards in terms of this Decision, we consider that it is necessary for the Applicant Union to re-submit schedules to reflect the amendments proposed during proceedings (Refer to transcript pages 173-176 inclusive) and matters addressed by both parties for the redrafted provisions to remove gender limitations etc. (Refer to transcript pages 7-9 inclusive). Furthermore, for the efficacy of the application of the award provisions, it will be necessary to implement administrative arrangements along the lines of those that were found in Routine Orders and the Police Gazette prior to the repeal of Regulation 1307. These will need to be incorporated in the amended schedules or re-established through some other mechanism. Similarly, the existing administrative requirements for those allowances which are presently found in the Regulations may need to be formalised under another mechanism with the operation of award amendments.

On receipt of amended schedules as stipulated the Commission is available to assist the parties in finalising the documentation to issue as Orders.

Appearances: Mr R.L. LeMiere, QC (of Counsel) on behalf of the Applicant Union

Ms J.H. Smith (of Counsel) on behalf of the Respondent

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

Western Australian Police Union of Workers
and
Hon Minister for Police.
No. 363 of 1994.

The Police Award 1965
No. 2 of 1966.

COMMISSION IN COURT SESSION
CHIEF COMMISSIONER W.S. COLEMAN.
COMMISSIONER R.N. GEORGE.
COMMISSIONER C B PARKS.

21 December 1995.

Order.

HAVING heard Mr R L Le Miere QC (of Counsel) on behalf of the Applicant and Ms J H Smith (of Counsel) on behalf of the Respondent the Commission in Court Session, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT The Police Award 1965 be varied in accordance with the following Schedule and that such variation shall

have effect from the beginning of the first pay period commencing on or after the 18th day of November 1994.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S] Chief Commissioner.

Schedule.

1. Clause 2—Arrangement:

(A) Renumber Clause 38.—Named Parties and reinsert as Clause 42—Named Parties.

(B) Insert the following new clause numbers and titles as follows:

38. Entitlement to Leave and Allowances through Illness or Injury.
39. Medical and Hospital Expenses through Illness or Injury resulting from Duties.
40. Medical and Pharmaceutical Expenses.
41. Retirement, Removal or Death of an Employee.

2. Clause 5—Definitions: Immediately following the definition "De-facto spouse" insert the new definitions "dentist". Immediately following the definition "Detective" insert the new definition "Distant Rate". Immediately following the definition "Emergency" insert the new definition "Family". Immediately following the definition "House" insert the new definitions "incapacity", "Manager", "medical practitioner" and "Medicare benefits". Immediately following the definition "Partial Dependant" insert the new definition "pharmaceutical chemist". Immediately following the definition "Public Interest" insert the new definition "Public Transport". Immediately following the definition "Recruit in Training" insert the new definitions "region" and "Special Area" as follows:

"dentist" has the same meaning as it has in the Dental Act 1939.

"Distance Rate" means the rate per kilometre applicable in the North West of the State that is prescribed by the Award under Clause 13—Allowance for use of Employee's Own Vehicle as payment to an employee for the use by the employee of the employee's vehicle for the performance of police duties.

"Family" in relation to an employee means the employee, spouse and all dependent children attending school and to those dependent children living with the employee who are unemployed.

"incapacity" means unfitness for and absence from duty as a result of illness or injury and "incapacitated" shall be construed accordingly.

"Manager" means the Manager of the Occupational Health, Safety and Welfare Unit of the Department.

"medical practitioner" has the same meaning as it has in the Medical Act 1894.

"Medicare benefits" has the same meaning as it has in the Health Insurance Act 1973 of the Parliament of the Commonwealth.

"pharmaceutical chemist" has the same meaning as it has in the Pharmacy Act 1964.

"Public Transport" means any means of public transport approved by the Commissioner.

"region" means region of the Sate within the meaning of section 39(2) of the Police Act 1892.

"Special Area" means—

(a) any portion of the State that is—
  (i) east of longitude 119 degrees east; or
  (ii) north of 26 degrees of south latitude;
(b) Yalgoo, Mount Magnet, Cue and Meekatharra; and
(c) any area outside the State designated a special area by the Minister.

3. Clause 13.—Mileage Allowance: Rename this Clause 13.—Allowance for Use of Employee's Own Vehicle.

4. Clause 20.—Annual Leave: Delete subclause (1) of this clause and insert the following in lieu:

(1) (a) Each employee shall be granted annual leave of 42 days (including 12 rest days) on full pay for each year of service. Provided that such employee stationed in the North West shall be granted an additional 7 days annual leave (including 2 rest days) on full pay for each year of service in the North West.

(b) An employee when stationed in the North West who desires to commence leave in the South shall not commence such leave until after arrival in the metropolitan area.

(c) The following travelling concessions apply to and in relation to an employee stationed in a special area who for the employee's annual leave travels to Perth or other place outside the employee's sub-region which is approved of by the Commissioner—

(i) where public transport is used—free return passes to Perth or that other place on public transport for the employee and the employee's family.

(ii) where a private vehicle is used—the distance rate to that place so long as the amount so paid does not exceed the cost of free passes granted under paragraph (i);

(iii) where both public transport and a private vehicle are used—free return passes to that place in respect of the persons travelling by public transport and the distance rate to that place payable under paragraph (ii) so long as the amount so paid does not exceed the cost of providing the persons travelling by private vehicle with a free return pass granted under paragraph (i).

(d) With mutual consent of the Commissioner and the employee annual leave may be taken in more than one period. Such periods to be not less than 14 days.

(e) The travelling concession payable under this subclause is payable only in respect of an employee—

(i) who has completed 12 months' service in the special area; or

(ii) if the employee has not completed 12 months' service in the special area before the employee proceeds on annual leave, the employee does so on their return from annual leave before the employee again takes annual leave;

(iii) shall be repaid to the Department by the employee if the employee fails to complete 12 months' service in the special area unless the failure is due to causes beyond the employee's control.

(f) An employee when stationed at headquarters situated more than 240kms from Perth City Railway Station and travelling to Perth during annual leave shall be allowed such additional leave as is reasonable and necessary to enable the employee to travel to Perth and return.

(g) To standardise the entitlement the following criteria is to be used—

(i) 24O kms to 5OO kms—half day travelling each way but taken as one additional day;

(ii) 5OO kms to 1OOO kms—one day's travelling time each way;

(iii) In excess of 1OOO kms and north of the 26th parallel—two and one half day's each way, and all stations south of the 26th parallel but in excess of

1OOO kms be allowed the equivalent of a counterpart north of the 26th parallel.

5. Clause 37—Adjustment of Reimbursement Allowances: After this clause add the following new clauses as follows—

38.—ENTITLEMENT TO LEAVE AND ALLOWANCES THROUGH ILLNESS OR INJURY

(1) An employee who becomes incapacitated shall as soon as possible:

(a) notify the employee's officer in charge of that fact and of the employee's whereabouts; and

(b) notify the Manager of the nature of the illness or the nature and cause of the injury, as the case may be.

(2) Except in respect of a day on which an employee becomes incapacitated while on duty, an application for leave by an employee on account of incapacity shall be supported by a certificate of a medical practitioner or, where the incapacity involves a dental condition, by a certificate of a dentist.

(3) The application shall be—

(a) in a form approved by the Commissioner; and

(b) submitted to the Manager, and the certificate in its support shall be—

(c) submitted to the Manager.

(4) Subject to subclause (2) and to the compliance by the employee of subparagraphs (a), (b) and (c) of subclause (3), the Commissioner may grant to an employee in respect of the employee'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.

(5) Except where an employee is incapacitated through the employee's fault or misconduct, an employee is entitled to receive in respect of a period of leave of absence approved under subclause (4) and subject to any terms and conditions imposed under subparagraph (4) (b), any special allowances which the employee would have received under the Award if the employee had not been incapacitated.

(6) The district allowance prescribed by the Award ceases to be payable—

(a) after an incapacitated employee and the family of that employee have been absent from the employee's region for a continuous period exceeding 6 weeks; and

(b) for so long thereafter as that absence continues.

(7) In subclause (6) "family" means the spouse and any children of the employee residing with the employee.

(8) (a) An employee who suffers illness or injury through the employee's fault or misconduct is not entitled to paid leave contained within the provisions of subclause (4) under subparagraphs (a) and (b) in respect of absence from duty resulting from that illness or injury.

(b) An employee who suffers illness or injury through the employee's fault or misconduct is not entitled in respect of that illness or injury to receive the benefits contained under Clause 40.—Medical and Pharmaceutical Expenses of the Award.

(c) Where the incapacity of an employee results from the carrying on by the employee of an occupation for which the employee received or expected to receive remuneration, outside of the employee's duties as an employee the Commissioner may grant or refuse to grant paid leave to the employee in respect of the incapacity or may grant the employee leave at a reduced rate of pay.

(9) An incapacitated employee shall not during the employee's absence from duty engage for reward in any other occupation or activity.

(10) An employee who has been absent from duty because of incapacity for longer than 4 weeks shall, before returning to duty, submit to the Manager evidence of the employee's medical fitness to return to duty.

(11) (a) The Commissioner may direct an employee to submit to examination, at the expense of the Commissioner, by one or more medical practitioners nominated in each instance by the Commissioner and the employee shall obey such a direction.

(b) Where an employee has been examined under subclause (11)(a) and the examining medical practitioner expresses the opinion in writing to the Commissioner that the employee is unfit for duty because of illness or injury, the Commissioner may direct the employee, to apply for leave on that ground and the employee shall obey such a direction.

39.—MEDICAL AND HOSPITAL EXPENSES THROUGH ILLNESS OR INJURY RESULTING FROM DUTIES.

(1) Subject to the provisions contained within Clause 38.—Entitlement to Leave and Allowances Through Illness or injury of this Award, under subclause (8) (b), the Commissioner shall pay the reasonable medical and hospital expenses incurred by an employee as a result of illness or injury arising out of or in the course of the employee's duties suffered by the employee in the course of travel to or from a place of duty.

40.—MEDICAL AND PHARMACEUTICAL EXPENSES.

(1) Subject to the provisions contained within Clause 38.—Entitlement To Leave And Allowances Through Illness or Injury of this Award, under subparagraphs (a) and (b) of subclause (8), an employee who receives—

(a) any consultation, treatment or other service by a medical practitioner; or

(b) any X-ray or other service not provided by a medical practitioner but provided under a referral given by a medical practitioner, may claim from the Commissioner reimbursement of the amount paid for that service, less the amount of any Medicare benefits paid or payable, and the Commissioner may pay the claim.

(2) An employee is entitled to reimbursement by the Commissioner of the cost of a medicine supplied by a pharmaceutical chemist on the prescription of a medical practitioner if the medicine was at the time of issue of the prescription specified in the Commonwealth Schedule of Pharmaceutical Benefits for Medical Practitioners.

(3) An employee claiming reimbursement of expenditure shall submit with the employee's claim—

(a) in the case of expenditure of a kind referred to in subclause (1)—

(i) a receipt for the amount paid;

(ii) a statement of the amount received or receivable as Medicare benefits; and

(iii) where applicable, documentary evidence that the health service not provided by a medical practitioner was provided under a referral given by a medical practitioner;

and

(b) in the case of expenditure of a kind referred to in subclause (2), a receipt for the amount paid, and the Commissioner, before approving payment, may require the employee to supply additional information as to the identity of the

person treated, the amount paid or, where applicable, the prescription.

41.—RETIREMENT, REMOVAL OR DEATH OF AN EMPLOYEE

(1) Retirement.

(a) An employee may retire on attaining the age of 55 years.

(b) Employee's of the Force other than the Commissioner, Deputy Commissioner and Assistant Commissioner shall retire on attaining the age of 6O years.

(c) The Deputy Commissioner and Assistant Commissioner shall retire on attaining the age of 62 years.

(2) Examination by Medical Board.

(a) Where the Commissioner is of the opinion that an employee is not fit for further service, he may direct the employee to be examined by a medical board.

(b) The medical board referred to in subparagraph (a) shall consist of 3 legally qualified medical practitioners nominated by the person who holds or acts in the office of Commissioner of Health under the Health Act 1911.

(c) An employee shall not fail to carry out a direction given pursuant to subparagraph (a).

(d) Subject to the Act, where the medical board referred to in subparagraph (b) reports to the Commissioner that the employee in question is unfit for further active service the Commissioner shall advise the employee of the date the employee will cease duty.

(3) Allowances Paid on Death of an Employee.

Where an employee dies the spouse of the employee and such of the children of the employee as are under the age of 18 years are entitled to the allowances prescribed by Clause 10.—Travelling Allowances and Clause 12.—Transfer Allowances of the Award for the conveyance of themselves and their furniture and effects to the Metropolitan area or to any part of the State approved of by the Commissioner.

(4) Leave Entitlement to be Paid Out.

On the death of an employee the Minister may on the recommendation of the Commissioner grant to the relatives of the employee who were dependent on the employee at the date of the employee's death the monetary equivalent, computed to the date of death, of—

(a) annual leave accrued and owing to the employee;

(b) long service leave accrued and owing to the employee;

(c) pro rata leave for each completed month of service of the employee in the current year.

6 Clause 38.—Named Parties: Renumber this Clause to 42.—Named Parties.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Australian Police Union of Workers
and
Hon Minister for Police.
No. 1259 of 1994.

The Aboriginal Police Aides Award
No. R 31 of 1979.

COMMISSION IN COURT SESSION
CHIEF COMMISSIONER W.S. COLEMAN.
COMMISSIONER R.N. GEORGE.
COMMISSIONER C B PARKS.

21 December 1995.

Order.

HAVING heard Mr R L Le Miere QC (of Counsel) on behalf of the Applicant and Ms J H Smith (of Counsel) on behalf of the Respondent the Commission in Court Session, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT The Aboriginal Police Aides Award be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 18th day of November 1994.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S] Chief Commissioner.

Schedule.

1. Clause 2—Arrangement: Renumber Clause 25.—Named Parties and reinsert as Clause 29—Named Parties. Insert the following new clause numbers and titles as follows:

25. Entitlement to Leave and Allowances through Illness or Injury.
26. Medical and Hospital Expenses through Illness or Injury resulting from Duties.
27. Medical and Pharmaceutical Expenses.
28. Retirement, Removal or Death of an Employee.

2. Clause 5—Definitions: Immediately following the definition "De-facto" insert the new definitions "dentist". Immediately following the definition "Dependent" insert the new definition "Distant Rate". Immediately following the definition "Emergency" insert the new definition "Family". Immediately following the definition "House" insert the new definitions "incapacity", "Manager", "medical practitioner" and "Medicare benefits". Immediately following the definition "Partial Dependent" insert the new definition "pharmaceutical chemist". Immediately following the definition "Public Interest" insert the new definitions "Public Transport", "region" and "Special Area" as follows:

"dentist" has the same meaning as it has in the Dental Act 1939.

"Distance Rate" means the rate per kilometre applicable in the North West of the State that is prescribed by the Award under Clause 13—Allowance for use of Employee's Own Vehicle as payment to an employee for the use by the employee of the employee's vehicle for the performance of police duties.

"Family" in relation to an employee means the employee, spouse and all dependent children attending school and to those dependent children living with the employee who are unemployed.

"incapacity" means unfitness for and absence from duty as a result of illness or injury and "incapacitated" shall be construed accordingly.

"Manager" means the Manager of the Occupational Health, Safety and Welfare Unit of the Department.

"medical practitioner" has the same meaning as it has in the Medical Act 1894.

"Medicare benefits" has the same meaning as it has in the Health Insurance Act 1973 of the Parliament of the Commonwealth.

"pharmaceutical chemist" has the same meaning as it has in the Pharmacy Act 1964.

"Public Transport" means any means of public transport approved by the Commissioner.

"region" means region of the Sate within the meaning of section 39(2) of the Police Act 1892.

"Special Area" means—

(a) any portion of the State that is—

(i) east of longitude 119 degrees east; or

(ii) north of 26 degrees of south latitude;

(b) Yalgoo, Mount Magnet, Cue and Meekatharra; and

(c) any area outside the State designated a special area by the Minister.

3. Clause 17—Annual Leave: Delete subclause (1) of this clause and insert the following in lieu:

(1) (a) Each employee shall be granted annual leave of 42 days (including 12 rest days) on full pay for each year of service. Provided that such employee stationed in the North West shall be granted an additional 7 days annual leave (including 2 rest days) on full pay for each year of service in the North West.

(b) An employee when stationed in the North West who desires to commence leave in the South shall not commence such leave until after arrival in the metropolitan area.

(c) The following travelling concessions apply to and in relation to an employee stationed in a special area who for the employee's annual leave travels to Perth or other place outside the employee's sub-region which is approved of by the Commissioner—

(i) where public transport is used—free return passes to Perth or that other place on public transport for the employee and the employee's family.

(ii) where a private vehicle is used—the distance rate to that place so long as the amount so paid does not exceed the cost of free passes granted under paragraph (i);

(iii) where both public transport and a private vehicle are used—free return passes to that place in respect of the persons travelling by public transport and the distance rate to that place payable under paragraph (ii) so long as the amount so paid does not exceed the cost of providing the persons travelling by private vehicle with a free return pass granted under paragraph (i).

(d) With mutual consent of the Commissioner and the employee annual leave may be taken in more than one period. Such periods to be not less than 14 days.

(e) The travelling concession payable under this subclause is payable only in respect of an employee—

(i) who has completed 12 months' service in the special area; or

(ii) if the employee has not completed 12 months' service in the special area before the employee proceeds on annual leave, the employee does so on their return from annual leave before the employee again takes annual leave;

(iii) shall be repaid to the Department by the employee if the employee fails to complete 12 months' service in the special area unless the failure is due to causes beyond the employee's control.

(f) An employee when stationed at headquarters situated more than 240kms from Perth City Railway Station and travelling to Perth during annual leave shall be allowed such additional leave as is reasonable and necessary to enable the employee to travel to Perth and return.

(g) To standardise the entitlement the following criteria is to be used—

(i) 24O kms to 5OO kms—half day travelling each way but taken as one additional day;

(ii) 5OO kms to 1OOO kms—one day's travelling time each way;

(iii) In excess of 1OOO kms and north of the 26th parallel—two and one half day's each way, and all stations south of the 26th parallel but in excess of 1OOO kms be allowed the equivalent of a counterpart north of the 26th parallel.

4. Clause 24.—Disturbance Allowance: After this clause add the following new clauses as follows—

25.—ENTITLEMENT TO LEAVE AND ALLOWANCES THROUGH ILLNESS OR INJURY

(1) An employee who becomes incapacitated shall as soon as possible:

(a) notify the employee's officer in charge of that fact and of the employee's whereabouts; and

(b) notify the Manager of the nature of the illness or the nature and cause of the injury, as the case may be.

(2) Except in respect of a day on which an employee becomes incapacitated while on duty, an application for leave by an employee on account of incapacity shall be supported by a certificate of a medical practitioner or, where the incapacity involves a dental condition, by a certificate of a dentist.

(3) The application shall be—

(a) in a form approved by the Commissioner; and

(b) submitted to the Manager, and the certificate in its support shall be—

(c) submitted to the Manager.

(4) Subject to subclause (2) and to the compliance by the employee of subparagraphs (a), (b) and (c) of subclause (3), the Commissioner may grant to an employee in respect of the employee'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.

(5) Except where an employee is incapacitated through the employee's fault or misconduct, an employee is entitled to receive in respect of a period of leave of absence approved under subclause (4) and subject to any terms and conditions imposed under subparagraph (4) (b), any special allowances which the employee would have received under the Award if the employee had not been incapacitated.

(6) The district allowance prescribed by the Award ceases to be payable—

(a) after an incapacitated employee and the family of that employee have been absent from the employee's region for a continuous period exceeding 6 weeks; and

(b) for so long thereafter as that absence continues.

(7) In subclause (6) "family" means the spouse and any children of the employee residing with the employee.

(8) (a) An employee who suffers illness or injury through the employee's fault or misconduct is not entitled to paid leave contained within the provisions of subclause (4) under

subparagraphs (a) and (b) in respect of absence from duty resulting from that illness or injury.

(b) An employee who suffers illness or injury through the employee's fault or misconduct is not entitled in respect of that illness or injury to receive the benefits contained under Clause 27.—Medical and Pharmaceutical Expenses of the Award.

(c) Where the incapacity of an employee results from the carrying on by the employee of an occupation for which the employee received or expected to receive remuneration, outside of the employee's duties as an employee the Commissioner may grant or refuse to grant paid leave to the employee in respect of the incapacity or may grant the employee leave at a reduced rate of pay.

(9) An incapacitated employee shall not during the employee's absence from duty engage for reward in any other occupation or activity.

(10) An employee who has been absent from duty because of incapacity for longer than 4 weeks shall, before returning to duty, submit to the Manager evidence of the employee's medical fitness to return to duty.

(11) (a) The Commissioner may direct an employee to submit to examination, at the expense of the Commissioner, by one or more medical practitioners nominated in each instance by the Commissioner and the employee shall obey such a direction.

(b) Where an employee has been examined under subclause (11)(a) and the examining medical practitioner expresses the opinion in writing to the Commissioner that the employee is unfit for duty because of illness or injury, the Commissioner may direct the employee, to apply for leave on that ground and the employee shall obey such a direction.

26.—MEDICAL AND HOSPITAL EXPENSES THROUGH ILLNESS OR INJURY RESULTING FROM DUTIES.

(1) Subject to the provisions contained within Clause 25.—Entitlement to Leave and Allowances Through Illness or Injury of this Award under subclause (8)(b), the Commissioner shall pay the reasonable medical and hospital expenses incurred by an employee as a result of illness or injury arising out of or in the course of the employee's duties suffered by the employee in the course of travel to or from a place of duty.

27.—MEDICAL AND PHARMACEUTICAL EXPENSES.

(1) Subject to the provisions contained within Clause 25.—Entitlement To Leave And Allowances Through Illness or Injury of this Award, under subparagraphs (a) and (b) of subclause (8), an employee who receives—

(a) any consultation, treatment or other service by a medical practitioner; or

(b) any X-ray or other service not provided by a medical practitioner but provided under a referral given by a medical practitioner, may claim from the Commissioner reimbursement of the amount paid for that service, less the amount of any Medicare benefits paid or payable, and the Commissioner may pay the claim.

(2) An employee is entitled to reimbursement by the Commissioner of the cost of a medicine supplied by a pharmaceutical chemist on the prescription of a medical practitioner if the medicine was at the time of issue of the prescription specified in the Commonwealth Schedule of Pharmaceutical Benefits for Medical Practitioners.

(3) An employee claiming reimbursement of expenditure shall submit with the employee's claim—

(a) in the case of expenditure of a kind referred to in subclause (1)—

(i) a receipt for the amount paid;

(ii) a statement of the amount received or receivable as Medicare benefits; and

(iii) where applicable, documentary evidence that the health service not provided by a medical practitioner was provided under a referral given by a medical practitioner;

and

(b) in the case of expenditure of a kind referred to in subclause (2), a receipt for the amount paid, and the Commissioner, before approving payment, may require the employee to supply additional information as to the identity of the person treated, the amount paid or, where applicable, the prescription.

28.—RETIREMENT, REMOVAL OR DEATH OF AN EMPLOYEE

(1) Retirement.

(a) An employee may retire on attaining the age of 55 years.

(b) Employee's of the Force other than the Commissioner, Deputy Commissioner and Assistant Commissioner shall retire on attaining the age of 6O years.

(c) The Deputy Commissioner and Assistant Commissioner shall retire on attaining the age of 62 years.

(2) Examination by Medical Board.

(a) Where the Commissioner is of the opinion that an employee is not fit for further service, he may direct the employee to be examined by a medical board.

(b) The medical board referred to in subparagraph (a) shall consist of 3 legally qualified medical practitioners nominated by the person who holds or acts in the office of Commissioner of Health under the Health Act 1911.

(c) An employee shall not fail to carry out a direction given pursuant to subparagraph (a).

(d) Subject to the Act, where the medical board referred to in subparagraph (b) reports to the Commissioner that the employee in question is unfit for further active service the Commissioner shall advise the employee of the date the employee will cease duty.

(3) Allowances Paid on Death of an Employee.

Where an employee dies the spouse of the employee and such of the children of the employee as are under the age of 18 years are entitled to the allowances prescribed by Clause 9.—Travelling Allowances and Clause 11.—Transfer Allowance of the Award for the conveyance of themselves and their furniture and effects to the Metropolitan area or to any part of the State approved of by the Commissioner.

(4) Leave Entitlement to be Paid Out.

On the death of an employee the Minister may on the recommendation of the Commissioner grant to the relatives of the employee who were dependent on the employee at the date of the employee's death the monetary equivalent, computed to the date of death, of—

(a) annual leave accrued and owing to the employee;

(b) long service leave accrued and owing to the employee;

(c) pro rata leave for each completed month of service of the employee in the current year.

5. Clause 25.—Named Parties: Renumber to Clause 29.—Named Parties.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

Western Australian Police Union of Workers
and
Hon Minister for Police.
No. 1260 of 1994.

Police Cadets' Award
No. R 7 of 1976.

COMMISSION IN COURT SESSION
CHIEF COMMISSIONER W S COLEMAN.
COMMISSIONER R N GEORGE.
COMMISSIONER C B PARKS.

21 December 1995.

Order.

HAVING heard Mr R L Le Miere QC (of Counsel) on behalf of the Applicant and Ms J H Smith (of Counsel) on behalf of the Respondent the Commission in Court Session, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Police Cadets' Award be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 18th day of November 1994.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S] Chief Commissioner.

Schedule.

1. Clause 2—Arrangement:

(A) Renumber Clause 22.—Named Parties and reinsert as Clause 24.—Named Parties.

(B) Insert the following new clause numbers and titles as follows:

22. Allowance for use of Employee's Own Vehicle.
23. Death of an Employee.

2. Clause 4A—Definitions: Immediately prior to the definition "Union" insert new definitions in relation to "Distance Rate", "Family", "Public Transport" and "Special Area" as follows:

"Distance Rate" means the rate per kilometre applicable in the North West of the State that is prescribed by the Award under Clause 22.—Allowance for Use of Employee's Own Vehicle as payment to an employee for the use by the employee of the employee's vehicle for the performance of police duties.

"Family" in relation to an employee means the employee, spouse and all dependent children attending school and to those dependent children living with the employee who are unemployed.

"Public Transport" means any means of public transport approved by the Commissioner.

"Special Area" means—

(a) any portion of the State that is—
  (i) east of longitude 119 degrees east; or
  (ii) north of 26 degrees of south latitude;
(b) Yalgoo, Mount Magnet, Cue and Meekatharra; and
(c) any area outside the State designated a special area by the Minister.

3. Clause 10—Annual Leave: Delete subclause (6) of this clause and insert in lieu the following:

(6) (a) An employee when stationed in the North West who desires to commence leave in the South shall not commence such leave until after arrival in the metropolitan area.

(b) The following travelling concessions apply to and in relation to an employee stationed in a special area who for the employee's annual leave travels to Perth or other place outside the employee's sub-region which is approved of by the Commissioner—

(i) where public transport is used—free return passes to Perth or that other place on public transport for the employee and the employee's family.

(ii) where a private vehicle is used—the distance rate to that place so long as the amount so paid does not exceed the cost of free passes granted under paragraph (i);

(iii) where both public transport and a private vehicle are used—free return passes to that place in respect of the persons travelling by public transport and the distance rate to that place payable under paragraph (ii) so long as the amount so paid does not exceed the cost of providing the persons travelling by private vehicle with a free return pass granted under paragraph (i).

(c) With mutual consent of the Commissioner and the employee annual leave may be taken in more than one period. Such periods to be not less than 14 days.

(d) The travelling concession payable under this subclause is payable only in respect of an employee—

(i) who has completed 12 months' service in the special area; or

(ii) if the employee has not completed 12 months' service in the special area before the employee proceeds on annual leave, the employee does so on their return from annual leave before the employee again takes annual leave;

(iii) shall be repaid to the Department by the employee if the employee fails to complete 12 months' service in the special area unless the failure is due to causes beyond the employee's control.

(e) An employee when stationed at headquarters are situated more than 240kms from the Perth City Railway Station and travelling to Perth during annual leave shall be allowed such additional leave as is reasonable and necessary to enable the employee to travel to Perth and return.

(f) To standardise the entitlement the following criteria is to be used—

(i) 24O kms to 5OO kms—half day travelling each way but taken as one additional day;

(ii) 5OO kms to 1OOO kms—one day's travelling time each way;

(iii) In excess of 1OOO kms and north of the 26th parallel—two and one half day's each way, and all stations south of the 26th parallel but in excess of 1OOO kms be allowed the equivalent of a counterpart north of the 26th parallel.

4. Clause 21—Award Modernisation: After this clause add the following new clauses as follows—

22.—ALLOWANCE FOR USE OF EMPLOYEE'S OWN VEHICLE

(1) An employee who is authorised to receive a motor vehicle allowance because the employee is required to place the employee's vehicle at the disposal of the Police Department for the performance of normal Police duties, shall be paid an allowance of ten (1O)

dollars per month for each calendar month the employee is so required.

(2) (a) An employee who is required to use the employee's motor car or motorcycle for the performance of Police Duties shall be paid an allowance as set out below.

(b) Where vehicles are fitted with odometers registering in miles, the distance travelled must be converted to kilometres by multiplying the number of miles by 1.61.

MOTOR VEHICLE ALLOWANCES

(a) MOTORCAR

Rate per Kilometre (in cents)	1600cc and under	over 1600cc up to 2600cc	over 2600cc
(1) Metro, Area	37.9	43.5	49.4
(2) South West Land Division	38.9	44.6	50.5
(3) North of 23.5 deg, South Latitude	43.5	50.0	56.2
(4) Rest of State	40.0	46.0	52.2

(b) MOTORCYCLE

17.1 cents per kilometre necessarily travelled.

23.—DEATH OF AN EMPLOYEE

(1) Allowances Paid on Death of an Employee

Where an employee dies the spouse of the employee and such of the children of the employee as are under the age of 18 years are entitled to the allowances prescribed by Clause 8.—Travelling Allowances, of the Award for the conveyance of themselves and their furniture and effects to the Metropolitan area or to any part of the State approved of by the Commissioner.

(2) Leave Entitlement to be Paid Out.

On the death of an employee the Minister may on the recommendation of the Commissioner grant to the relatives of the employee who were dependent on the employee at the date of the employee's death the monetary equivalent, computed to the date of death, of—

(a) annual leave accrued and owing to the employee;

(b) long service leave accrued and owing to the employee;

(c) pro rata leave for each completed month of service of the employee in the current year.

5. Clause 22.—Named Parties: Renumber this Clause to 24.—Named Parties.

PRESIDENT—
Matters dealt with—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia (Inc)
(Applicant)

and

Western Australian Centre for Pathology and Medical Research and the Hospital Salaried Officers Association of Western Australia (Union of Workers)
(Respondents).

No. 1311 of 1995.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

4 December 1995.

Reasons for Decision.

THE PRESIDENT: This is an application for a stay of the whole of the decision of the Commission, constituted by the Public Service Arbitrator entitled a "Finding" and made on 22 November 1995 in application No PSA AG2 of 1995. The Finding, formal parts omitted, was in the following terms—

> "THAT the Hospital Salaried Officers Association of Western Australia (Union of Workers) has the constitutional coverage necessary to its standing under the Industrial Relations Act, 1979 to be a party to the PathCentre Enterprise Agreement 1995 sought to be registered before the Commission pursuant to S.41 of the Industrial Relations Act, 1979."

A notice of appeal against that Finding was lodged on 22 November 1995 in appeal No 1310 of 1995.

This application for a stay of the whole of that decision made upon application No PSA AG2 of 1995 was filed on 22 November 1995.

The decision appealed against, I should add, was deposited in the office of the Registrar on 22 November 1995.

Subsequently, on 23 November 1995, an order by the Commission in the same matter was deposited in the office of the Registrar, formal parts omitted, in the following terms—

> "THAT the Agreement in the terms of the following schedule be registered with effect on and from 15 November 1995."

No notice of appeal has been filed in relation to that order, and it goes without saying that no application for a stay could or has been filed in relation to that decision.

I should add that there was also an order deposited on 22 November 1995 in the office of the Registrar which, formal parts omitted, reads as follows—

> "1. leave be and is hereby granted to the Civil Service Association of Western Australia (Inc) to intervene in proceedings pursuant to S.27(1)(k) of the Industrial Relations Act 1979; and
>
> 2. intervention be limited to the question of whether the Hospital Salaried Officer Association of Western Australia (Union of Workers) has the constitutional coverage necessary to its standing to be a party to the Agreement before the Commission for registration pursuant to S.41 of the Industrial Relations Act 1979."

The applicant, The Civil Service Association of Western Australia (Inc) (hereinafter referred to as "the CSA"), was an intervener in proceedings at first instance in which the firstnamed respondent, the Western Australian Centre for Pathology and Medical Research (hereinafter referred to as "the Path Centre"), was the applicant, and the Hospital Salaried Officers Association of Western Australia (Union of Workers) (hereinafter referred to as "the HSOA"), the secondnamed respondent, was the respondent.

At first instance, there was an application to register an industrial agreement (hereinafter referred to as "the agreement") made by the firstnamed respondent as applicant, with the secondnamed respondent as respondent on 11 July 1995,

pursuant to s.41 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act"). The applicant in these proceedings, the CSA, sought and was granted leave to intervene in those proceedings pursuant to s.27(1)(k) of the Act, but such intervention was limited to the question of whether the HSOA had the constitutional coverage necessary to its standing to be a party to the agreement before the Commission for registration pursuant to s.41 of the Act. The Commission heard and determined the application. In the end, as will have been seen, the Commission ordered that the agreement be registered.

The appeal is brought on a number of main grounds which I summarise. Firstly, the interpretation of s.41 of the Act is put in question. Secondly, it is alleged that the Commission erred as a matter of law in not considering the provisions stipulated by s.80C(4) of the Act in conjunction with the provisions of s.41. Further, the Commission's decision to limit the CSA's right of intervention and not to give the CSA the leave to intervene generally is challenged. Next, the Commission is alleged to have erred in law in finding that the HSOA had constitutional coverage entitling it to be a party to the s.41 agreement, and, further, it is alleged that the Commission failed to properly consider the circumstances in which the HSOA had sought to amend its constitution.

BACKGROUND

The background to the matter is this. The firstnamed respondent, the Path Centre, is a health agency constituted under the Hospital and Services Act 1927 (as amended). It was formerly conducted by the Health Department of Western Australia. It came into operation following a notice in the Government Gazette dated 3 March 1995 on 10 April 1995. Currently, it has very few employees. The application to register the industrial agreement to which I have referred above was lodged in the registry on 11 July 1995.

Prior to that, on 3 May 1995, the CSA, and on 3 March 1995 and 7 March 1995, the HSOA, had made applications to the Full Bench pursuant to s.72A of the Act wherein they sought each, to the exclusion of other organisations, and, in particular, each other, an order that they have the right to represent under the Act the industrial interests of a particular class or group of employees employed in various enterprises who were said to be eligible for membership of each organisation. Those applications include applications by both the applicant, the CSA, and the secondnamed respondent, the HSOA, for that order to apply to the firstnamed respondent, the Path Centre. In the case of the HSOA applications, these were numbered 203, 326 and 329 of 1995. Applications by both the CSA and the HSOA seek coverage of all PACTS employees ((ie) Professional, Administrative, Clerical, Technical and Supervisory employees), who might be employed by the Path Centre. I should add that the last of the HSOA applications were filed before 10 April 1995 ((ie) before the Path Centre as an entity came into being). The applicant alleges that the applications for that reason are defective. The CSA applications under s.72A of the Act were filed on 3 May 1995. The s.72A applications relate to a large number of services and to coverage in the hospital services industry generally.

I am satisfied that this agreement is sought by the HSOA to cover persons who are currently members of the CSA. Both the CSA and the HSOA assert that they would have coverage of persons employed in the Path Centre. It is clear that a substantial number of employees, perhaps in the order of 600, is involved. Of those, three quarters are CSA members.

Significantly, the registration of the agreement excludes the CSA, and the s.41 agreement entered with the HSOA will bind the employees of the Path Centre, including CSA members. The right to cover those employees is very much at issue in the s.72A proceedings. An application to have the Path Centre made a party to the Government Officers Salaries, Allowances and Conditions Award 1989 was adjourned sine die on 3 November 1995.

The registration of the agreement, the subject of an application after the making of the applications under s.72A, which applications are currently almost completed in the hearing before the Full Bench, means that the HSOA are party to an agreement in relation to persons whom, in the end, upon appeal or upon the finding of the Full Bench, they may not have the right to cover, or who exist in an enterprise which some other organisation might be said to cover. If, of course, the appeal is dismissed or the HSOA succeeds in its s.72A application, that obviously will not be the case.

A number of matters should be considered. Firstly, there is no evidence as to the structure of the Path Centre or when it will be said to be announced. The firstnamed respondent maintains that it wishes to employ people as soon as possible, notwithstanding this fact. It was said that the CSA members would be required to make a choice either to remain in the Public Service or be dealt with under the Redeployment and Redundancy Regulations.

There are currently only six employees who might be affected, and several hundred CSA employees, who would not be represented by the CSA, the organisation to which they belong.

The hearing of the s.72A applications will be likely to be completed this week If the CSA application is granted, it will render the appeal unnecessary. The appeal and the s.72A applications both deal with the central issue of coverage.

Emphasis was laid on the Path Centre as not being a successor in business to the State Health Laboratory, but a body with the ability to enter into joint ventures, having been set up as a commercial enterprise. It was submitted that if the order registering the agreement were stayed, then the Path Centre would be "award" free and the contracts offered would be either workplace agreements or common law contracts. It was submitted that it was not in the public interest for employment to be award free. The balance of convenience therefore lies with the firstnamed respondent. These submissions were adopted by Mr Drake-Brockman (of Counsel) for the secondnamed respondent.

However, the firstnamed respondent also says that in the event of the appeal being successful, it would seek to have the agreement registered, revoked and would enter into another agreement or perhaps enable amendment to the relevant government officers award, the Government Officers Salaries, Allowances and Conditions Award 1989.

It was submitted on behalf of the respondents that the authority to be considered by me in this matter emanated from the judgment of Murray J in WALEDF&CU v Hathaway 75 WAIG 1785 at 1787 (IAC) where His Honour said—

> "However, as I have already indicated, in my view this application is to be determined by applying the test usually held to govern the exercise of a court's discretion to grant a stay pending appeal. I am satisfied that I should treat such a remedy as of an exceptional character, only to be ordered where to refuse it might leave the appellant, if successful in the appeal, in the position that it might have suffered some irremediable harm by the refusal of the stay in the meantime."

It was the case for the respondents that that test applied and that the applicant was not able to satisfy it. However, that was a decision of His Honour sitting in the Industrial Appeal Court, upon an application for a stay pursuant to the Industrial Appeal Court Regulations 1980 (as amended). His Honour is not required to consider s.26(1)(a), s.26(1)(c) or s.26(1)(d) of the Act, and, indeed, His Honour did not. S.26(1)(c), in particular, requires the Commission to have regard for the interests of the persons immediately concerned, whether directly affected or not, and, where appropriate, for the interests of the community as a whole. In Gawooleng Dawang Inc v Lupton and Others 72 WAIG 1310 I set out, having special regard to s.26 of the Act, what the duty of the Commission is on a s.49(11) application. There is also, of course, the necessity to be consistent as Dawson J observed in Re Moore; ex parte Pillar [1991] 65 ALJR 683 (HC). I am, of course, having regard to s.26(1) of the Act and to Re Moore; ex parte Pillar (op cit), not of opinion that special or exceptional circumstances are applicable as rigidly as are required to be applied upon application for a stay to the Industrial Appeal Court or to the Supreme Court, for example, in this jurisdiction where equity, good conscience and the substantial merits of the case govern the exercise of discretion.

The question is, firstly, whether the balance of convenience favours the applicant who must establish that that is so. I am satisfied that the balance of convenience favours the applicant because the whole question of coverage of the Path Centre and of other health service enterprises is presently before

the Full Bench which will comprehensively determine that coverage. To determine coverage in respect of an agreement as distinct from enterprise coverage at this stage is pre-emptive. To enable a decision to confer coverage on one organisation when that question is in issue and when that question of coverage relates to persons already covered by the CSA and members of the CSA, means that the balance of convenience favours the applicant in that respect. To enable an agreement between the firstnamed respondent and the secondnamed respondent to be registered which pre-empts the question of enterprise coverage to be determined by the Full Bench upon the application of the applicant and also the secondnamed respondent, is inconsistent with the balance of convenience favouring the respondents at this time. I am satisfied that the balance of convenience favours the applicant for those reasons.

As to the question of whether there is a serious issue to be tried, there is no doubt that there are serious questions of law to be decided as to coverage and serious questions as to the application of s.41 of the Act, its interpretation, and the place of s.80C of the Act in the scheme of things.

For those reasons, I am satisfied that the equity, good conscience and substantial merits of the application lie with the applicant and that the respondents should be deprived, at least temporarily, of the fruits of the order.

I would emphasise that what I have said here cannot, in any respect, be said to relate to any other application such as an application before the Full Bench or any appeal. I make these findings and these observations solely for the purpose of deciding this application.

I am satisfied that an appeal has been instituted and that the applicant, as an intervener at first hand, has sufficient interest to enable it to make this application. It also has sufficient interest because it is an appellant.

I will make an order staying the whole of the operation of the decision referred to.

Appearances: Mr P M Nisbet QC, by leave, and with him Mr T J Carmady (of Counsel), by leave, on behalf of the applicant.

Ms J H Smith (of Counsel), by leave, on behalf of the Western Australian Centre for Pathology and Medical Research.

Mr A L Drake-Brockman (of Counsel), by leave, on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers).

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

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The Civil Service Association of Western Australia (Inc)
(Applicant)
and
Western Australian Centre for Pathology and Medical Research
(Respondent).

No. 1311 of 1995.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

28 November 1995.

Order.

THIS matter having come on for hearing before me on the 27th day of November 1995, and having heard Mr P M Nisbet QC, by leave, and with him Mr T J Carmady (of Counsel), by leave, on behalf of the applicant, Ms J H Smith (of Counsel), by leave, on behalf of the Western Australian Centre for Pathology and Medical Research as respondent, and Mr A L Drake-Brockman (of Counsel), by leave, on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers), and having determined that my reasons for decision on the matter will issue at a future date, it is this day, the 28th day of November 1995, ordered and declared as follows—

(1) THAT the applicant has a sufficient interest as required by s.49(11) of the Industrial Relations Act 1979 (as amended) ("the Act") and was therefore entitled to apply for the orders which appear hereunder.

(2) THAT appeal No 1310 of 1995 has been instituted within the meaning of s.49(11) of the Act.

(3) THAT there be a stay of the operation of the whole of the decision of the Public Service Arbitrator entitled "finding" made on the 22nd day of November 1995 in application No. PSA AG2 of 1995 pending the hearing and determination of appeal No 1310 of 1995 or until further order.

(4) THAT the application herein be and is hereby amended to include the Hospital Salaried Officers Association of Western Australia (Union of Workers) as a respondent herein.

(Sgd.) P.J. SHARKEY,
[L.S] President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Robowash Pty Ltd
(Applicant)
and
D A Potts
(Respondent).

No. 1344 of 1995.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

12 December 1995.

Order.

THIS matter having come on for hearing before me on the 12th day of December 1995, and having heard Mr S P Kemp (of Counsel), by leave, on behalf of the applicant and Mr D A Potts on his own behalf as respondent, and the parties herein having consented to the making of the following orders, it is this day, the 12th day of December 1995, ordered and declared, by consent, as follows—

(1) THAT the applicant has a sufficient interest as required by s.49(11) of the Industrial Relations Act 1979 (as amended) ("the Act") and was therefore entitled to apply for the orders which appear hereunder.

(2) THAT appeal No 1342 of 1995 has been instituted within the meaning of s.49(11) of the Act.

(3) THAT the order made by the Commission on the 13th day of November 1995 in application No 831 of 1995 be and is hereby wholly stayed pending the hearing and determination of appeal No 1342 of 1995, or until further order, subject to and conditional upon the applicant complying with the orders and conditions hereinafter expressed.

(4) THAT the applicant herein shall, on or before the 15th day of December 1995, pay the total of the amount of $32,192.50 ordered to be paid by the Commission in its said order of the 13th day of November 1995 in application No 831 of 1995 into a bank account offering the best obtainable interest rates.

(5) THAT account shall be opened by agreement between the person to be nominated in writing to the respondent by the applicant and by the respondent or his nominee on or before the 15th day of December 1995 aforesaid.

(6) THAT such account shall be opened and held in the joint names of and shall be jointly administered by the applicant and the respondent or their nominees on behalf of the parties.

(7) THAT if any dispute as to the administration of the said account shall arise the same shall be referred forthwith to the Registrar of the Western Australian Industrial Relations Commission for the time being,

whose decision in the matter shall be final and bind all persons referred to in order (6) hereof.

(8) THAT all or any liability for taxes or charges of any kind which might become due and payable in respect of such account shall be discharged by the applicant who shall indemnify the respondent against any claim in respect of the same.

(9) THAT all administration expenses in respect of the said account shall be paid forthwith by the applicant.

(10) THAT in the event of any failure to comply with all or any of these conditions then there shall be liberty to apply on 48 hours notice to revoke this order or any part thereof, and/or for any other necessary orders or directions.

(11) THAT in the event of the appeal herein being dismissed then the monies in such account, including any interest earned by the same, shall be paid forthwith without any deduction to the abovenamed respondent.

(12) THAT in the event of the appeal herein being upheld then the monies in such account, including any interest earned by the same, shall be paid forthwith without any deduction to the applicant.

(13) THAT the President may at any time upon application by any party hereto and without affecting the generality of his ability to give further directions—

(a) Fix further conditions.

(b) Direct that the account be administered by a person or persons in lieu of the persons referred to in order (6) hereof.

(c) Vary these orders.

(14) THAT there be liberty to apply on 48 hours notice in relation to clarification of this order or for any ancillary orders or directions necessary to achieve what these orders require, save and except in relation to decisions made by the Registrar and pursuant to order (7) hereof.

(15) THAT the applicant forthwith serve a copy of this order on the Registrar.

(Sgd.) P.J. SHARKEY,
[L.S] President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

Serco (Australia) Pty Limited
(Applicant)
and
John Joseph Moreno
(Respondent).
No. 1304 of 1995.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

13 December 1995.

Reasons for Decision.

THE PRESIDENT: This is an application by the appellant in appeal No 1281 of 1995 against the decision of the Commission at first instance, constituted by a single Commissioner, made upon an application by the respondent to this application, Mr John Joseph Moreno, wherein he alleged to the Commission that he had been unfairly dismissed.

The Commission at first instance made orders, the orders appealed against. These orders were—

"1. THAT Serco (Australia) Pty Limited offer to Mr John Joseph Moreno, the position he formerly held with the company with effect from 3 January 1995, namely that of a casual Storeman/Picker engaged on a ongoing basis.

2. THAT such offer be made within 7 days of the date hereof."

An affidavit was filed herein on behalf of the applicant, sworn by Alan David Bond, its contract manager. He was not cross-examined on that affidavit, nor was it sought to cross-examine him. The substance of the affidavit is that, since the hearing of the Western Australian Industrial Relations Commission application No 542 of 1995, in which the orders appealed against were made, the policy of the applicant as regards casual employees has changed significantly. In the affidavit, Mr Bond, inter alia, deposes—

> "There are now no casuals employed by the applicant except to relieve permanent workers absent from the work place or for other pressing, short term requirements."

Further, in the affidavit, Mr Bond alleges that, if Mr Moreno were re-employed as a casual storeman/picker on an on-going basis and the appeal was successful, the effect of success in the appeal would be rendered meaningless. Further, Mr Bond deposes that Mr Moreno's re-employment would cause significant dislocation to Serco (Australia) Pty Limited's place of work.

The position is, of course, sofar as one can ascertain, that Mr Moreno is not employed.

It is for the applicant to establish, within the principles laid down in Gawooleng Dawang Inc v Lupton and Others 72 WAIG 1310 and affirmed in CSA v WA Centre for Pathology and Medical Research and HSOA (Application No 1311 of 1995) delivered 4 December 1995 (unreported), that there is a serious issue to be tried before the Full Bench upon appeal and that the balance of convenience favours the applicant. In addition, the application must be decided in accordance with s.26 of the Industrial Relations Act 1979 (as amended) with due regard to the principle that the successful "litigant" is entitled to the fruits of his or her "judgment".

It was virtually conceded by Mr Crossley, for the respondent, that there were serious issues to be tried, and these included questions of interpretation of the award and of whether there was jurisdiction to deal with the application, inter alia. The question also as to whether there was a resignation or a termination of employment is raised. I am satisfied that there is a serious issue to be tried. As to the question of balance of convenience, the only evidence for the applicant is that since the order was made policies have changed, and, as a result, re-employment of Mr Moreno will cause significant dislocation. What "significant dislocation" is has not been spelt out, and it is difficult to see what it is. Without evidence as to what significant dislocation is, I attach little weight to that evidence.

In my opinion, the mere subsequent change of the policy of the applicant as regards the employment of casuals is not sufficient for me to say that the balance of convenience falls on the side of the applicant, or that, as a result, the respondent should be deprived of the fruits of his order.

Indeed, the equity, good conscience and substantial merits of the case are with the respondent who has lost his employment and who will be further deprived of the right to be re-employed if this application is granted.

The applicant's case is not made out, and I would dismiss the application.

Appearances: Mr J O Kennedy (of Counsel), by leave, on behalf of the applicant.

Mr T C Crossley, as agent, on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Serco (Australia) Pty Limited
(Applicant)

and

John Joseph Moreno
(Respondent).

No. 1304 of 1995.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

11 December 1995.

Order.

THIS matter having come on for hearing before me on the 11th day of December 1995, and having heard Mr J O Kennedy (of Counsel), by leave, on behalf of the applicant and Mr T C Crossley as agent on behalf of the respondent, and having reserved my decision on the matter, and having determined that my reasons for decision will issue at a future date, it is this day, the 11th day of December 1995, ordered that application No 1304 of 1995 be and is hereby dismissed.

(Sgd.) P.J. SHARKEY,
[L.S] President.

AWARDS/AGREEMENTS—Application for—

ABB-EPT CONSTRUCTION PTY LTD WESTERN REGION (CAR DUMPER PROJECT DAMPIER) ENTERPRISE BARGAINING AGREEMENT 1995.

No. AG 234 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

ABB-EPT Construction Pty Ltd Western Region

and

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and Another.

No. AG 234 of 1995.

ABB-EPT Construction Pty Ltd Western Region (Car Dumper Project, Dampier) Enterprise Bargaining Agreement 1995.

SENIOR COMMISSIONER G.G. HALLIWELL.

10 January 1996.

Order.

The Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the application be wholly discontinued.

(Sgd.) G. G. HALLIWELL,
[L.S.] Senior Commissioner.

ACTION CEILINGS INDUSTRIAL AGREEMENT No. AG 224 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Action Ceilings Pty Ltd.

No. AG 224 of 1995.

Action Ceilings Industrial Agreement.

COMMISSIONER P.E. SCOTT.

22 November 1995.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered on the 22nd day of November 1995 to operate with effect on and from the 12th day of September 1995.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Action Ceilings Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. Ratification
Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Action Ceilings Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of ratification as indicated in Clause 16.—Ratification and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees
course books and materials
payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect on and from the 12th day of September 1995.

(signed) (signed)

ON BEHALF OF THE UNION ON BEHALF OF THE COMPANY

Dated this 12th day of September 1995.

APPENDIX A

	1 August 1995 Hourly Rate	1 February 1996 Hourly Rate	1 August 1996 Hourly Rate	1 February 1997 Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

ALLWEST CEILINGS INDUSTRIAL AGREEMENT No. AG 226 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Stillitano Nominees Pty Ltd trading as Allwest Ceilings.

No. AG 226 of 1995.

Allwest Ceilings Industrial Agreement.

COMMISSIONER P E SCOTT.

22 November 1995.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered on the 22nd day of November 1995 to operate with effect on and from the 1st day of October 1995.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Allwest Ceilings Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. Ratification

Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Stillitano Nominees Pty Ltd trading as Allwest Ceilings (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of ratification as indicated in Clause 16.—Ratification and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $11.00 per working week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees
course books and materials
payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect on and from the 1st day of October 1995.

(signed)	(signed)
ON BEHALF OF THE UNION	ON BEHALF OF THE COMPANY

Dated this 1st day of September 1995.

APPENDIX A

	1 October 1995 Hourly Rate	1 February 1996 Hourly Rate	1 August 1996 Hourly Rate	1 February 1997 Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

AMEC SERVICES PTY LTD MAINTENANCE CONTRACTS ENTERPRISE BARGAINING AGREEMENT 1995
No. AG 290 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and Other

and

Amec Services Pty Ltd.

No. AG 290 of 1995.

Amec Services Pty Ltd Maintenance Contracts Enterprise Bargaining Agreement 1995.

SENIOR COMMISSIONER G.G. HALLIWELL.

15 December 1995.

Order.

REGISTRATION OF AN ENTERPRISE BARGAINING INDUSTRIAL AGREEMENT
No. AG 290 of 1995.

HAVING heard Mr K. Peckham on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch, Mr W. Tracey on behalf of The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch and Mr N.M. Hacket on behalf of the Respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Schedule titled the Amec Services Pty Ltd Maintenance Contracts Enterprise Bargaining Agreement 1995, signed for me for identification, be registered as an Enterprise Bargaining Industrial Agreement and shall take effect on and from the 8th day of November, 1995.

(Sgd.) G.G. HALLIWELL,
[L.S] Senior Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the 'Amec Services Pty Ltd Maintenance Contracts Enterprise Bargaining Agreement 1995'.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Introduction
4. Application of the Agreement
5. Parties Bound
6. Date and Period of Operation of Review
7. Relationship with Parent Award and other Agreements/Orders
8. Aims and Objectives
9. Strategies for Achieving Aims of Agreement
10. Work Practices and Conditions of Employment
11. Grievance Procedure/Dispute Resolution
12. No Extra Claims Commitment
13. Rates of Pay

Signatories

3.—INTRODUCTION

This Enterprise Bargaining Agreement is a reflection of the commitment and consensus approach to workplace relations exhibited by the parties in recent years. Amec Services and its employees are aware of the competitive pressures facing industry today, and hence the need to enhance productivity, flexibility and efficiency at the workplace in order to ensure the future viability of operations. Recognition of the need to increase competitiveness is an underlying aspect of this Agreement, and there is a commensurate recognition on the part of

Amec Services of the need to reward genuine and effective increases in productivity on the part of its employees.

4.—APPLICATION OF THE AGREEMENT

This Agreement shall only apply to Amec Services Pty Ltd with respect to employees employed in the classifications specified in Clause 13.—Rates of Pay, of this Agreement, who are employed for work on, at ALCOA of Australia Pinjarra and Wagerup Sites only.

5.—PARTIES BOUND

(1) This Agreement shall apply to and be binding upon Amec Services Pty Ltd and all persons employed under the classifications set out in Clause 13.—Rates of Pay, of this Agreement, and the members or eligible to be members of the Automotive, Food, Metals, Engineering, Printing, and Kindred Industries Union of Workers—Western Australian Branch.

(2) AFMEPKIU WA Branch.

(3) Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia (WA Branch).

6.—DATE AND PERIOD OF OPERATION AND REVIEW

(1) This Agreement shall operate from the 1st September, 1995 and continues in operation for 12 months.

(2) This Agreement shall be revised in January 1996. No Amec employee shall be disadvantaged with respect of remuneration by the outcome of site EBA negotiations with other on site engineering contractors.

(3) The Monitoring Committee (as referred to in Clause 9.—Strategies for Achieving the Aims of the Agreement) will begin a process of review of the Agreement one month prior to its expiry.

(4) In conducting the review of this Agreement, the Monitoring Committee shall assess achievements and gains in productivity and efficiency during the term of the Agreement.

(5) The parties to this Agreement may apply to cancel the Agreement with effect from 1st September, 1996 and may make application for a new Agreement to be registered in its place, subject to the outcomes of the process of review required under this Clause.

7.—RELATIONSHIP WITH PARENT AWARD AND OTHER AGREEMENTS/ORDERS

(1) This Agreement shall be read and interpreted wholly in conjunction with the Metal Trades (General) Award 1966 No. 13 of 1965, Part II—Construction, and the Metal Electrical Building Trades (Wagerup Aluminium Refinery and Willowdale Mine Site) Construction Order No. 1311 of 1993 and 1027 of 1994 and the Metal Electrical and Building Trades (Pinjarra and Kwinana Alumina Refineries and the Huntley, Del Park and Jarrahdale Mine Sites) Construction Order No. 1310 of 1993 and 1026 of 1994 as amended Engine Drivers, Building and Steel Construction Award No. 20 of 1993.

(2) Where there is any inconsistency between this Agreement and either of the other documents named in Subclause (1) of this clause, the terms and provisions of the Agreement shall prevail to the extent of that inconsistency.

8.—AIMS AND OBJECTIVES

(1) Amec Services aims to ensure the continued and long term viability of its operations, thus providing job security for its employees. Amec also aims to provide a quality and committed service to the maintenance engineering industry, and to be the preferred contractor to our clients in this industry. The parties to this Agreement recognise that this aim requires a mutual commitment to developing and enacting a process of productivity and efficiency enhancement within Amec Services.

To facilitate the achievement of this aim, the parties agreed to pursue the following objectives:

(a) To have a well trained, dedicated, motivated and highly competent workforce management team;

(b) To continually improve safety in the work place and the personal awareness of safety and correct procedures such to achieve a zero lost time/injury level;

(c) To equal or better quality standards as required by client with substantive reductions in rework and repairs within each project and monitor amount of rework and repairs;

(d) To foster an attitude of consensus and agreement based on consultation and negotiation at the workplace;

(e) To foster improvements in productivity and efficiency at the workplace for the benefit of the company and its employees; and

(f) To promote flexible and adaptive work practices by removing demarcation barriers, artificial manning levels, and encouraging self supervision and the use of initiative by employees.

(2) The shared aim of this Agreement is to allow Amec Services to provide a service of total quality and total commitment to its clients.

To support this aim, it has been agreed between Amec Services Pty Ltd and its employees that their joint aim is to be the preferred contractor to its clients and to maintain and enhance the multi-skilled aspects of their clients.

9.—STRATEGIES FOR ACHIEVING THE AIMS OF THE AGREEMENT

(1) The parties agree to follow a strategy in relation to the achievement of the aims and objectives specified in Clause 8.—Aims and Objectives of this Agreement.

(2) The parties agree to establish or maintain a monitoring committee consisting of equal numbers of employee and employer representatives. The committee would have the following responsibilities and aims:

(a) To monitor the progress of productivity and efficiency initiatives resulting from the application of this Agreement and to evaluate proposals offering potential productivity and/or flexibility enhancements;

(b) To conduct on-going discussions on a monthly basis regarding productivity, work practices, management/employee relations and other general proposals aimed at improving Amec Services Pty Ltd operations on its ALCOA Australia Pinjarra and Wagerup Sites.

(c) To utilise effectively the intellectual resources, skills and experience of members of the Amec Services Pty Ltd workforce, and represent and consider the interests of other employees and management in rational discussions.

10.—WORK PRACTICES AND CONDITIONS OF EMPLOYMENT

(1) The following strategies have been established with regard to the aims and objectives of this Agreement, and form the basis of entitlement to the rates of pay specified in Clause 13.—Rates of Pay of this Agreement.

(a) SICK/LEAVE ABSENTEEISM

The parties to this Agreement recognise that the continued viability of Amec Services Pty Ltd operations is dependant on workforce and management commitment to the organisation. All employees will reduce absent/sick days taken.

The parties agree that the entitlement to sick leave does not apply to an employee who fails to produce a certificate from a medical practitioner dated at the time of the absence or who fails to supply such other proof of the illness or injury as the employer may reasonably require provided that the employee shall not be required to produce a certificate from a medical practitioner with respect to absences of two days or less unless after two such absences in any year of service the employer requests in writing that the next and subsequent absence in that year if any, shall be accompanied by such certificate.

The parties agree that to simplify the application of the doctors certificate requirement that the counting of sick leave taken be administered from 1st July to 30th June of the following year.

Target—The target for this Agreement is that average sick leave taken should be no more than 50% of the award entitlement.

(2) Hours of work

(a) The daily ordinary hours of work shall be eight hours (resulting in a 40 hour, five day week). Any hours worked in excess of eight hours in any day, Monday to Friday, shall be paid at overtime rates.

(b) The daily work schedule in relation to ordinary hours shall be—

7.00am	Commencement of work
9.30am-9.40am	Smoko Break
12.30pm-1.00pm	Lunch Break, unpaid
3.30pm	Completion of ordinary hours

Should the lunch break commencement be delayed on any day due to unforeseen, emergency or work circumstances, such delay will be via agreement with the employees involved. If the lunch break commencement is delayed for more than one hour after the normal time then overtime rates (as prescribed for Saturday work) will be applied after the one hour has elapsed and continue until the meal break is taken.

(c) A maximum of five (5) minutes is allowed before an employee finishes his/her workday for the purpose of securing tools and clean up of the workplace.

(d) The total daily ordinary time paid from commencement to completion of work is eight hours.

(e) Lunch and smoko breaks may be staggered or altered by management in order to meet operational requirements.

(3) Rostered days off (RDO)

(a) Employees will accrue a Rostered Day Off (RDO) at the rate of one every 28 days.

(b) The RDO's shall be taken at a time mutually agreed between the employee and his/her supervisor. Employees shall request his/her RDO from their supervisor. Should the RDO requested not be suitable to the supervisor, a day and date shall be agreed within seven days of the request by the employee.

(c) RDO's may be accrued to a maximum of six days and a maximum of two consecutive days (RDO's) shall be taken at any time.

(d) RDO's shall be taken in accordance with the above and will not be paid out in lieu.

(e) It is intended that the introduction of RDO's as part of this Agreement will assist employees to pursue personal/family activities (that require business operating hours).

(f) The same day off shall not be allowed for all or the majority of employees.

(g) Target—To allow the Amec Services Alcoa Pinjarra and Wagerup Complex to operate as normal, Monday to Friday excluding Public Holidays. This will allow Amec Services to provide a service of continuous availability at short notice. It is not intended that all or a majority of employees take the same day off therefore stopping or seriously inhibiting production.

(4) Workforce Flexibility

(a) Flexibility—In the interests of developing a more highly skilled and flexible workforce and removing restrictive demarcation barriers from the workplace, employees shall carry out all directions and duties that are within the scope of their skill and capability, ensuring the safety and quality requirements of the job are maintained.

(b) Staff to assist wages employees where practicable—Engineering, commissioning and supervisory staff may use tools when carrying out inspections, testing equipment or instructing/training employees and at other times provided that this action does not attempt to replace the jobs of employees covered by this Agreement.

(c) Overtime—Subject to Clause 14.—Overtime, of the Metal Trades (General) Award 1966 No. 13 of 1965, employees are required to work reasonable overtime at the direction of management. All hours worked in excess of eight hours in any one day shall be paid at overtime rates.

Notification of the requirement or work where possible shall be made to employees no later than prior to the normal lunch break on the day. However, where it is necessary to cancel weekend overtime employees effected will be advised of the cancellation prior to finishing time on Friday.

If a dispute resulting from the application or allocation of overtime arises, it will be referred to the monitoring committee.

Target—To provide flexible service to our clients that allows for increased job satisfaction and associated improvements in productivity.

(d) Self-supervision—in keeping with the overall aims and objectives of this Agreement, and as a reflection of Amec Services' faith in the ability and dedication of it's employees, it is a fundamental aim of this Agreement to promote the concept of self-supervision within its workforce.

Employees are to be encouraged to use their initiative and self discipline to ensure that their work is completed with as little supervision as possible. Employees shall also be encouraged to contribute ideas for productivity and efficiency enhancements and participate in decision making processes via the monitoring committee, as well as suggestion boxes and direct communications.

Employees should at all times share with management a sense of responsibility for safety and quality of work at the workplace. A culture of dual commitment and responsibility is essential for the long term viability of Amec Services' operations and for optimal job satisfaction and personal development.

Target—Reduce the number of supervisors, checkers and support personnel through increased self supervision and quality awareness by employees at source.

(e) Casual Employees—Casual employees will be used from time to time in order to alleviate shortfalls in Amec Services regular core crew workforce. An employee to be employed as a casual will be notified of their casual status in writing at the time of engagement.

For the purpose of this Agreement, an employee is deemed to be casual if their expected term of employment is less than three months.

The period notice for a casual employee shall be one hour.

In all other respects the terms of casual employment shall be in accordance with the provisions relating to the employment of casuals in the Metal Trades (General) Award 1966 No. 13 of 1965, as amended.

(f) Workload Fluctuations:

In an effort to enhance the flexibility and efficiency of Amec Services' operations, a number of avenues have been identified by which to improve handling of fluctuations in workload so as to minimise any necessary reductions in the workforce. Some of these avenues have been reflected throughout this Agreement and this subclause specifically addresses the use of annual leave accruals.

In order that annual leave be used a mechanism to provide flexibility as well as a break for employees, management and individual employees shall endeavour to schedule annual leave at a time that is mutually suitable to both parties. Where employees have more than four (4) weeks accumulated annual leave, then the employer can request that part or all of that excess to be taken provided it is a minimum of one (1) week and also that prior agreement had not been reached as to accumulating leave for special reasons.

Where prior agreement has been reached, it will be confirmed in writing with copies kept on the employees personnel file and with the employee.

(g) Training—Amec Services is committed to helping its employees to attain higher levels of skills and competency in areas that benefit the company. The following areas have been identified as potential areas of focus:

* Technical
* Interpersonal communications
* Safety
* Job instructions
* Quality of work

(h) Flexibility of labour hire

Whilst it is Amec Services normal practice to employ labour directly, due to peaks and troughs in the nature of the work, Amec Services requires that its site/project works are allowed flexibility in the employment of labour.

It is agreed that Labour Hire contractors may be employed as required to meet the cyclic nature of the work being performed or when particular skills are in short supply and time constraints or delivery schedules do not allow for practical and economical training of existing employees.

If concern is raised by the workforce during the employment of labour via Labour Hire contractors it will be processed via the monitoring committee.

(5) BEST PRACTICE

The parties agree to assess and implement methods by which 'best' practice techniques involving optimal flexibility and efficiency may be introduced. Area of focus include:

(a) Workplace Injuries—The parties agree to develop ways to reduce the occurrence of injuries within the workplace. A benchmark and incentive scheme based on accumulated hours without injury shall be developed and implemented through a continuous improvement programme in safety by applying real improvements in workplace protection, safety training and awareness.

Target—Continue to reduce both the frequency and severity of injuries by at least 50% during the life of this Agreement.

(b) Use of Consumables—Employees will reduce the levels of consumables use. Consumables include, but are not limited to: Safety glasses, gloves, tools, welding equipment, ear plugs, safety boots, grinding disks, steel makers, electrodes and gas. Employees will be encouraged to take responsibility for monitoring and improving on levels of use of consumables.

Benchmark targets will be developed in conjunction with the monitoring committee with a view to reducing wastage and over-use without compromising the safety of employees.

Target—Reduce waste.

(c) Comfort support—The provisions of tea and coffee is to be maintained, provided this provisions continues to be sensibly utilised.

(d) Raw Materials—The parties agree to take steps to reduce the levels of wastage of raw materials. The parties will develop methods of reducing raw material wastage. Storage of useful off-cuts and fabrication aids capable of re-use is to be targeted.

Target—Reduce wastage and clean-up requirements. Provide Fabrication support closer to the actual activity.

(e) Quality/rework

The monitoring committee will address work quality. The committee will put into place a system of assessing and evaluating the quality of work carried out.

The committee will establish a current level of defects. This level will be evaluated in regard to the current productivity. An action plan will then be established in regard to maintaining or reducing (if necessary) the quantity of rework.

(f) Plant and Equipment

Employees shall ensure that all plant and equipment is used in the correct manner and is not abused by any irresponsible practices.

(6) Communications

The parties agree to take steps to improve and enhance communications between employees and management through:

* Tool Box Talks
* Management Report Back Meetings with all employees
* Monitoring Committee Meetings
* Suggestion Systems
* Notice Board
* Newsletters

(7) Union Meetings

Meetings between the workforce representatives and the management of Amec Services will be held at times mutually convenient to both parties.

Local issues—Meeting to report on local Amec Service issues will be held at times convenient to the company and employees. It has been the practice to have these meetings in the lunch break and the parties agree that this is the most convenient time. Discussions will take place if either party wish to change from the above.

Target—To allow Amec Services Pty Ltd to operate productively and consistently.

11.—GRIEVANCE PROCEDURE/DISPUTE RESOLUTION

(1) Where a grievance arises, the matter shall be initially discussed and resolved between the employee (and if the employee so desires, his/her union delegate) and the employee's immediate supervisor.

(2) If the grievance remains unresolved after the process described in Subclause (1) of this clause has been followed, the union delegate shall discuss the attempt to resolve the dispute with the on site project manager of Amec Services Pty Ltd.

(3) If the matter remains unresolved, it shall be referred to a senior management representative of Amec Services Pty Ltd and the appropriate full-time union official. The parties shall then initiate steps to resolve the grievance as soon as possible.

(4) While the steps outlined in Subclause (1), (2) and (3) of this clause as being followed, no industrial action shall be taken. A minimum of seven (7) working days is allowed for discussions in steps (1)-(3) above to solve any dispute.

(5) If, after step (3) the grievance is still not resolved, either party may refer the matter to the Western Australian Industrial Relations Commission, without taking industrial action.

(6) Either party will give the earliest possible notice to the other party of any issue or problem which has the potential to give rise to a grievance or dispute. All relevant facts will be recorded and clearly identified throughout.

(7) No bans or limitations may be place on the performance of work while the procedure outlined in this clause is being followed and all actions shall be in accordance with Safe Working Practice, and consistent with established custom and practices.

12.—NO EXTRA CLAIMS COMMITMENT

(1) The parties agree to undertake a commitment that there shall be no extra claims during the life of this Agreement.

(2) The parties to the Agreement shall be bound by the terms of the Agreement for its duration.

(3) The parties to this Agreement shall oppose any application by other parties to be joined to this Agreement.

(4) The terms of this Agreement will not be used to progress or obtain similar arrangements or benefits in any other enterprise, whether involving Amec Services or not.

(5) The terms of this Agreement have resulted from extensive negotiations relating to productivity enhancements that

specifically relate to the Amec Services operations under Maintenance Contract and thus cannot be used as a precedent elsewhere.

13.—RATES OF PAY

In specific acknowledgment of the productivity and efficiency enhancements targeted with the successful operation of the Enterprise Agreement and a continued commitment from all parties, a wage increase of 10.5% as set out herein shall be payable on the rates prescribed in Total Rate Per Week column as per wage schedule 27 April, 1995, Metal Trades (General) Award 1966 No. 13 of 1965, Part II, Construction Work, from the 1st of September, 1995.

In addition to the appropriate Total Wage, a Construction Allowance of $29.40 per week or further amounts as reflected in Clause 10, subclause 4(a) of the Metal Trades General Award II Construction Work Award is payable for construction work.

In addition to the appropriate Total Wage (as above), a Tool Allowance (as applicable) of $9.20 per week or further amounts as reflected,—Wages, subclause 6(a)(i) of the Metal Trades (General) Award 1966 No. 13 of 1965, Part II, Construction Work is payable.

All additional/supplementary Safety Net Adjustments arising from the recent decisions of the Western Australian Industrial Relations Commission that may apply during the current of this Agreement are deemed to be absorbed within the wage rates specified herein:

SIGNATORIES

AMEC SERVICES PTY LTD
(Sgd)
DATE: 20/10/95

AFMEPKIU
J. Sharp-Collett
DATE: 13/11/95

CMETSWU
W. Ethel
DATE: 8/11/95

		Base Rate $	Special Payment $	Safety Net Adjustment $	Total Rate Per Week $	10½% Increase $	Total Rate Per Week $
i	Instrumentation and Controls Tradesman	423.80	96.00	16.00	535.80	56.20	592.00
ii	Instrument Tradesman —Complex Systems	386.60	84.90	16.00	487.50	51.20	538.70
iii	Instrument Tradesman	380.10	80.10	16.00	476.20	50.00	526.20
iv	Scientific Instrument Maker	380.10	80.10	16.00	476.20	50.00	526.20
v	Welder—Special Class	371.40	80.10	16.00	467.50	49.10	516.60
vi	Welder	362.90	80.10	16.00	459.00	48.20	507.20
vii	Electrician—Special Class	386.60	84.90	16.00	487.50	51.20	538.70
viii	Electrical Fitter	362.90	80.10	16.00	459.00	48.20	507.20
ix	Electrical Installer	362.90	80.10	16.00	459.00	48.20	507.20
x	Boilermaker	362.90	80.10	16.00	459.00	48.20	507.20
xi	Tradesman the greater part of whose time is occupied in marking off and/or template making	367.10	80.10	16.00	463.20	48.70	511.90
FCY							
xii	Mechanical Tradesman —Special Class	386.60	84.90	16.00	487.50	51.20	538.70
xiii	Tradesman	362.90	80.10	16.00	459.00	48.20	507.20
xiv	Pipe Fitter	362.90	80.10	16.00	459.00	48.20	507.20
xv	Fitter—Refrigeration	362.90	80.10	16.00	459.00	48.20	507.20
xvi	Fitter—Window Frame	362.90	80.10	16.00	459.00	48.20	507.20
xvii	Motor Mechanic	362.90	80.10	16.00	459.00	48.20	507.20
xviii	Mechanist—Engineering						
	First Class	362.90	80.10	16.00	459.00	48.20	507.20
	Second Class	327.20	86.80	16.00	410.00	43.05	453.05
xix	Certificated Rigger or Scaffolder	345.70	88.90	16.00	430.60	45.20	475.80
xx	Rigger or Scaffolder —Other	334.70	87.70	16.00	418.40	44.00	462.40
xxi	Tool and Material Storeman	322.90	65.80	16.00	404.70	42.50	447.20
xxii	Tradesman's Assistant	310.20	64.30	16.00	390.50	41.00	431.50
xxiii	Tradesman's Assistant —who from time to time uses a grinding machine	311.70	65.80	16.00	393.50	41.30	434.80
xxiv	Lagger—						
	First 6 months experience	310.20	63.40	16.00	389.60	40.90	430.50
	2nd and 3rd six months experience	311.70	65.40	16.00	393.50	41.30	434.80
	4th and 5th six months experience	315.90	65.60	16.00	397.50	41.80	439.30
	Thereafter	317.40	66.60	16.00	400.00	42.00	442.00
xxv	Grinder using portable machine	315.90	65.70	16.00	397.60	41.80	439.40
xxvi	Crane Attendant and Dogman	334.70	67.70	16.00	418.40	44.00	462.40
xxvii	Labourer	291.60	62.10	16.00	369.70	38.80	408.50

	Old Wage Rate $	Additional Supplementary Payment $	Total Weekly Rate $	10.5% Increase (20/09/95) $	Total EBA Rate Per Week (01/07/95) $
Mobile Crane Operators—					
Up to 8 tonnes	447.30	16.00	463.60	48.70	512.30
8—15 tonnes	457.60	16.00	474.00	49.80	523.80
15—40 tonnes	466.40	16.00	482.70	50.70	533.40
40—80 tonnes	473.60	16.00	489.60	51.40	541.00
80—100 tonnes	478.60	16.00	494.90	52.00	546.90
100—140 tonnes	486.40	16.00	502.70	52.80	555.50
140—180 tonnes	496.70	16.00	513.10	53.90	567.00
180—220 tonnes	510.60	16.00	526.90	55.30	582.20
Over 220 tonnes	528.50	16.00	544.80	57.20	602.00
Tower Crane	490.40	16.00	506.70	53.20	559.90

This increase will be operated as specified above and is on the proviso that this Agreement is registered in the Western Australian Industrial Relations Commission.

A S BUILT CONSTRUCTIONS INDUSTRIAL AGREEMENT No. AG 228 of 1995.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

A S Built Constructions Pty Ltd.

No. AG 228 of 1995.

A S Built Constructions Industrial Agreement.

COMMISSIONER P E SCOTT.

22 November 1995.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered on the 22nd day of November 1995 to operate with effect on and from the 19th day of September 1995.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the A S Built Constructions Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement

3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. Ratification

Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and A S Built Constructions Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of ratification as indicated in Clause 16.—Ratification and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees
course books and materials
payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect on and from the 19th day of September 1995.

(signed) (signed)

ON BEHALF OF THE UNION ON BEHALF OF THE COMPANY

Dated this 19th day of September 1995.

APPENDIX A

	1 August 1995 Hourly Rate	1 February 1996 Hourly Rate	1 August 1996 Hourly Rate	1 February 1997 Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

AWU—FREMANTLE BOWLING CLUB ENTERPRISE BARGAINING AGREEMENT 1995 No. AG 300 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Workers' Union, West Australian Branch, Industrial Union of Workers

and

Fremantle Bowling Club Inc.

No. AG 300 of 1995.

AWU—Fremantle Bowling Club Enterprise Bargaining Agreement 1995.

COMMISSIONER A.R. BEECH.

5 January 1996.

Order.

HAVING heard Mr M.J. Lourey on behalf of the Applicant and Mr N.W. Pegler on behalf of the Respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the AWU—Fremantle Bowling Club Enterprise Bargaining Agreement 1995 be registered as an industrial agreement in accordance with the following Schedule from the first pay period commencing on or after the 5th day of January 1996.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

Schedule.

1.—TITLE

This agreement shall be known as the AWU—Fremantle Bowling Club Enterprise Bargaining Agreement 1995.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Application and Parties Bound
4. Term of Agreement
5. Parent Award
6. Wage Rates
7. Efficiency Measures
8. Record
9. Dispute Resolution Procedure
10. Signatories

3.—APPLICATION AND PARTIES BOUND

This agreement shall apply to the Fremantle Bowling Club Incorporated (the Club), The Australian Workers' Union, West Australian Branch, Industrial Union of Workers (the union) and all employees of the Club eligible to be members of the union and who are employed as greenkeepers pursuant to the Golf Link and Bowling Green Employees' Award, 1993.

4.—TERM OF AGREEMENT

This agreement shall commence from the first pay period commencing on or after the 1st October 1995 and shall continue until the 30th September 1996.

The parties to the agreement agree to commence negotiating a subsequent agreement no later than one month prior to the expiration of this agreement.

5.—PARENT AWARD

(1) This agreement shall be read and interpreted wholly in conjunction with the Golf Link and Bowling Green Employees' Award, 1993 (the parent award).

(2) Where there is any inconsistency between this agreement and the parent award this agreement shall apply.

6.—WAGE RATES

Employees party to this agreement shall receive an increase of 4% on their actual rate of pay from the first pay period commencing on or after 1 October 1995 which results in the following rate per week:

Greenkeeper $507.20

7.—EFFICIENCY MEASURES

(1) Where, in the playing season, the Club requires Sunday work to be performed by an employee bound by this agreement, that employee is entitled to no less than one month's prior knowledge of the particular requirement, including the date.

(2) Where Sunday work is performed, ordinary time off without deduction of pay may be taken by the employee in lieu of payment for the work performed, at the rate of two hours of time off for each hour so worked.

Provided that such time off shall be taken in the manner prescribed by Clause 16.—Annual Leave of the parent award. Leave loading will not apply to such time taken.

(3) Where work is performed on any day referred to in paragraph (1)(a) of Clause 17.—Holidays of the parent award, ordinary time off without deduction of pay may be taken by the employee in lieu of payment for the work performed, at the rate of one and a half hours of time off for each hour so worked in the manner referred to in subclause (2) of this clause.

(4) Where an employee's employment terminates for any reason without the employee having taken the time off referred to in subclauses (2) and (3) of this clause the Club shall pay the employee for so much of the time as remains untaken.

8.—RECORD

The Club shall keep a register wherein shall be recorded all time worked, and all time off accrued pursuant to subclauses (2) and (3) of Clause 7.—Efficiency Measures hereof.

9.—DISPUTE RESOLUTION PROCEDURE

To enable any grievance to be resolved, or any dispute to be settled, including a safety related issue, the following procedure shall apply:

(1) Any party with a grievance or dispute that involves the other party, should raise that grievance or dispute at the first opportunity to do so.

(2) Where the matter referred to in subclause (1) of this clause is not satisfactorily resolved it may be raised with the relevant Committee of the Club and/or with a representative of the union, as appropriate, and as the case may be.

(3) Where subclause (2) of this clause occurs the parties will, at that time, agree on a suitable time frame within which the matter should be resolved.

(4) Where the matter remains unresolved any party may refer the matter to the Western Australian Industrial Relations Commission.

10.—SIGNATORIES

Signed on behalf of the Fremantle Bowling Club by:

24/11/1995 B. Prunster
Date President
24/11/1995 N.W. Pegler
Date Treasurer

Signed on behalf of The Australian Workers' Union, West Australian Branch, Industrial Union of Workers

22/11/1995 P.S. Trebilco
Date Secretary
22/11/1995 Don Bartlem
Date Witness

BAYLEYS ELECTRICAL SERVICE INDUSTRIAL AGREEMENT
No. AG 289 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Ron Bayley trading as Bayleys Electrical Service.

No. AG 289 of 1995.

Bayleys Electrical Service Industrial Agreement.

COMMISSIONER P E SCOTT.

7 December 1995.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered with effect on and from the 31st day of October 1995.

(Sgd.) P. E. SCOTT,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Bayleys Electrical Service Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Ron Bayley trading as Bayleys Electrical Service (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.
(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.
(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees
course books and materials
payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

(signed) (signed)

ON BEHALF OF THE UNION ON BEHALF OF THE COMPANY

Dated this 31st day of October 1995.

APPENDIX A

	1 August 1995 Hourly Rate	1 February 1996 Hourly Rate	1 August 1996 Hourly Rate	1 February 1997 Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

BHP TRANSPORT KWINANA ENTERPRISE BARGAINING AGREEMENT 1995
No. AG 285 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

BHP Transport

and

The Australian Workers' Union, West Australian Branch, Industrial Union of Workers and Others.

No. AG 285 of 1995.

BHP Transport Kwinana Enterprise Bargaining Agreement, 1995.

COMMISSIONER P.E. SCOTT.

3 January 1996.

Order.

HAVING heard Mr C G Brett on behalf of the Applicant, Mr J Binks on behalf of the Australian Workers' Union, West Australian Branch, Industrial Union of Workers and Mr G C Sturman on behalf of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the BHP Transport Kwinana Enterprise Bargaining Agreement, 1995 be registered with effect on and from the 27th day of November 1995.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

Schedule.

1.—TITLE

This agreement shall be known as the BHP Transport Kwinana Enterprise Bargaining Agreement, 1995.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties to the Agreement
4. Extent of Agreement
5. Relationship to Parent Award
6. Aim of Agreement
7. Occupational Health and Safety
8. Efficiency Improvements
9. Redundancy
10. Wage Increase
11. Allowances
12. Business Performance Incentive Scheme (B.P.I.S.)
13. Training
14. Overtime
15. Organisation/Cancellation of Overtime
16. Plant Upgrading
17. Term of Agreement
18. State Wage Case Principles
19. New Parent Award
20. Consultative Arrangements
21. Grievances and Disputes
22. Quality Management
23. Customer Focus
24. Signatures to Agreement

Schedule I—Bulk Materials Handling—Efficiency Improvements
Schedule II—Kwinana Rail Terminal—Efficiency Improvements
Schedule III—Wage Rates For Purpose Of Enterprise Bargaining Agreement
Schedule IV—Allowances For Purpose Of Enterprise Bargaining Agreement

3.—PARTIES TO THE AGREEMENT

BHP Transport

The Australian Workers Union, West Australian Branch, Industrial Union of Workers

Transport Workers Union of Australia, Industrial Union of Workers, Western Australian Branch

Metal and Engineering Workers' Union, Western Australian Branch

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch.

4.—EXTENT OF AGREEMENT

This agreement extends to employees in the Bulk Materials Handling, Kwinana Rail Terminal and Vehicle Maintenance operations, employed in classifications as per Clause 27.—Wages of the parent award.

5.—RELATIONSHIP TO PARENT AWARD

The terms and conditions of this agreement shall be read and interpreted in conjunction with The Iron & Steel Industry Workers' (BHP Steel International—Rod and Bar Division) Award No. 1 of 1968, as amended and consolidated or as replaced, provided that where there is any inconsistency, this agreement shall take precedence to the extent of the inconsistency.

6.—AIM OF AGREEMENT

The aims of this agreement are to—

- — Provide for the ongoing improvement in the operations of BHP Transport Kwinana.
- — Secure and develop the viability of the enterprise by improving quality of service and reliability of supply.
- — Provide BHP Transport employees with a mechanism to improve their work performance and productivity and skills base.

To achieve these aims the parties have agreed to—

- — Change work practices.
- — Increase flexibility.
- — Reduce manning levels.

The parties are committed to working towards a work place where employees work as a team with each employee working to the level of each individual's training and ability in a co-operative effort to ensure safe and efficient operations.

7.—OCCUPATIONAL HEALTH AND SAFETY

The parties are committed to:

- — Preventing injury and illness by providing a safe and healthy working environment.
- — Preventing unsafe acts and damage to property.
- — Carrying out work recognising that safety is essential to achieve operating and business objectives.
- — Recognising that safety is the responsibility of management and all employees.
- — Improving the safety of work practices in all work places.
- — Creating interest in and enthusiasm for safety and to develop personal responsibility for safety.

The purpose of this is to:

- — Prevent all injuries to personnel, unsafe acts and damage to property.
- — Protect all personnel from needless suffering and hardship.
- — Demonstrate by the safety record that the business is operating responsibly and successfully.
- — Undertake duties in a safe manner in the belief that a safe operation will also be an efficient operation.

All parties are totally committed to improving safety standards and will actively encourage and promote the levels of safety awareness that such standards demand. Effective training of all personnel is essential to achieve these standards.

To be effective the commitment and involvement of all employees is required, in particular employees must take reasonable care in the performance of work to prevent work related injuries to themselves and to others.

8.—EFFICIENCY IMPROVEMENTS

(1) Current Achievements

The 1993 Enterprise Bargaining Agreement provided the basis for several efficiency improvements. Whilst some of these have been pursued to a greater extent than others all parties give their commitment to the full implementation of all 1993 E.B.A. issues.

(2) Continued Improvement

From the date of this agreement the parties have agreed to implement the changes identified in Schedule I (Bulk Materials Handling) and Schedule II (Kwinana Rail Terminal).

9.—REDUNDANCY

In order to effect the agreed manning levels a redundancy program will be provided as follows:

A package consisting of—

- — 14 weeks pay (based on 38 hour week)
- — Plus 2.5 weeks for each year of service (based on a 38 hour week)

Long service leave and annual leave—pro-rata leave calculated to day of leaving.

For redundant Bulk Materials Handling employees an allowance of $0.60 to be incorporated in their hourly rate for all purposes of the redundancy package, representing the various allowances applying to the B.M.H. operation.

Package calculated on employees rate of pay prior to agreement plus 12%.

Assistance in areas of:

- — Financial advice
- — Stress management training
- — Retraining where appropriate
- — C.E.S. or other assistance

10.—WAGE INCREASE
(refer Schedule III)

A total of 12% over the duration of the agreement.

Comprising

- — 8% upon registration of this agreement.
- — A further 4% after six months from registration of this agreement subject to the ongoing commitment by employees to cross-skilling and training.

11.—ALLOWANCES

(1) Bulk Materials Allowance

For employees who work in the Bulk Materials Handling operation a consolidated allowance of $0.80 per hour for all hours worked.

This consolidated allowance replaces all product/condition allowances other than shift allowance, meal allowance, tool allowance and electrical licence allowance.

The consolidated allowance covers any new product that may be handled during the term of this agreement.

(2) Kwinana Rail Terminal—Twin Lift Allowance

The twin lift allowance will be increased to $0.40 per hour.

This allowance is payable to drivers with a Certificate of Competency and payable when undertaking the task.

12.—BUSINESS PERFORMANCE INCENTIVE SCHEME (B.P.I.S.)

(1) Bulk Materials Handling

The parties agree that the existing scheme will continue unchanged for a period of 12 months from the date of this agreement at which time a review is to take place. The parties acknowledge that the purpose of the scheme is to provide for continuous improvement in the business and as such new targets will need to be set as improvements are consolidated.

(2) Kwinana Rail Terminal

Due to the inclusion of the Rod and Bar warehouse in KRT's costs and the change in product mix handled the existing

B.P.I.S. scheme no longer provides a means to improving the business (targets not achievable). The parties agree to implement revised targets that are as achievable as the existing scheme was on introduction.

13.—TRAINING

The parties are committed to developing the necessary skills for cross skilling to occur.

All employees will participate in training others, provided they have been deemed competent in those skills being passed on.

14.—OVERTIME

The parties agree that personnel required for overtime will wherever possible be sourced from the respective core areas.

When it is not possible to source from within the department, personnel from other work areas on site shall be utilised subject to competency and training.

Where it is not possible to source personnel from other areas on site external sourcing can take place.

15.—ORGANISATION/CANCELLATION OF OVERTIME

(1) Organisation

(a) Weekends

To be organised by 2.00 p.m. Thursday with no cancellation penalty to apply until 2.00 p.m. Friday. This includes personnel off on R.D.O.'s, sick leave etc.

(b) During Week

Organise previous shift and confirmed whilst employee still at work.

(c) Working Back to Finish Ship

Where employees are required to work back to finish a ship, a four hour minimum at penalty rates is to apply.

If work goes beyond 4 hours, employees by mutual agreement may remain for full shift and be utilised on other duties.

(2) Penalties (where appropriate notification of cancellation not given)

(a) A penalty of 4 hours at single time to apply during week

A penalty of 4 hours at overtime rates to apply on weekends and public holidays.

Penalties apply to first cancelled shift only and will not apply as a result of industrial disputation involving respondent unions.

16.—PLANT UPGRADING

As part of the ongoing business development process the following upgrading is planned:

— New weighbridge and entry
— CCTV to monitor systems
— Belt drift switches
— Roadways
— Continued upgrade of loader/unloader
— New BC2/3 chute on stacker
— Relocation of BC3 drive motor to top of boom
— Automate BC10 gates
— Pendant control for discharge bins

17.—TERM OF AGREEMENT

This agreement shall expire on the 21st April, 1997. The parties agree to commence negotiations on a new agreement three months prior to the expiry of this agreement.

18.—STATE WAGE CASE PRINCIPLES

The parties to this agreement reconfirm their commitment to State Wage Case principles and will not pursue any extra claims except when consistent with the principles determined by the Commission.

19.—NEW PARENT AWARD

The parties agree to develop and implement a new award during the term of this agreement which truly reflects the identity of BHP Transport's Kwinana operation as a service based, customer orientated and market focussed business committed to achieving World's Best Practice.

20.—CONSULTATIVE ARRANGEMENTS

Effective communication and consultation is essential in promoting a successful operation.

The process that has led to this Agreement being developed has involved those who will implement it. All parties are committed to continuing this process.

In an endeavour to improve consultation and employee input into decision making processes the consultative arrangements agreed to in the 1993 Enterprise Bargaining Agreement will continue and are fully supported by all parties.

The parties are committed to continuing to exchange information on performance and future direction for the Company and its various operations.

21.—GRIEVANCES AND DISPUTES

All parties re-confirm their commitment to the dispute settling provisions as laid out in clause 23 Grievances and Disputes of the parent award.

22.—QUALITY MANAGEMENT

The parties are committed to the implementation of a quality management program throughout the operations of BHP Transport Kwinana incorporating safety and environmental objectives.

23.—CUSTOMER FOCUS

The parties are committed to a customer focus program consisting of:

— Site visits
— Communication skills
— Identifying and satisfying customer concerns

24.—SIGNATURES TO AGREEMENT

Signed for and on behalf of:
BHP Transport Kwinana Works:
.....
In the presence of:
.....

Dated:
.....
Signed for and on behalf of:
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch:
.....

In the presence of:
.....

Dated:
.....

Signed for and on behalf of:
The Australian Workers Union Western Australian Branch Industrial Union of Workers:
.....
In the presence of:
.....

Dated:
.....

Signed for and on behalf of:
Metal and Engineering Workers Union
Western Australian Branch:
.....

In the presence of:
.....

Dated:
.....
Signed for and on behalf of:
.....
Transport Workers Union of Australia Industrial Union of Workers Western Australian Branch:
.....
In the presence of:
.....
Dated:
.....

SCHEDULE I

BULK MATERIALS HANDLING—EFFICIENCY IMPROVEMENTS

Manning Levels

The following manning levels to be implemented from the date of this agreement subject to achieving necessary skills mix and safety—

Three shift crews of:
- — 3 operators
- — 1 mechanical fitter
- — 1 electrical fitter

In addition a crew of:
- — 1 mechanical fitter
- — 1 electrical fitter
- — 2 operators (surplus to requirements and to be made redundant end of May, 1996)

Operational manning levels as follows to be utilised including overtime situations.

	Operation	Current				Immediate				Stage Two		
		Ops	Dr	E	M	Ops	Dr	E	M	P	E	M
1.	Unload train only	3.00	—	1.00	—	2.00	—	1.00	—	2.00	1.00	—
2.	Receive CF3 only	3.00	—	1.00	—	2.00	—	1.00	—	1.00	1.00	—
3.	Receive DF1 only	2.00	—	1.00	—	2.00	—	1.00	—	1.00	1.00	—
4.	Load via BC10 only (not copper concentrate)	3.00	2/3	1.00	1.00	1.00	2.00	1.00	1.00	3.00	1.00	1.00
5.	Load via BC5	3.00	2/3	1.00	1.00	1.00	2.00	1.00	1.00	3.00	1.00	1.00
6.	Receive sand by train or road and load out via BC5	4.00	2/3	1.00	1.00	2.00	2.00	1.00	1.00	3.00	1.00	1.00
7.	Receive sand DF1 and load out via BC10 (not copper concentrate)	4.00	2/3	1.00	1.00	1.00	2.00	1.00	1.00	3.00	1.00	1.00
8.	Receive mineral sands CF3 and discharge cargoes	5.00	AR	1.00	2.00	2.00	AR	1.00	1.00	3.00	1.00	1.00
9.	Receive silica sands and discharge cargo	4.00	AR	1.00	2.00	2.00	AR	1.00	1.00	3.00	1.00	1.00
10.	Clinker discharge, load in sheds and load out from bins and discharge train	6.00	AR	1.00	2.00	3.00	AR	1.00	1.00	3.00	1.00	1.00

Rosters

Utilisation of a day and afternoon shift roster covering Monday to Friday (2 shift crews on days and one crew on afternoons).

Options for extended shipping requirements to be reviewed.

The parties agree to review the applicability of a continuous roster once tonnages exceed 1.6 million tonnes per annum.

The Company agrees not to implement a 5 x 3 roster provided operational requirements are met.

Cross Skilling/Flexibility

The following changes to reflect further improvements in developing a flexible and cross skilled work force.

Total cross skilling of operators and drivers.

Tradesperson to operate control room for relief purposes and on an overtime basis when operators are not available.

Tradesperson drive front end loaders and other mobile equipment on relief basis.

Rigging/scaffolding tickets—

rigging tickets—non trades and electrical trades

scaffolding tickets—optional to anyone

R class licence for mechanical trades.

Oxy cutting and welding for non trades and electrical.

Crane drivers ticket—all areas.

Non trades and electrical to change idlers, brush or scraper adjustments, skirt maintenance, removal/installation and removal/installation of flexible chutes.

Staff to assist in operational requirements in:
- — emergent circumstances
- — weighing of unscheduled trucking
- — resetting trips/vibros

Tradespersons to drive crane for up to 3 hours.

All employees interacting with each other to the extent of their training and capability.

Continued Improvement

During the term of this agreement the parties agree to review operational manning levels with respect to:
- — Pendant control for bins
- — Integration of Tiwest personnel in rail truck operation
- — Modifications to plant and equipment

SCHEDULE II

KWINANA RAIL TERMINAL—EFFICIENCY IMPROVEMENTS

Integration of following into the KRT matrix with associated training and cross-skilling:
- — Crane driving—cab and pendant
- — Warehouse slinging (dogman's ticket)
- — Sheet and coil warehousing
- — Clerical functions
- — Safety inspections of equipment including minor maintenance
- — Site maintenance including lawn mowing, clean-up etc.

Changes to work routines as a result of "pendulum" train arrangements:
- — Preparedness to work in the Bulk Materials Handling operation to meet short falls when KRT work loads permit (to include front end loader training).
- — All employees interacting with each other to the extent of their training and competency.

SCHEDULE III

WAGE RATES FOR PURPOSE OF ENTERPRISE BARGAINING AGREEMENT

1. Rates to apply from this agreement:

	Award	Fixed Bonus	Total
Operator—			
Grade A (6)	468.40	74.00	542.40
Grade B (5)	443.80	74.00	517.80
Grade C (4)	425.30	74.00	499.30
Grade D (3)	400.80	74.00	474.80
Grade E (2)	376.10	74.00	450.10
Grade F (1)	345.40	74.00	419.40

	Award	Fixed Bonus	Total
Tradesperson—			
Grade 4	526.20	74.00	600.20
Grade 3	489.10	74.00	563.10
Grade 2	452.20	74.00	526.20
Grade 1	421.50	74.00	495.50

2. Rates to apply from the first pay period commencing on or after the date that represent the 6 month anniversary of this agreement.

	Award	Fixed Bonus	Total
Operator—			
Grade A (6)	487.10	77.00	564.10
Grade B (5)	461.60	77.00	538.60
Grade C (4)	442.30	77.00	519.30
Grade D (3)	416.80	77.00	493.80
Grade E (2)	391.10	77.00	468.10
Grade F (1)	359.20	77.00	436.20
	Award	Fixed Bonus	Total
Tradesperson—			
Grade 4	547.20	77.00	624.20
Grade 3	508.70	77.00	585.70
Grade 2	470.30	77.00	547.30
Grade 1	438.40	77.00	515.40

SCHEDULE IV

ALLOWANCES FOR PURPOSE OF ENTERPRISE BARGAINING AGREEMENT

1. Allowances to apply from this agreement—

Tool allowance $10.80 per week

Electrical licence allowance $14.30 per week

Meal allowance (first) $6.60

Meal allowance (second) $4.50

2. Allowance to apply from the first pay period commencing on or after the date that represents the 6 month anniversary of this agreement—

Tool allowance $11.20 per week

Electrical licence allowance $14.90 per week

Meal allowance (first) $6.90

Meal allowance (second) $4.70

BINDOON TILING INDUSTRIAL AGREEMENT
No. AG 125 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Garry Dunk trading as Bindoon Tiling.

No. AG 215 of 1995.

Bindoon Tiling Industrial Agreement.

COMMISSIONER P E SCOTT.

7 December 1995.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered with effect from the beginning of the first pay period commencing on or after the 7th day of September 1995.

(Sgd.) P. E. SCOTT,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Bindoon Tiling Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
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10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. Ratification
Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Garry Dunk trading as Bindoon Tiling (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of ratification as indicated in Clause 16.—Ratification and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $0.20 per hour per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees
course books and materials
payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect from the first pay period on or after the 7th day of September 1995.

(signed)	(signed)
ON BEHALF OF THE UNION	ON BEHALF OF THE COMPANY BINDOON TILING

Dated this 7th day of September 1995.

APPENDIX A

	1 August 1995 Hourly Rate	1 February 1996 Hourly Rate	1 August 1996 Hourly Rate	1 February 1997 Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

B KERNAGHAN & CO INDUSTRIAL AGREEMENT

No. AG 220 of 1995.

WESTERN AUSTRALIAN

INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

B Kernaghan & Co.

No. AG 220 of 1995.

B Kernaghan & Co Industrial Agreement.

COMMISSIONER P E SCOTT.

22 November 1995.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered on and from the 22nd day of November 1995 to operate with effect on and from the 13th day of September 1995.

(Sgd.) P. E. SCOTT,
Commissioner.

[L.S.]

Schedule.

1.—TITLE

This Agreement will be known as the B Kernaghan & Co Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards

12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. Ratification

Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and B Kernaghan & Co (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of ratification as indicated in Clause 16.—Ratification and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees

course books and materials

payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect on and from the 13th day of September 1995.

(signed) (signed)

ON BEHALF OF THE UNION ON BEHALF OF THE COMPANY

Dated this 13th day of September 1995.

APPENDIX A

	1 August 1995	1 February 1996	1 August 1996	1 February 1997
	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

BMB SCAFFOLD INDUSTRIAL AGREEMENT
No. AG 276 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Ben Cant trading as BMB Scaffold.

No. AG 276 of 1995.

BMB Scaffold Industrial Agreement.

COMMISSIONER P E SCOTT.

7 December 1995.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered with effect from the beginning of the first pay period commencing on or after the 26th day of October 1995.

(Sgd.) P. E. SCOTT,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the BMB Scaffold Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. Ratification
Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Ben Cant trading as BMB Scaffold (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees
course books and materials
payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect from the first pay period on or after the 26th day of October 1995.

(signed) (signed)

ON BEHALF OF THE UNION ON BEHALF OF THE COMPANY

Dated this 26th day of October 1995.

APPENDIX A

	1 August 1995 Hourly Rate	1 February 1996 Hourly Rate	1 August 1996 Hourly Rate	1 February 1997 Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

BUTYNOL FIXERS (WA) INDUSTRIAL AGREEMENT
No. AG 240 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Butynol Fixers (WA) Pty Ltd.

No. AG 240 of 1995.

Butynol Fixers (WA) Industrial Agreement.

COMMISSIONER P E SCOTT.

22 November 1995.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered on the 22nd day of November 1995 to operate with effect on and from the 22nd day of September 1995.

(Sgd.) P. E. SCOTT,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Butynol Fixers (WA) Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. Ratification

Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Butynol Fixers (WA) Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of ratification as indicated in Clause 16.—Ratification and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees
course books and materials
payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect on and from the 22nd day of September 1995.

(signed) (signed)

ON BEHALF OF THE UNION ON BEHALF OF THE COMPANY

Dated this 22nd day of September 1995.

APPENDIX A

	1 August 1995 Hourly Rate	1 February 1996 Hourly Rate	1 August 1996 Hourly Rate	1 February 1997 Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

C & S PERROT INDUSTRIAL AGREEMENT

No. AG 225 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

C Perrot trading as C & S Perrot.

No. AG 225 of 1995.

C & S Perrot Industrial Agreement.

COMMISSIONER P E SCOTT.

22 November 1995.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and Mr C Perrott and Mrs S Perrott appeared on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered on the 22nd day of November 1995 to operate with effect on and from the 12th day of September 1995.

(Sgd.) P. E. SCOTT,
[L.S.] Commissioner.

———

Schedule.

1.—TITLE

This Agreement will be known as the C & S Perrot Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. Ratification

Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and C Perrot trading as C & S Perrot (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of ratification as indicated in Clause 16.—Ratification and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $0.20 per hour per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees
course books and materials
payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect on and from the 12th day of September 1995.

(signed)	(signed)
ON BEHALF OF THE UNION	ON BEHALF OF THE COMPANY

Dated this 12th day of September 1995.

APPENDIX A

	1 August 1995 Hourly Rate	1 February 1996 Hourly Rate	1 August 1996 Hourly Rate	1 February 1997 Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

CASCADE SERVICES PTY LTD
INDUSTRIAL AGREEMENT
No. AG 292 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Cascade Services Pty Ltd.

No. AG 292 of 1995.

Cascade Services Pty Ltd Industrial Agreement.

COMMISSIONER P E SCOTT.

21 December 1995.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered with effect on and from the 13th day of November 1995.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Cascade Services Pty Ltd Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave

Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Cascade Services Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees
course books and materials
payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

(signed) LESLIE BROXTON—DIRECTOR

ON BEHALF OF THE UNION ON BEHALF OF THE COMPANY

Dated this 13th day of November 1995.

APPENDIX A

	1 August 1995 Hourly Rate	1 February 1996 Hourly Rate	1 August 1996 Hourly Rate	1 February 1997 Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
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Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

CITY OF FREMANTLE ENTERPRISE AGREEMENT
No. 2 of 1995, No. AG 279 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

City of Fremantle

and

Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers' Division, Western Australian Branch.

No. AG 279 of 1995.

COMMISSIONER R.H. GIFFORD.

18 December 1995.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT
No. AG 279 of 1995.

HAVING heard Ms M. Marchese on behalf of the Applicant and Ms J. Freeman on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers' Division, Western Australian Branch, and Mr D. McIntyre on behalf of the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers' Union of Australia, Western Australian Branch and the Western Australian Builders', Labourers', Painters and Plasterers Union of Workers, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders:

THAT the City of Fremantle Enterprise Agreement No. 2 of 1995, No. AG 279 of 1995, as specified by the following schedule, be registered as an Industrial Agreement.

(Sgd.) R.H. GIFFORD,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the City of Fremantle Enterprise Agreement No. 2 of 1995, No. AG 279 of 1995.

1A.—ARRANGEMENT

1. Title
1A. Arrangement
2. Introduction
3. Parties to this Agreement
4. Term of Agreement
5. Relationship to Parent Awards
6. Definitions
7. Objectives of this Agreement
8. Principles of this Agreement
9. Productivity Improvements in this Agreement
10. Local Work Area Agreements
11. Utilisation of Technology, Plant and Equipment
12. Introduction of Change
13. Competitive Tendering
14. Remuneration and Timing
15. Prevention and Settlement of Disputes
16. No Extra Claims
17. Renewal of Agreement
18. Commitment to Single Award
19. Signatories

2.—INTRODUCTION

The parties recognise that the Council needs to improve its services by striving for continued productivity, efficiency and effectiveness.

This Agreement is an essential component to ensuring continuous improvements. It is aimed at securing Council's long term viability and lasting benefits for the community and employees. It will provide a wide range of initiatives to improve the quality, productivity and efficiency of Council's services, whilst rewarding its employees by developing more meaningful, fulfilling, interesting and better paid jobs.

3.—PARTIES TO THIS AGREEMENT

The parties bound by this Agreement are the City of Fremantle (hereinafter referred to as the "Council") and the following unions (hereinafter referred to as the "Unions").

- Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers' Division, Western Australian Branch.
- Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia, Western Australian Branch.
- The Western Australian Builders', Labourers', Painters and Plasterers Union of Workers.

4.—TERM OF AGREEMENT

The term of this Agreement shall be from the date of registration of this Agreement, expiring on 30 June 1997.

5.—RELATIONSHIP TO PARENT AWARDS

This agreement shall be read and interpreted wholly in conjunction with the Awards outlined below.

- Building Trades Award 1968.
- Metal Trades (General) Award 1966.
- Child Care (Out of School Care—Playleaders) Award.
- Child Care (Subsidised Centres) Award.
- Aged and Disabled Persons Hostels Award, 1987.
- Restaurant, Tearooms and Catering Workers' Award, 1979.
- Motel, Hostel, Services Flats and Boarding House Workers' Award, 1976.
- Health Attendants Awards, 1979.

In the event of any inconsistency between the Award and this Agreement, the Agreement shall prevail to the extent of the inconsistency.

6.—DEFINITIONS

The following is a list of terms used within this document:

BASE AWARD RATE	The base rate and supplementary payment prescribed in Clause 10.—Wages of the Building Trades Award or the total minimum weekly rate of wage or salary payable under the corresponding clause of the other relevant award.
BENCHMARKING	The process of an organisation measuring and comparing its performance with other similar companies/organisations,thus enabling the organisation to establish how much it needs to improve to reach and then exceed these levels of performance.
BEST PRACTICE	A process of continually adapting to new pressures; a method of operation to achieve exemplary levels of performance. Best Practices are not restricted to the examination of costs but also include quality and timeliness of delivery.
CONSENSUS	General agreement or acceptance of a specified item or instance that once reached all parties shall adopt and comply with.
CONSULTATION	Involves more than a mere exchange of information. For consultation to be effective the participants must be contributing to the decision-making process, not only in appearance, but in fact.
CONTINUOUS IMPROVEMENT	Continuous systematic process for evaluating the products, services and work processes for the purpose of continued improvements in a competitive environment.

COUNCIL	Refers to the Council of the City of Fremantle.
EMPLOYEE PARTICIPATION	Describes the process that leads to a greater degree of employee influence and genuine say in the decision making processes of the enterprise.
EMPLOYEES	All persons employed by the City of Fremantle including temporary and casual employees but excluding the City Manager.
ENTERPRISE	The organisation as it carries on business at its various workplace locations.
ENTERPRISE BARGAINING CONSULTATIVE TEAM	Consists of eight (8) nominees from Council and eight (8) employees nominated from relevant unions.
MULTI-SKILLING	A concept whereby employees are able to exercise a variety of skills in the performance of their work. Multiskilling leads to the broadening of existing skills and the gaining of extra skills to open up better career opportunities. It provides work flexibility for the organisation and works towards the breakdown of demarcation between job classifications.
PERFORMANCE INDICATORS	A means of identifying appropriate trends and efficiency against best practice benchmarks, enabling the identification of areas where there is potential for future improvements.
PRODUCTIVITY	A measure of the productive value of work in terms of resources used in relation to result achieved.
WORK ENVIRONMENT	The human, technological, physical and economic climate within which each person carries out their duties.
WORKFORCE PARTICIPATION	The ability of employees to contribute their maximum potential, energy, creativity, quality, efforts and effectiveness to achieve the aims and objectives of the organisation.

7.—OBJECTIVES OF THIS AGREEMENT

(1) The parties agree that the objectives of this Agreement are to facilitate and implement:

(a) workplace productivity, efficiency and effectiveness.

(b) a productive and harmonious working relationship.

(c) negotiated flexible work practices.

(d) a more efficient and effective enterprise.

(2) These measures are designed to—

(a) Facilitate services in the City of Fremantle to enhance the quality of life of our community and workforce.

(b) Develop a working environment where all parties are involved in the decision making process.

(c) Develop a high performance, high trust organisation through a genuine partnership between management, staff, unions, elected members and the community.

(d) Embrace change and develop a commitment to continuous improvement by all parties.

(e) Assist the parties to this Agreement in the development of an organisation focused on the customer and driven by a commitment to results.

8.—PRINCIPLES OF THIS AGREEMENT

(1) Commitment

The parties recognise that this Agreement continues the process of structural efficiency and productivity improvement. Fundamental to the continuation of this change process the parties are committed to identifying common objectives which will lead to improved employer-employee relations and improved productivity, flexibility, efficiency, quality of employment and delivery of quality service. The following principles relating to the development of trust within the organisation and employment security for staff underlie this Agreement.

(2) Trust

The parties recognise the need to develop mutual trust and understanding which will foster positive, high quality industrial relations throughout the organisation. This will be achieved by developing and following agreed consultation, negotiation and grievance processes. Honesty, mutual respect and a professional attitude are to prevail at all times.

The parties are committed to participate in improving activities based on a "team approach" to problem solving. To this end a free exchange of relevant information and ideas is to prevail at all times subject to agreed commercial confidentiality.

(3) Employment Security

The parties are committed to enhance the quality and security of employment for City of Fremantle employees through the ongoing implementation of agreed structural efficiency processes, together with the philosophies and initiatives detailed in this Agreement. This includes broadening the training and career development opportunities for all employees and applying relevant nationally accredited competency plans to complement job redesign within the respective work area, where such plans are available.

The parties recognise that some roles, tasks, and functions of employees may change or be displaced by new technology or work methods. Every effort will be made to offer those employees alternative positions.

An employee who is redeployed to an alternative position at a lower classification level shall have their salary maintained at their existing level and all future salary/wage increments will be absorbed to this level.

The employee will be provided with the opportunity to undertake appropriate training and development as determined by the Council's Training Plan. Career counselling will be available as part of the transition process.

No forced retrenchments will occur during the life of this Agreement except as a result of reduced Government funding. Where an unavoidable loss of jobs occurs, it will be managed initially through the use of natural attrition, retraining, re-skilling and redeployment.

Any redundancies will only occur after these options have been vigorously pursued and through a process agreed between the parties.

(4) Equal Employment Opportunity

The parties are committed to a workplace that is free of discrimination and in which all employees have the opportunity to progress to the full extent of their abilities in accordance with Council's Equal Employment Opportunity Policy.

Best endeavours will be applied to employees and potential employees with specific equity needs in common. Such common areas may include, but not be limited to, aboriginality, ethnicity, gender, people with disabilities and family responsibility.

(5) Occupational Health and Safety

It is agreed between the parties that emphasis should be given to Occupational Health and Safety in order to minimise any lost time injuries and worker's compensation premiums; accordingly the parties will work toward—

(a) To observe as a minimum and to better the requirements of the Occupational Health, Safety and Welfare Act, 1984 and Regulations 1984 and 1988 as amended.

(b) Taking all practicable steps to provide and maintain a working environment that is safe and without risks to health.

(c) A system of consultation which involves employees and health and safety representatives in workplace and work design, and selection of plant, equipment

and substances with the aim of eliminating or reducing hazards at their source.

(d) Integration of the principles of Occupational Health and Safety into training programs to maximise employee contributions to the identification, assessment and control of hazards.

(e) A commitment to effective rehabilitation of injured workers and an early return to work.

Specific mechanisms, including policies, will continue to be developed by the Occupational Health and Safety Committee to meet these objectives.

Employees will have access to Occupational Health and Safety training and training aids.

9.—PRODUCTIVITY IMPROVEMENTS IN THIS AGREEMENT

The parties agree that productivity improvement does not necessarily come from working harder or longer, but from working smarter and making the best possible use of all resources available to Council.

Given this the parties will work towards maximising levels of productivity and quality of service by creating an organisation committed to the principles of Best Practice and the achievement of continuous improvements.

Issues to be addressed will include, but not be limited to:

- customer service
- benchmarking process
- a multi-skilled workforce
- training and development
- technology
- a flexible workforce committed to change
- employee/workforce participation
- workplace change

These issues, outlined below, will enable Council to achieve continuous improvement in quality, effectiveness, productivity and efficiency.

(1) Customer Service

The parties agree that meeting the needs of the customers is paramount. In recognition of this the parties agree to the development of strategies to meet customer requirements.

(2) Multi Skilled Workforce

The parties recognise that multi-skilled employees are important to achieve significant efficiency gains in service delivery. Some examples could include:

- skill expansion and enhancement;
- redesign of work to reduce waste and duplication;
- develop more meaningful, fulfilling, interesting and better paid jobs for employees;
- provide opportunity for agreed work exchange.

The parties also recognise that in engaging in multiskilling, employees will be adequately remunerated.

(3) Training and Development

The parties recognise that access to training is a fundamental element of the process of achieving a customer service culture. Council is committed to providing all employees with a range of nationally accredited competency based training opportunities for the purpose of increasing productivity and flexibility, as well as enhancing career opportunities.

The parties intend broadening the training and career progression opportunities for all employees and develop and apply where possible nationally accredited competency based training plans for respective work areas to complement job redesign.

(4) Technology

The parties agree that significant workplace efficiencies leading to productivity may be gained from the introduction of relevant technologies. The parties recognise that the introduction of improved technology in the workplace may have an impact on their development and may result in redeployment of staff.

(5) Flexible Workforce

The parties acknowledge that integral to Council's strategy of providing excellent customer service is a highly skilled and flexible workforce motivated to utilise their skills within a changing work environment.

(6) Employee/Workforce Participation

Council is committed to creating conditions within the organisation that result in the ability of employees to contribute their energy, creativity, ideas and experience to achieving the overall objectives of the organisation.

The parties agree this necessitates involving all employees in decision making processes which affect them in the workplace.

(7) Workplace Change

The Council recognises that in order to respond to external challenges and to prosper, it will be necessary to develop a process whereby it may diagnose and solve problems and become more adaptive to change.

The parties recognise that the Enterprise Bargaining Consultative Team is one of the catalysts (ie. a team of people who facilitate change) to assist the organisation to achieve continuous improvement through this Agreement. This will require a process of organisational development and clear communication to build a culture which supports a new vision and challenge for the organisation.

10.—LOCAL WORK AREA AGREEMENTS

(1) Introduction

The parties recognise that the City of Fremantle is a diverse organisation and that the needs and requirements of the various work areas are different. In order to obtain improved productivity, efficiency and effectiveness, different arrangements may be required by different work areas.

Our commitment to achieving increased productivity and improved quality will depend upon the development of Local Work Area Agreements which will be put into place during the life of this Agreement.

(2) Definitions

(a) Local Work Area

The overall composition of Local Work Areas will be determined via a process of:

(i) Initial design of Local Work Areas by Management and Staff.

(ii) Overall co-ordination of and agreement by the Enterprise Bargaining Consultative Team.

(b) Local Work Area Agreement

A Local Work Area Agreement is a consent document which encompasses the various factors contained in this Agreement and the specific commitments made in the work areas. The Local Work Area Agreement will complement and form part of this Agreement upon registration.

(3) Objectives of Local Work Area Agreements

The purpose of Local Work Area Agreement's is to support the objectives of this Agreement which are—

To facilitate, improve and implement:

(a) Workplace productivity, efficiency and effectiveness.

(b) The development and maintenance of productive and harmonious working relationships.

(c) Negotiated flexible work practices.

(d) A more efficient and effective enterprise.

The objectives are designed to—

(a) Facilitate services in the City of Fremantle and enhance the quality of life of our community and workforce.

(b) Develop a working environment where all parties are involved in the decision making process.

(c) Develop a high performance, high trust organisation through a genuine partnership between management, staff, their unions, elected members and the community.

(d) Embrace change and develop a commitment to continuous improvement by all parties.

(e) Assist the parties to this Agreement in the development of an organisation focused on the customer and driven by a commitment to results.

(4) Content of Local Work Area Agreements

(a) The parties agree to encourage local workplace flexibility and initiative and support local solutions through Local Work Area Agreement's on as many issues as are practicable.

(b) A Local Work Area Agreement may be entered into and subsequently implemented subject to the following requirements:

(i) No Local Work Area Agreement shall be inconsistent with the provisions of this Agreement.

(ii) The terms and conditions in the Local Work Area Agreement shall not, when reviewed as a whole, be less favourable than the entitlements otherwise available under the particular Local Work Area's relevant Award, or other standard conditions dealt with by the relevant Industrial Tribunal.

(c) Each work area will be responsible for reviewing existing work practices and developing initiatives aimed at continually improving those practices to meet the needs of the work area and the organisation. Those initiatives can be broadly based and will link changed work practices to Key Performance Indicators.

(5) Process for Establishing Local Work Area Agreements.

The process will be a participative one from start to finish; one in which Management and staff and the relevant union(s), if requested, work together.

(a) The first step for each area will be to examine its work as it is currently done, to assess how well it meets the needs of its customers, to benchmark its work with other like organisations, to understand its cost structures and to identify those factors which will achieve improvements.

(b) The second step will be to recommend a range of possible efficiencies, initiatives and changes that may allow the quality of service to be delivered effectively or in a better way.

(c) The third step will be to decide which of the changes are practicable and cost effective and to agree on what is to be done and how it is to be done.

CHECK LIST

Local Work Area Agreement objectives and Key Performance Indicators agreed.

Local Work Area Agreement referred to Senior Management Group of Council and relevant Unions for information.

Local Work Area Agreement reviewed by the Enterprise Bargaining Consultative Team.

Local Work Area Agreement submitted to Full Council and relevant Unions for approval.

Local Work Area Agreement submitted to the West Australian Industrial Relations Commission for registration.

Second payment made unless agreement cannot be reached.

If no agreement can be reached proceed to the process outlined in subclause (8) hereof.

(d) The fourth step will be to implement the agreed changes and then to monitor the effect of these changes.

CHECK LIST

Agreed changes implemented in the work place. Third payment made unless agreement cannot be reached. If no agreement can be reached proceed to the process outlined in subclause (8) hereof.

(e) No award conditions/provisions are to be changed by Local Work Area Agreement's unless agreed to by the parties to this Agreement.

(f) Conduct of meetings—

(i) At the initiation of any Local work Area Agreement negotiation, it is essential that consensus be obtained as to the process by which this Local Work Area Agreement will be accepted or rejected.

This is to specify at what level between 50% plus 1 and 100% is acceptable to the parties involved in the Local Work Area Agreement, as to being a true reflection of genuine acceptance or rejection of the Local Work Area Agreement.

(ii) Meetings should be formal and minuted, all employees are to have a say with a free flow of ideas and suggestions. Representatives of relevant unions may attend meetings, if requested.

(iii) The Chairperson of each Local Work Area shall be appointed by employees of the Local Work Area.

(iv) Local Work Area Agreement meeting minutes shall be circulated to all employees of the Local Work Area Agreement, to committee members of the Enterprise Bargaining Consultative Team and other relevant union representatives within two working days after each meeting.

(6) Reporting of Enterprise Bargaining Consultative Team

The Enterprise Bargaining Consultative Team is to meet at least once per month to review the Local Work Area Agreement process and will prepare quarterly reports for the parties to this Agreement.

(7) Implementation of Local Work Area Agreements.

A Local Work Area Agreement will be implemented subject to the following requirements—

(a) The changes sought will maintain or improve the current standards of service provided to customers and quality of working life of employees.

(b) Each Local Work Area Agreement will form part of this Agreement and be registered in the Western Australian Industrial Relations Commission.

(c) Each Local Work Area Agreement will operate for a specific period of time which shall not exceed the life of this Agreement. With the renegotiation of this Agreement the Local Work Area Agreements may be continued or renegotiated.

(d) Each Local Work Area Agreement will be in writing and signed by the parties to that specific Local Work Area Agreement.

(e) A requirement of the Local Work Area Agreement is that any increased costs resulting from the Local Work Area Agreement should be equal to or surpassed by improved productivity, efficiency, effectiveness or quality achieved through implementation of that Local Work Area Agreement.

(8) Process for assisting Local Work Areas unable to achieve Local Work Area Agreement's in the required time frame.

If on recognition by either party that a local work area is experiencing difficulty in establishing a Local Work Area Agreement, then the following process will be followed:

(a) A representative(s) of the work area notifies the relevant Supervisor/Manager/Director and other relevant parties that difficulties in achieving a Local Work Area Agreement are being experienced.

(b) The relevant Supervisor/Manager/Director meets with the Local Work Area and attempts to resolve the difficulties being experienced.

(c) If those efforts fail to resolve the difficulties a member or members (including the Supervisor) can request the assistance of the Enterprise Bargaining Consultative Team. The Enterprise Bargaining Consultative Team will then employ a range of strategies to overcome the difficulties.

(d) If the Enterprise Bargaining Consultative Team cannot resolve the difficulties in the Local Work Area,

the matter may be referred to the Western Australian Industrial Relations Commission in accordance with Section 44 of the Industrial Relations Act, 1979.

At any time during the above process, employees may seek the advice, assistance or involvement of their union.

(9) Monitoring and Reporting

The parties are committed to a process of continuous improvement and regard Key Performance Indicators as a means of measuring what has been achieved and identifying the need for further improvements. The primary role of performance indicators is to assist in the attainment of corporate goals in the interest of the customers, staff and Council.

Key Performance Indicators will be developed with reference to organisational objectives, the corporate plan and objectives of specific work areas. These objectives should be developed through the agreed consultative process and will be subject to periodic review.

It is recognised that Key Performance Indicators are not an end in themselves, but are a means of identifying trends and efficiency against Best Practices benchmarks.

Such benchmarking will—

(a) measure Council's performance with other like organisations;

(b) compare with organisations that exemplify Best Practice;

(c) identify areas where there is potential for further improvements.

Key performance indicators may include but not be limited to—

(a) QUALITY INDICATORS

Quality
Use of Relevant Technology
Ethical processes
Transparent Processes
Innovation
Industry leadership

(b) STAFF MANAGEMENT RELATIONS INDICATORS

Internal and External Communication
Empowered Workforce
Absenteeism
Employee satisfaction
Staff Turnover
Management Performance
Industrial disputation
Training

(c) CUSTOMER RELATIONS INDICATORS

Responsive Service Delivery
Customer Service
Customer Satisfaction
Market Awareness

(d) COST EFFICIENCY INDICATORS

Allocated Unit Cost of Service Delivery
Wastage/Rework
Incidence/Costs of Public Liability
Incidence/Costs of Workplace Injury

(10) Payments

(a) A review by the Enterprise Bargaining Consultative Team of the process of the formation of Local Work Area Agreement's will begin on 1 May 1996.

Employees covered by Local Work Area Agreement's registered on or before 1 July 1996 will receive the second payment from 1 July 1996.

Other employees will receive the second payment from 1 July 1996 except where the Enterprise Bargaining Consultative Team is not satisfied that genuine bargaining is occurring. In which case payment will be effective from the date on which the Enterprise Bargaining Consultative Team is satisfied that genuine bargaining is occurring.

The Enterprise Bargaining Consultative Team may seek the assistance of the Western Australian Industrial Relations Commission if it is experiencing difficulty in determining whether genuine bargaining is occurring.

(b) A review by the Enterprise Bargaining Consultative Team of the progress of the implementation of Local Work Area Agreement's will begin on 1 August 1996.

Employees who have implemented Local Work Area Agreement's on or before 1 October 1996 will receive the third payment from 1 October 1996.

Other employees will receive the third payment from 1 October 1996 except where the Enterprise Bargaining Consultative Team is not satisfied that genuine bargaining is occurring. In which case payment will be effective from the date on which the Enterprise Bargaining Consultative Team is satisfied that genuine bargaining is occurring.

The Enterprise Bargaining Consultative Team may seek the assistance of the Western Australian Industrial Relations Commission if it is experiencing difficulty in determining whether genuine bargaining is occurring.

(11) Review of Local Work Area Agreement's

By December 1996 an internal audit by management and employees will be undertaken and will be overseen by the Enterprise Bargaining Consultative Team.

The audit is to concern itself with productivity, efficiency and effectiveness gains achieved during the life of this Agreement and will confirm financial and quality achievements.

11.—UTILISATION OF TECHNOLOGY, PLANT AND EQUIPMENT

(1) The parties recognise that one of the components to improved efficiency and productivity is the appropriate purchase and utilisation of plant and equipment.

(2) On signing of this Agreement the Enterprise Bargaining Consultative Team will undertake to monitor, at least every six months, the process for appropriate purchase, hire, lease and utilisation of plant and equipment and will address such issues as, but not be limited to—

- minimisation of waste
- minimisation of down time
- the most cost effective way of acquiring and or replacing plant and equipment
- the establishment of a consultative process.

Prior to the implementation of any change which has a significant effect on employees, the opportunity for proper and effective consultation through appropriate on-site consultative mechanisms will occur.

12.—INTRODUCTION OF CHANGE

Where the Council has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the Council shall notify the employees who may be affected by the proposed changes and their Union.

The Council shall discuss with the employees affected and their Union the introduction of the changes referred to above, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees. The Council shall give prompt consideration to matters raised by the employees and/or their Union in relation to the changes.

Discussions shall commence as early as practicable after a firm decision has been made by the Council to make the changes.

For the purpose of such discussion, the Council shall provide to the employees concerned and their Union, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that the Council shall not be required to disclose confidential information, the disclosure of which would be contrary to its interests.

13.—COMPETITIVE TENDERING

The parties agree that affected employees shall be consulted prior to Council determining which, if any, services are to be opened to Competitive Tendering.

Before any of the City's services performed by employees are subject to Competitive Tendering a Management/Employee consultative review shall be carried out to determine the full cost to Council of carrying out that service.

Following the above being completed the affected employees shall be given 6 months notice of any proposal to call tenders for that Council Service and shall be given appropriate training to enable them to prepare and submit a quality tender.

A Code of Practice defining minimum standards of quality, safety and award wages shall be jointly developed by employees and management. This Code of Practice, when developed, shall be included in a Council Policy and shall be strictly enforced.

Employees shall not be excluded from participating in any tendering process.

14.—REMUNERATION AND TIMING

The following remuneration and timing is agreed by the parties and should be read subject to subclause (10) of Clause 10.—Productivity Improvements in this Agreement, of this agreement:

- $17.50 per week upon entering into this Agreement, effective the first full pay period commencing on or after 1.10.95.
- $12.50 per week or 2.5% of base award rate, whichever is the greater, available the first full pay period commencing on or after 1.7.96.
- $15.00 per week or 3% of base award rate, whichever is the greater, available the first full pay period commencing on or after 1.10.96.
- Additional 1% of base award rate Council contribution to superannuation for employees contributing to the voluntary scheme, effective the first full pay period commencing on or after 1 July 1996. Future increases in superannuation payments will be considered in the context of the next agreement..

15.—PREVENTION AND SETTLEMENT OF DISPUTES

The success of the mutual relations between the Council, its employees and the Unions under this Agreement depends on their shared commitment to address issues in a fair and reasonable manner.

All negotiations will be conducted in good faith and on the basis of mutual trust.

The following procedure shall be followed to facilitate the resolution of a grievance, complaint, claim or dispute between the Council and an employee or group of employees.

(a) The employee(s) or steward in the first instance shall discuss the matter with the immediate supervisor. Where the matter cannot be satisfactorily resolved the supervisor shall within 3 working days refer the matter to a more senior officer with the employee(s) being advised accordingly.

(b) The more senior officer where possible will answer the matter raised within one week of it being referred to such an officer. If such an officer is unable to resolve the matter he/she shall refer the matter to the appropriate Divisional Director and advise the employee(s) accordingly.

(c) If the matter has been referred in accordance with paragraphs (a) and (b) above and the matter remains in dispute the employee(s) or steward shall refer the matter to the appropriate union(s), who shall then seek to resolve the dispute in negotiation with the City Manager or delegated representative of the Authority.

(d) The City Manager shall as soon as practicable after considering the matter advise the employee(s) and/or union representatives. Provided that such advice shall be given within 10 days of the matter being referred to the City Manager.

(e) Should the matter remain in dispute after the above process has been exhausted the matter may be referred by either party to the Western Australian Industrial Relations Commission for determination.

16.—NO EXTRA CLAIMS

It is agreed that for the term of this Agreement the Unions will not pursue any extra claims, Award or Over Award, which are inconsistent with State Wage Case Decision, or seek to apply any Wage Case Decision, excluding any current claims.

17.—RENEWAL OF AGREEMENT

The Parties agree to commence negotiations on a new Agreement no later than six months prior to the termination date of this Agreement.

During this six months deliberation period, the parties will meet in order to seek agreement/resolution of any issues.

In the event that the Agreement is not re-negotiated or replaced, this Agreement will remain in place with an additional payment to be negotiated.

18.—COMMITMENT TO SINGLE AWARD

Council is committed to the establishment of a single award for all employees of the City of Fremantle. Following registration of this Agreement, the parties agree, as a first step, to establish a working party to progress common conditions.

19.—SIGNATORIES

For and on behalf of the Union THE AUSTRALIAN LIQUOR, HOSPITALITY & MISCELLANEOUS WORKERS' UNION, MISCELLANEOUS WORKERS' DIVISION, WESTERN AUSTRALIAN BRANCH.

The Secretary

Dated: 6 October 1995

For and on behalf of the Union CONSTRUCTION, MINING, ENERGY, TIMBERYARDS, SAWMILLS & WOODWORKERS UNION OF AUSTRALIA, WESTERN AUSTRALIAN BRANCH

Ron Keilty (Assistant Secretary)

Dated: 5 September 1995

For and on behalf of the Union THE WESTERN AUSTRALIAN BUILDERS', LABOURERS', PAINTERS AND PLASTERS UNION OF WORKERS

Kevin Reynolds (Secretary)

Dated: 5 October 1995

THE COMMON SEAL of CITY OF FREMANTLE was hereunto affixed by authority of a resolution of the Council in the presence of:

The Mayor of the City of Fremantle. Jenny Archibald

on this 17th day of October 1995

City Manager — Ray Glickman

on this 16th day of October 1995

COCKBURN CEMENT LIMITED (ENTERPRISE BARGAINING) AGREEMENT 1995.

No. AG 293 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Cockburn Cement Ltd

and

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and Others.

No. AG 293 of 1995.

Cockburn Cement Limited (Enterprise Bargaining) Agreement 1995.

SENIOR COMMISSIONER G.G. HALLIWELL.

15 December 1995.

Order.

REGISTRATION OF AN ENTERPRISE BARGAINING INDUSTRIAL AGREEMENT

No. AG 293 OF 1995

HAVING heard Mr A. Tomlinson on behalf of the Applicant and Mr K. Peckham on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch, Ms D. MacTiernan on behalf of The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch, Mr P. Grant Smith on behalf of the Merchant Service Guild of Australia, Western Australian Branch, Union of Workers, Mr A. Waddell on behalf of the Transport Workers' Union of Australia, Industrial Union of Workers, Mr B. Krygsman on behalf of the Australian Workers' Union, West Australian Branch, Industrial Union of Workers and Mr B. Jones on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Schedule titled the Cockburn Cement Limited (Enterprise Bargaining) Agreement 1995, signed for me for identification, be registered as an Enterprise Bargaining Industrial Agreement and shall take effect on and from the 8th day of November, 1995.

(Sgd.) G. G. HALLIWELL,
[L.S.] Senior Commissioner.

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Schedule.

1.—TITLE

This Agreement shall be known as the 'Cockburn Cement Limited (Enterprise Bargaining) Agreement 1995'.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope and Parties to the Agreement
4. Term of the Agreement
5. Relationship to Parent Award
6. Single Bargaining Unit
7. Aims and Objectives of the Agreement
8. Annualised Salaries
9. Salary Rates
10. Hours of Work
11. Leave Conditions
12. Sick Leave
13. Family Leave
14. Redundancy
15. Calculation of Termination Pay
16. Superannuation
17. Use of Contractors
18. Review and Renewal of Agreement
19. Team Leader Allowance
20. Signatories

3.—SCOPE AND PARTIES TO THE AGREEMENT

(1) This Agreement shall apply to Cockburn Cement Limited, and the employees employed in the classifications mentioned herein, at the main works in Russel Road and Woodman Point.

(2) The following unions are parties to this Agreement:

(a) The Automotive, Food, Metals, Engineering, Printing, and Kindred Industries Union of Workers—Western Australian Branch.

(b) The Australian Workers' Union, Western Australian Branch, Industrial Union of Workers.

(c) Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia, Engineering & Electrical Division (WA Branch).

(d) The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch.

(e) Merchant Service Guild of Australia, Western Australian Branch, Union of Workers.

(f) Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch.

(3) The parties will oppose any applications by other parties to be joined to this Agreement.

4.—TERM OF THE AGREEMENT

This Agreement shall operate from the first pay period commencing on or after 8th November, 1995, and shall remain in force until 31st October, 1998.

5.—RELATIONSHIP TO PARENT AWARD

(1) This Agreement shall be read and interpreted wholly in conjunction with the Cockburn Cement limited Award 1991 No. A14 of 1991, provided that where there is any inconsistency, the terms of this Agreement shall prevail.

(2) Except as provided in subclauses 5(1) hereof, the parties undertake for the term of this Agreement to maintain and adhere to the entitlements and conditions contained within the Cockburn Cement Limited Award, 1991.

6.—SINGLE BARGAINING UNIT

(1) In accordance with the State Wage Decision in January 1992 (72 WAIG 191) the employees and the company have formed a single bargaining unit in respect to the Cockburn Cement operations.

(2) The single bargaining unit will ensure that the framework of this enterprise agreement is adhered to by holding regular meetings with Shop Stewards at Consultative Committee meetings.

(3) The single bargaining unit will assist in the implementation of measures that have been agreed to by the parties that are designed to improve the efficiency and productivity of the enterprise.

7.—AIMS AND OBJECTIVES OF THE AGREEMENT

(1) The intent of this Agreement is to provide all employees with a guaranteed annual salary. Fortnightly pay will be constant, whether on annual leave, long service leave, sick leave, paternity leave, bereavement leave, workers' compensation, family leave or other approved reasons.

(2) The purpose of entering into an enterprise bargaining agreement is to increase the productivity, efficiency and flexibility of Cockburn Cement operations to ensure the company remains competitive within the cement and lime manufacturing industries.

(3) The company remains committed to the continual training of all personnel so that their skills base can be enhanced and maintained, and to provide an environment in which these new skills can be utilised and recognised to the satisfaction of individual employees.

(4) Furthermore, the company recognises the need to improve occupational health and safety for all employees and is therefore committed to the continued development and implementation of health and safety initiatives. This agreement provides for the participation of all employees in these initiatives in order that the Russel Road and Woodman Point operations will become a safer working environment.

8.—ANNUALISED SALARIES

(1) Employees fortnightly payment shall be one twenty-sixth of the annual deemed salary for the employee's grade as set out in Clause 9.—Salary Rates of this Agreement.

(2) The annualised deemed salary includes the ordinary 72 hour fortnight and consolidation of all existing award pay additions and allowances (except first aid, travel and meal allowance) plus a committed number of additional worked hours.

(3) Salary adjustments arising from short term anomalies shall be determined for each fortnight and implemented in the following pay period. Such adjustments shall not be considered as forming part of the annual salary. They will include:

(a) Change of grade for all temporary higher duty work, including temporary Team Leader (minimum period of 36 continuous hours).

(b) Any period of unpaid leave.

9.—SALARY RATES

The salary rates to apply pursuant to this Agreement for permanent employees with two or more years of service are as follows:

(1) (a) Day employees from the first pay period commencing on or after 8th November, 1995.

	Total Committed Hours		
	2072	2272	2472
Grade	$	$	$
8	40000.00	46500.00	54000.00
7	38500.00	45000.00	52000.00
6	37000.00	43500.00	50500.00
5	35500.00	42000.00	48000.00
4	34500.00	40500.00	46500.00
3	33000.00	38500.00	44500.00
2	32000.00	37000.00	43000.00
1	30000.00	35500.00	41000.00

(b) Day employees from the first pay period commencing on or after 8th April, 1997.

	Total Committed Hours		
	2072	2272	2472
Grade	$	$	$
8	41500.00	48500.00	56000.00
7	40000.00	47000.00	54000.00
6	38500.00	45000.00	52500.00
5	37000.00	43500.00	50000.00
4	36000.00	42000.00	48500.00
3	34000.00	40000.00	46500.00
2	33000.00	38500.00	44500.00
1	31500.00	37000.00	42500.00

(2) (a) Main Works employees from the first pay period commencing on or after 8th November, 1995.

	Total Committed Hours		
	2022	2022	2022
Grade	2 Shift Cement Mills	4 Shift EOT Crane	5 Shift Main Works
	$	$	$
8	55000.00	51500.00	52000.00
7	53500.00	50000.00	50000.00
6	52000.00	47500.00	47500.00
5	50000.00	46000.00	45500.00
4	47500.00	44500.00	43500.00
3	45500.00	42500.00	42000.00
2	44000.00	41000.00	39500.00
1	42000.00	39000.00	37000.00

(b) Main Works employees from the first pay period commencing on or after 8th April, 1997.

	Total Committed Hours		
	2022	2022	2022
Grade	2 Shift Cement Mills	4 Shift EOT Crane	5 Shift Main Works
	$	$	$
8	57500.00	53500.00	54000.00
7	55500.00	52000.00	52000.00
6	54000.00	49500.00	49500.00
5	52000.00	48000.00	47500.00
4	49500.00	46500.00	45000.00
3	47500.00	44000.00	43500.00
2	45500.00	42500.00	41500.00
1	43500.00	41000.00	38500.00

(3) (a) Floating Plant employees from the first pay period commencing on or after 8th November, 1995.

Grade	Total Committed Hours	$
Dog 4	2217	57000.00
Dog 3	2217	55000.00
Dog 2	2217	53000.00
Dog 1	2257	52000.00

(b) Floating Plant employees from the first pay period commencing on or after 8th April, 1997.

Grade	Total Committed Hours	$
Dog 4	2217	59500.00
Dog 3	2217	57500.00
Dog 2	2217	55000.00
Dog 1	2257	54000.00

(4) (a) Woodman Point Wash Plant (4 shift roster) employees from the first pay period commencing on or after 8th November, 1995.

NB. 4 shift roster is 42 normal hours per week.

Grade	Total Committed Hours	$
5	2259	52000.00

(b) Woodman Point Wash Plant (4 shift roster) employees from the first pay period commencing on or after 8th April, 1997.

NB. 4 shift roster is 42 normal hours per week.

Grade	Total Committed Hours	$
5	2259	54000.00

(5) Where an employee is absent from work, except whilst on paid leave, the employees salary will be reduced at the annualised salary hourly rate.

10.—HOURS OF WORK

(1) The hours of work for each employee will comprise ordinary hours in accordance with the award plus the additional hours required in accordance with each employee's commitment to committed hours as provided in this clause.

(2) The salary package is offered and accepted on the understanding that cover will be provided as requested (and within reason) to meet the operational and maintenance needs of the company. Each department within the company shall implement an agreed system of work to meet this requirement.

(3) The intent of the agreement is not to manufacture extra working hours in order to ensure total use of hours committed.

(4) (a) Consistent with their department's requirements and by mutual agreement, individuals may be allowed to change their additional hours commitment level to meet changed personal circumstances.

(b) Where an employee repeatedly makes themselves unavailable to work their committed hours (except when absent on authorised leave) and is unable to provide a satisfactory explanation to that effect, then the employee may have their committed hours, and therefore salary, reduced. In the first instance, every effort will be made to resolve the situation by the relevant Shop Steward at shop floor Level. If unable to be resolved, such problem matters will be referred to management for further consultation. In every situation the opportunity shall be given for discussion regarding the personal circumstances of the employee, prior to the taking of any action as described above.

(5) The company shall be obliged:

(a) To minimise the use of committed hours and, in particular, the need for employees to attend on rostered days off and call outs.

(b) To not seek the attendance of employees unreasonably.

(c) To ensure that employees within all grades and at all levels proportionally share all additional hours, as equally as possible.

(d) To acknowledge that, exceptionally, prior commitments may restrict an employee's availability to work

additional hours on a particular occasion. This does not absolve the employee from the responsibility of working a fair share of additional hours.

(6) An employee commencing part way through the year will be offered a pro-rata number of additional hours based on the additional hours requirement of the department determined at that time.

(7) Where it is necessary to work committed hours, employees will be given as much notice as practicable in the circumstances.

(8) (a) The hours of attendance of each employee will be recorded by the individual departments on their electronic time sheets. This information will be regularly updated and made available for review in each department on a fortnightly basis, so that the use of additional hours can be proportionally balanced between individuals in the same group.

(b) Further records will be kept by individual departments as required, to show the number of occasions when individuals work on rostered days off, are "called out" or work on a public holiday, with the aim of ensuring fairness.

(9) All training will be debited against committed hours.

(10) Where it is necessary to call someone back to work, the minimum number of hours in attendance shall be recorded for the purposes of subclause (8) hereof as four. For hours worked in additional to four, the actual number of hours attended will be credited. In either case, travelling time of one hour will also be credited as one additional hour.

(11) Additional hours commitments (as shown in Clause 9.—Salary Rates herein) are those hours worked in addition to a 72 hour fortnight.

(12) At the end of each 12 month period, the outstanding balance of unused committed hours, will be written off and not carried forward as on-going obligation of the employee.

Any committed hours which are written off, will not result in a reduction of salary provided subclause (4). of this clause is complied with.

As such, the addition hours' commitment by each employee for the year are the maximum the employee will be required to work.

11.—LEAVE CONDITIONS

(1) Annual Leave, Public Holidays, Long Service Leave, Sick Leave, Paternity Leave, Family Leave and Bereavement Leave will be paid at the rate specified in Clause 9.—Salary Rates of this Agreement.

(2) An employee may request to be paid for Annual or Long Service Leave at the commencement of such leave, rather than at the normal fortnightly pay cycle.

12.—SICK LEAVE

(1) An employee who is unable to attend or remain at his/her place of employment during the ordinary working hours of work by reason of personal ill health or injury, shall be entitled to payment during such absence at their rate of salary as defined in Clause 9.—Salary Rates of this Agreement.

(2) Subject to subclause (5)(a) of this clause, payment during such illness shall continue whilst there is a reasonable medical expectation of a return to work.

(3) At the last pay period of the current Agreement, all employees bound by this Agreement will have their accrued sick leave entitlements paid out at the current annualised salary rate (Cockburn Cement Agreement 1993).

(4) There will be no accrual of sick leave entitlements during the life of this Agreement.

(5) (a) The continued payment of sick leave for employees covered by the agreement will be monitored by a sub-committee of equal employee/employer representation including the relevant Shop Steward. This sub-committee may request input from relevant advisers (personal doctor, Company doctor and/or other specialists) if required. Every effort will be made to provide an early return to work as per the company's rehabilitation policy.

(b) An employee who is unlikely to be able to return to work, will be entitled to make representation to the sub-committee, on compassionate grounds. The employee's circumstances will be carefully considered by the sub-committee before deciding at what point his/her sick leave payments may be discontinued.

13.—FAMILY LEAVE

(1) Permanent employees with 12 months continuous service will be entitled to claim paid family leave up to a maximum of five days per year, in respect of a member of their immediate family who resides with them and requires their care.

(2) In order for family leave entitlements to be paid, the employer shall require the employee to produce a medical certificate to verify their claim that a member of their immediate family requires their care.

(3) Applications for family leave entitlements from permanent employees with less than 12 months continuous service will be a the Works Manager's discretion.

14.—REDUNDANCY

During the term of this Agreement, payments made to an employee who has been made redundant, will be at their current salary rate.

15.—CALCULATION OF TERMINATION PAY

An employee whose contract of employment terminates during the life of this agreement, shall have their final salary payment calculated at the annualised rate on the number of days worked in the last pay fortnight.

16.—SUPERANNUATION

(1) Notwithstanding the provisions of Clause 27(2) of the Cockburn Cement Ltd Award, superannuation contributions shall be paid fortnightly by the company at the rate of 7.5% of the employees deemed annualised salary contained in Clause 9.—Salary Rates of this Agreement, into one of the following funds of the employee's choice:

WESTSCHEME

THE INDUSTRY SUPERANNUATION FUND PTY LTD

SUPERANNUATION TRUST OF AUSTRALIA

LIFETRACK

(2) Contributions will not be made in respect of periods of unpaid leave.

17.—USE OF CONTRACTORS

(1) Due to decreased manpower levels because of sickness, holiday leave, long service leave, workers' compensation, alternative duties, excessive plant breakdowns, contractors may be utilised to supplement existing manning levels.

(2) The company will maintain contractor use at appropriate levels to ensure the needs of individual departments are met as determined by the respective department head with due consultation with the relevant Shop Stewards at Shop Floor Committee meetings.

18.—REVIEW AND RENEWAL OF AGREEMENT

(1) The operation of this Agreement will be monitored at regular intervals by the Consultative Committee and reviewed by all parties during its three year term. A formal review of this Agreement will occur on a yearly basis.

(2) The parties will review the Agreement three months prior to the end of the agreement period. Such a review is expected to result in the re-negotiation or renewal of the conditions and entitlements within the agreement.

19.—TEAM LEADER ALLOWANCE

In addition to the salaries prescribed in Clause 9.—Salary Rates, a Team Leader (previously known as Leading Hand) allowance will be paid at the rate of 5% of the respective deemed salary level. This will then become his/her actual deemed salary.

20.—SIGNATORIES

(1) (Sgd)

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On behalf of Cockburn Cement Limited

(2) J. Sharp-Collett

The Automotive, Food, Metals, Engineering, Printing, and Kindred Industries Union of Workers —Western Australian Branch

(3) (Sgd)

The Australian Workers' Union, West Australian Branch, Industrial Union of Workers

(4) (Sgd)

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering & Electrical Division (WA Branch)

(5) W. Ethel

The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia— Western Australian Branch

(6) (Sgd)

Merchant Service Guild of Australia, Western Australia Branch Union of Employees

(7) J. McGiveron

Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch

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CONSOLIDATED CONSTRUCTIONS EAST PERTH HOLIDAY INN AGREEMENT
No. AG 214 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Consolidated Constructions Pty Ltd.

No. AG 214 of 1995.

Consolidated Constructions East Perth Holiday Inn Agreement 1995.

COMMISSIONER P E SCOTT.

22 November 1995.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered on the 22nd day of November 1995 to operate with effect on and from the 11th day of September 1995.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Consolidated Constructions East Perth Holiday Inn Agreement 1995.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Introduction
4. Application and Scope of the Agreement
5. Period of Operation
6. Commitment
7. Union Representation
8. Termination of Agreement
9. Consultative Committee
10. Dispute Avoidance and Settlement Procedure
11. Application of Agreement
12. Procedure for Settling Disagreements over Safety Issues
13. Industry Standards
14. Rostered Days Off
15. Allowances
16. Skills Enhancement Programme
17. Consultation on Training Development
18. Introduction of Skills Based Pay Classification Structure
19. Sick Leave Entitlement
20. No Further Claims
21. Hours of Work
22. Special Conditions
23. Team Ratios
24. Demarcation Procedure
25. Disciplinary Procedure
26. Signatories

3.—INTRODUCTION

(1) Joint Statement

This Agreement between Consolidated Constructions Pty Ltd ("the Company") and its employees and The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers ("BLPPU") (the Union) defines the relationship between the Company's employees who are eligible to be BLPPU members and all levels of management.

It recognises the value of all of the above parties working co-operatively towards maintaining and improving the competitiveness of the Company.

This Agreement is, as well as an agreement for this project, a framework for the future, because of the opportunities now available through award restructuring and the building industry reform process to achieve a more efficient, stable and rewarding industry.

(2) Aims

The aims of this Agreement are:

(a) To identify the advantages available through working co-operatively.

(b) To recognise that at various times the interests of the respective parties may not coincide but that with the development of good will and trust conflict can be minimised.

(c) To establish the necessary framework to deal with the major site issues that confront the building and construction industry.

(3) Objectives

The objectives of this Agreement with respect to all parties are:

(a) To eliminate as far as practicable, barriers to efficiency and productivity.

(b) To create a better working environment for all employees.

(c) To create an awareness of the need for continuous improvement in all aspects of the building process.

(d) To contribute to the implementation of reforms in the building construction industry.

4.—APPLICATION AND SCOPE OF THE AGREEMENT

(1) This Agreement shall apply to the Company and all its employees engaged on site at the Holiday Inn Project located in East Perth in the State of Western Australia.

(2) (a) This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Building Trades (Construction) Award 1987, No. 14 of 1978 ("the Award") shall apply.

(b) Where there is a conflict between rates of pay, conditions, allowances and other matters in this Agreement and the provisions in the Award, the higher standard shall apply.

5.—PERIOD OF OPERATION

This Agreement shall operate from the commencement of work on the Holiday Inn Project until the completion of construction work on this project. This Agreement can only be terminated by any of the parties to the Agreement in the manner described in Clause 8.—Termination of Agreement of this Agreement.

6.—COMMITMENT

The parties to this Agreement are committed to ensuring that:

(1) The terms and conditions of this Agreement lead to real gains in overall job productivity and workplace efficiencies, without reduction to health and safety standards.

(2) (a) The dispute avoidance procedure and settlement procedures provided for in Clause 10.—Dispute Avoidance and Settlement Procedure of this Agreement are rigorously adhered to.

(b) Payment for lost time due to industrial disputes will not be claimed (or paid) other than as described in Clause 10.—Dispute Avoidance and Settlement Procedure of this Agreement.

7.—UNION REPRESENTATION

(1) This Agreement recognises that the Union party to this Agreement and its accredited representatives are legitimate representatives of the Union's members covered by this Agreement.

(2) The rights of accredited Union officials to access the Holiday Inn Project to allow those officials to represent the interests of the Union's members on site is recognised by the Company.

(3) The Company will allow shop stewards/delegates adequate time during normal working hours to attend to Union duties providing that when not carrying out Union duties, shop stewards/delegates will carry out those work duties appropriate to their construction worker designation.

8.—TERMINATION OF AGREEMENT

(1) This Agreement can only be terminated by the Union:

(a) If the Company has knowingly and consistently acted contrary to terms and conditions of the Agreement; and

(b) After proper consultation has occurred with the Company's employees; and

(c) If one month's written notice has been given to the Company; and

(d) After application for termination has been made to the Western Australian Industrial Relations Commission pursuant to section 43 of the (Western Australian) Industrial Relations Act, 1979.

(2) This Agreement can only be terminated by the Company:

(a) If the Union or any group of employees has knowingly and consistently acted contrary to terms and conditions of the Agreement; and

(b) If the Company has exhausted the dispute avoidance and settlement procedure contained in Clause 10.—Dispute Avoidance and Settlement Procedure of this Agreement; and

(c) If one months' written notice has been given to the Union and application has been made to the Western Australian Industrial Relations Commission pursuant to section 43 of the (Western Australian) Industrial Relations Act, 1979.

9.—CONSULTATIVE COMMITTEE

(1) The parties agree to the establishment and maintenance of a Consultative Committee on site. This committee shall deal with and monitor all site related proposals for workplace reform processes and initiatives, and enterprise bargaining issues.

(2) The parties acknowledge the central role of the Consultative Committee in developing and maintaining the conditions and industrial climate necessary for the successful application of this Agreement.

(3) The Consultative Committee shall be provided with all the relevant information necessary for them to monitor the implementation of this Agreement.

(4) It is accepted that the State Secretary of the Union and the Managing Director of the builder of the Holiday Inn Project or their nominees may attend the Consultative Committee.

(5) The Consultative Committee will comprise representatives from management and workforce in equal numbers.

(6) The project Consultative Committee shall consist of six persons representing the following groups:

One representative of the Project Builder
One representative of the Structural Contractors
One representative of the Service Contractors
One representative of the Construction Labourers
One representative of the Construction Tradespeople
One representative of the Service Sector Workers

(7) The representatives of the workforce on the Consultative Committee shall be elected from the workforce on site.

The representatives of the contractors shall similarly be elected from representatives engaged on site.

(8) The parties to this Agreement agree to support the operation of the project Consultative Committee, notwithstanding any party to this Agreement may not provide a representative to sit on the committee.

10.—DISPUTE AVOIDANCE AND SETTLEMENT PROCEDURE

(1) In the first instance an employee shall submit a request concerning an industrial issue to either their own site Union representative or the immediate supervisor/foreman. If the matter cannot be resolved at this stage then the following procedure shall be applied.

(a) The employee and Union delegate/shop steward shall submit the issue to the immediate supervisor/foreman.

(b) If not settled at this stage the employee and Union delegate/shop steward shall submit the issue to the site manager of the Company.

(c) If not settled at this stage the Union delegate/shop may submit the matter to the Union organiser for discussion with the project manager or industrial relations officer in consultation with the company's site manager.

(d) If not settled at this stage the Union organiser may submit the matter to the Union secretary for discussion with the project builder at the state senior management level. The matter shall then be discussed further with the senior management representative of any other relevant contractor.

(e) If the dispute still exists after the aforementioned processes have been carried out, then the matter shall be referred to the Western Australian Industrial Relations Commission for determination. The decision of the Western Australian Industrial Relations Commission will be accepted by all parties subject to legal rights of appeal.

(2) Whilst the above procedures are being carried out work will continue as it did prior to the issue arising. Neither party shall be prejudiced as to final settlement by the continuance of work in accordance with this clause.

11.—APPLICATION OF AGREEMENT

(1) It is agreed the terms and conditions contained in this Agreement shall be strictly followed by all parties to the Agreement.

(2) Should any dispute arise as to the application or interpretation of this Agreement or any part of it, the matter in the first instance shall be discussed in the Consultative Committee. If not resolved in these discussions the procedures prescribed in Clause 10.—Dispute Avoidance and Settlement Procedure shall be followed.

12.—PROCEDURE FOR SETTLING DISAGREEMENTS OVER SAFETY ISSUES

(1) Where a safety problem exists work shall cease only in the affected area. Work shall continue elsewhere unless access to safe working areas is unsafe. However, any problem of access shall immediately be rectified and the workers will use an alternative safe access to such safe working areas while the usual access is being rectified.

(2) Should a whole project be in dispute on the basis that the whole project is thought to be unsafe, a Department of Occupational Health, Safety and Welfare (DOSHWA) inspector shall be immediately called. Pending the arrival of the inspector the following procedures shall apply:

(a) Workers shall not leave the site but shall remain in the sheds.

(b) Immediate inspections of the disputed areas involving both employer and employee representatives of the site safety committee shall take place in the order of priority nominated by the project builder in consultation with other relevant contractors. These inspections shall identify what safety rectification needs to take place in the disputed areas.

(c) All workers who can be gainfully employed shall immediately rectify that which needs to be rectified.

(d) The project builder will nominate in order of priority the areas to be inspected by the safety committee as rectification work is completed. On verification that rectification has been completed productive work will resume. Such resumption of work shall take place in stages as each area has been cleared.

(e) Providing that any disagreement between the builder and the safety committee shall be determined by the recommendation of a DOSHWA inspector.

(f) The position of the chairperson of the Workplace Safety Committee or the safety representative shall be undertaken in addition to their normal work obligations to the Company.

(3) The Company and employee(s) recognise their obligations as set out in the Occupational Health, Safety and Welfare Act.

13.—INDUSTRY STANDARD

The Company will continue to meet its current level of payment into the following non-wage benefit schemes for the life of this Agreement:

(1) Construction + Building Unions Superannuation Scheme.

(2) Western Australian Construction Industry Redundancy Fund;

(3) The Portable Long Service Leave Scheme.

14.—ROSTERED DAYS OFF (RDO'S)

(1) The parties to this Agreement acknowledge that a more flexible arrangement for the taking of RDO's will improve the efficiency of the building and construction industry.

(2) (a) Where at any time during the project a variation to the RDO is required, the appropriate method of RDO flexibility to meet the situation shall be discussed and agreed in the Consultative Committee.

(b) Alternative arrangements for RDO's agreed in this procedure shall be taken to meet the particular notice requirements of the Award.

15.—ALLOWANCES

(1) Site Allowances

A site allowance of $2.55 per each hour worked shall be paid to all employees covered by this Agreement to cover special factors and disabilities related to work on the project.

This allowance shall be paid in lieu of all special rates and conditions contained within Clause 9.—Special Rates and Provisions of the Award with the exception of those rates for the lifting of heavy blocks, cleaning down brickwork and use of explosive powered tools.

(2) Structural Frame Allowance

An allowance of $1.00 per each hour shall be paid for all purposes of the Award to employees covered by this Agreement as a structural frame allowance.

(3) Productivity Allowance

(a) An allowance of $1.00 per each hour shall accrue to each employee whilst working on site on the project.

(b) This allowance shall only become payable to the employee on the successful completion to program of all work on the project.

(4) The allowances prescribed in this clause shall be paid in addition to the wage rates agreed between the parties.

16.—SKILLS ENHANCEMENT PROGRAMME

(1) The parties recognise a commitment to develop and maintain a skills enhancement programme.

Any agreed programmes will provide training in NBCITC accredited general, common and task specific skills appropriate to the relevant career path.

(2) Training needs and opportunities shall be identified by the Consultative Committee.

(3) To the extent possible and practicable, and where the parties agree, other site contractors may be integrated into the project builder's workplace reform programme insofar as it operates in relation to work covered by this Agreement and is relevant to the type of work undertaken by the other party, and shall have access to all training material generally available to the project as deemed appropriate by the Consultative Committee.

(4) The parties to the Agreement shall pay attention to issues of equity when determining access to training. For example, attention will be paid to ensure that employees lacking in literacy skills are not disadvantaged.

(5) An amount of 20 cents per employee per each hour worked shall be paid into the Construction Skills Centre Education and Training Fund, recognising that funds from this trust are to be directed to developing and maintaining relevant employee work skills.

17.—CONSULTATION ON TRAINING DEVELOPMENT

The Consultative Committee shall monitor the introduction of any skills enhancement programme applicable to work on the project.

18.—INTRODUCTION OF SKILLS BASED PAY CLASSIFICATION STRUCTURE

(1) The parties to this Agreement agree to work towards establishing a skills based pay structure for this Agreement similar to those already existing at a company and national level.

(2) No employee shall suffer a reduction in his/her rate of pay as a result of translation to the Matrix if introduced.

(3) Within one month following signing of this Agreement the Union and the Company shall meet and discuss guidelines for the process to proceed.

19.—SICK LEAVE ENTITLEMENT

The parties to this Agreement agree to discuss during the life of this Agreement possible means to ensure the efficient and effective operation of sick leave entitlements. Any agreement reached shall be taken as forming part of this Agreement provided it is appropriately documented and signed by all parties.

20.—NO FURTHER CLAIMS

Neither the Union nor its members shall make any claim against the Company for any increase in rates of remuneration or make any other claim at all while this Agreement is current except for national or state award movements.

21.—HOURS OF WORK

The normal hours of work on this project shall be as per the Award or as agreed from time to time within Award prescriptions.

22.—SPECIAL CONDITIONS

The employees and Union undertake to adhere to the following conditions of the Company:

(1) (a) It is agreed that neither the employer nor the Union shall place any restrictions or limitations on reasonable overtime work that may be required by a contractor who is party to this Agreement.

(b) Prior notification will be given to the relevant Union for Sunday work, however no triple time or day in lieu will be claimed or apply to Sunday work and award rates only will apply.

(2) The Company will determine the appropriate manning levels to ensure that a high level of work productivity is achieved at all times.

(3) It is agreed by the Union that stop work meetings on this project will be kept to a minimum and will be timed to create minimal disruption to work progress. An agreed number of employees will always remain at work to maintain continuity of essential production.

(4) Staggered start times: At the request of the project builder, and to suit sensible movement of people and materials throughout the site, especially in relation to hoisting problems, the company will be allowed to implement staggered starting and finishing times within the ordinary spread of hours prescribed by the award without penalty payment.

(5) The Consultative Committee will ensure that lost time due to inclement weather is kept to a minimum. The Company will be allowed to take all reasonable measures to ensure that the employees can get to their place of work and carry on working in under cover areas during inclement weather. Where necessary, this may also extend to providing protection to allow workers to talk from one area to another, in line with Award provisions, keeping their normal work clothes in a dry condition.

23.—TEAM RATIOS

There shall be no dispute or industrial action of any kind over team ratios on the project. However, should any concern arise that team composition is not in accordance with industry standards, the issue shall be discussed in the Consultative Committee.

24.—DEMARCATION PROCEDURE

(1) Consultation shall be the primary method of avoiding demarcation disputes. If a dispute does occur, then senior officials of the Union concerned will meet with the aim of reaching a resolution as soon as possible.

(2) A demarcation issue or dispute shall not result in a work stoppage, ban or limitation on the project. All work shall continue as normal whilst the dispute is being resolved.

(3) If within a period of seven days the issue is not resolved the matter will be referred to the Western Australian Industrial Relations Commission.

25.—DISCIPLINARY PROCEDURE

The parties to this Agreement agree during the period of the Agreement to use the consultative processes established to discuss an appropriate disciplinary procedure.

26.—SIGNATORIES

Signed by (per)
KEVIN REYNOLDS: (signed)
Secretary

For and on behalf of: The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers
Dated: 11/9/95
Witness: Dated: 11/9/95

(signed) (Construction Manager)
For and on behalf of: Consolidated Constructions
Dated: 8/9/95
Witness: Dated: 8/9/95

COOKTOWN CONSTRUCTIONS INDUSTRIAL AGREEMENT.

No. AG 243 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Cooktown Constructions Pty Ltd.

No. AG 243 of 1995.

Cooktown Constructions Industrial Agreement.

COMMISSIONER P E SCOTT.

22 November 1995.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered on the 22nd day of November 1995 to operate with effect on and from the 26th day of September 1995.

(Sgd.) P. E. SCOTT,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Cooktown Constructions Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. Ratification
Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Cooktown Constructions Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of ratification as indicated in Clause 16.—Ratification and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees

course books and materials

payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect on and from the 26th day of September 1995.

(signed) (signed)

ON BEHALF OF THE UNION ON BEHALF OF THE COMPANY

Dated this 26th day of September 1995.

APPENDIX A

	1 August 1995 Hourly Rate	1 February 1996 Hourly Rate	1 August 1996 Hourly Rate	1 February 1997 Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

CRAIG & TAYLOR FORMWORK (1981) INDUSTRIAL AGREEMENT.

No. AG 241 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Cartledge Holdings Pty Ltd trading as Craig & Taylor Formwork (1981).

No. AG 241 of 1995.

Craig & Taylor Formwork (1981) Industrial Agreement.

COMMISSIONER P.E. SCOTT.

22 November 1995.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered on the 22nd day of November 1995 to operate with effect on and from the 21st day of September 1995.

(Sgd.) P. E. SCOTT,
[L.S.] Commissioner.

———

Schedule.

1.—TITLE

This Agreement will be known as the Craig & Taylor Formwork (1981) Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. Ratification
Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Cartledge Holdings Pty Ltd trading as Craig & Taylor Formwork (1981) (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of ratification as indicated in Clause 16.—Ratification and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees

course books and materials

payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes

including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect on and from the 21st day of September 1995.

(signed)	(signed)
	CRAIG & TAYLOR (John Craig)
ON BEHALF OF THE UNION	ON BEHALF OF THE COMPANY

Dated this 21st day of September 1995.

APPENDIX A

	1 August 1995 Hourly Rate	1 February 1996 Hourly Rate	1 August 1996 Hourly Rate	1 February 1997 Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

CROWN ROOFING INDUSTRIAL AGREEMENT.

No. AG 227 of 1995.

WESTERN AUSTRALIAN

INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Stratton Creek Pty Ltd trading as Crown Roofing.

No. AG 227 of 1995.

Crown Roofing Industrial Agreement.

COMMISSIONER P E SCOTT.

22 November 1995.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered on the 22nd day of November 1995 to operate with effect on and from the 14th day of September 1995.

(Sgd.) P. E. SCOTT,

[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Crown Roofing Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. Ratification

Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Stratton Creek Pty Ltd trading as Crown Roofing (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of ratification as indicated in Clause 16.—Ratification and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees

course books and materials

payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect on and from the 14th day of September 1995.

(signed) (signed)

ON BEHALF OF THE UNION ON BEHALF OF THE COMPANY

Dated this 14th day of September 1995.

APPENDIX A

	1 August 1995 Hourly Rate	1 February 1996 Hourly Rate	1 August 1996 Hourly Rate	1 February 1997 Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

D R & J BUILDING INDUSTRIAL AGREEMENT.

No. AG 269 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Dean Blackwell and Julie Blackwell trading as DR & J Building.

No. AG 269 of 1995.

DR & J Building Industrial Agreement.

COMMISSIONER P.E. SCOTT.

7 December 1995.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered with effect from the beginning of the first pay period commencing on or after the 13th day of October 1995.

(Sgd.) P.E. SCOTT,
[L.S.] Commissioner.

———

Schedule.

1.—TITLE

This Agreement will be known as the DR & J Building Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave

Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Dean Blackwell and Julie Blackwell trading as DR & J Building (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on all new work that commences on or after the date of signing and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees

course books and materials

payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

(signed) (signed)

ON BEHALF OF THE UNION ON BEHALF OF THE COMPANY

Dated this 13th day of October 1995.

APPENDIX A

	1 August 1995 Hourly Rate	1 February 1996 Hourly Rate	1 August 1996 Hourly Rate	1 February 1997 Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

F J & G CONTRACTORS INDUSTRIAL AGREEMENT.

No. AG 223 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

F J & G Contractors Pty Ltd.

No. AG 223 of 1995.

F J & G Contractors Industrial Agreement.

COMMISSIONER P.E. SCOTT.

22 November 1995.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered on the 22nd day of November 1995 to operate with effect on and from the 14th day of September 1995.

(Sgd.) P.E. SCOTT,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the F J & G Contractors Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. Ratification
Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and F J & G Contractors Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of ratification as indicated in Clause 16.—Ratification and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees

course books and materials

payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect on and from the 14th day of September 1995.

(signed)	(signed)
ON BEHALF OF THE UNION	ON BEHALF OF THE COMPANY

Dated this 14th day of September 1995.

APPENDIX A

	1 August 1995 Hourly Rate	1 February 1996 Hourly Rate	1 August 1996 Hourly Rate	1 February 1997 Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

G CONSTRUCTION ENGINEERING INDUSTRIAL AGREEMENT
No. AG 270 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Paddison Pty Ltd trading as G Construction Engineering.

No. AG 270 of 1995.

G Construction Industrial Agreement.

COMMISSIONER P E SCOTT.

7 December 1995.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and Mr M McLean on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered with effect on and from the 24th day of November 1995.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the G Construction Engineering Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. Ratification

Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Paddison Pty Ltd trading as G Construction Engineering (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of 20 cents per hour per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees

course books and materials

payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect from the day upon which the agreement is registered.

(signed) (signed)

ON BEHALF OF THE UNION ON BEHALF OF THE COMPANY

Dated this 20th day of October 1995.

APPENDIX A

	1 August 1995 Hourly Rate	1 February 1996 Hourly Rate	1 August 1996 Hourly Rate	1 February 1997 Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

GEO A ESSLEMONT & SON INDUSTRIAL AGREEMENT No. AG 277 of 1995.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

C H Day & Co Pty Ltd trading as Geo A Esslemont & Son.

No. AG 277 of 1995.

Geo A Esslemont & Son Industrial Agreement.

COMMISSIONER P E SCOTT.

7 December 1995.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered with effect on and from the 18th day of October 1995.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Geo A Esslemont & Son Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave

Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and C H Day & Co Pty Ltd trading as Geo A Esslemont & Son (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees
course books and materials
payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

(signed) (signed)

ON BEHALF OF THE UNION ON BEHALF OF THE COMPANY

Dated this 18th day of October 1995.

APPENDIX A

	1 August 1995 Hourly Rate	1 February 1996 Hourly Rate	1 August 1996 Hourly Rate	1 February 1997 Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

HJ & JW MAST PAINTING CONTRACTORS INDUSTRIAL AGREEMENT
No. AG 217 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Jayem Pty Ltd trading as HJ & JW Mast Painting Contractors.

No. AG 217 of 1995.

HJ & JW Mast Painting Contractors Industrial Agreement.

COMMISSIONER P E SCOTT.

22 November 1995.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered on the 22nd day of November 1995 to operate with effect on and from the 11th day of September 1995.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the HJ & JW Mast Painting Contractors Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure

7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. Ratification
Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Jayem Pty Ltd trading as HJ & JW Mast Painting Contractors (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of ratification as indicated in Clause 16.—Ratification and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees
course books and materials
payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect on and from the 11th day of September 1995.

(signed)	(signed)
ON BEHALF OF THE UNION	ON BEHALF OF THE COMPANY

Dated this 11th day of September 1995.

APPENDIX A

	1 August 1995	1 February 1996	1 August 1996	1 February 1997
	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

HORTICULTURAL CAREER START TRAINEESHIP INDUSTRIAL AGREEMENT 1995.

No. AG 262 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Workers' Union, West Australian Branch, Industrial Union of Workers

and

Sunglow Flowers Pty Ltd and Others.

No. AG 262 of 1995.

COMMISSIONER R.N. GEORGE.

21 December 1995.

Order.

HAVING heard Mr M. Llewellyn on behalf of the Applicant and Ms J. Wesley on behalf of the Respondents and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Agreement in the terms of the following schedule be registered with effect on and from 27 November 1995.

(Sgd.) R.N. GEORGE,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the Horticultural Career Start Traineeship Industrial Agreement 1995.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope
4. Area of Operation
5. Parties Bound
6. Terms of Agreement
7. Definitions
8. Objective
9. Form of Traineeship Agreement
10. Duties and Responsibilities
11. Employment Conditions
12. Wage Rates
13. General Conditions
14. Disputes Settlement
15. Signatories

3.—SCOPE

This Agreement shall apply to all horticultural trainees employed in any of the callings covered under the Horticultural (Nursery Industry) Award employed by the employers named in Schedule A to Clause 15.—Signatories.

4.—AREA OF OPERATION

This Agreement shall operate throughout the State of Western Australia.

5.—PARTIES BOUND

The Agreement shall be binding to the employees named in Schedule A to Clause 15.—Signatories hereof and in the Award.

6.—TERMS OF AGREEMENT

This Agreement shall operate from 27 November 1995 for a period of 12 months, or to the completion of the Traineeship. Provided that where the Agreement is terminated in accordance with Section 43 of the Industrial Relations Act 1979 such termination shall not prejudice any training agreements or employment contracts between the trainees and the employers which were entered into during the currency of this Agreement.

7.—DEFINITIONS

For the purposes of this Agreement, a traineeship scheme shall include.

A "Career Start Traineeship" is a system of training comprising structured training with an employer and it will include training in a Technical & Further Education College (TAFE) or other training provider approved by the WA Department of Trainig.

A "Career Start Trainee" is an employee engaged under the terms of this award and in accordance with the provisions of a Traineeship established pursuant to Section 37D of the Industrial and Commercial Training Act 1975 of Western Australia.

A "Training Agreement" means an agreement for a Career Start Traineeship that is registered with the WA Department of Training in accordance with the provisions established pursuant to Section 37D of the Industrial and Commercial Training Act 1975 of Western Australia.

An "Australian Vocational Training System Trainee" is an employee who is bound by a Training Agreement and undertaking an Australian Vocational Training System course.

"Relevant Award of Agreement" shall mean the award or agreement named in Clause (3) of this Agreement.

"Structured Training" shall mean formal instruction and closely supervised practice directly related to that instruction that is undertaken away from the job, as part of a training agreement.

8.—OBJECTIVE

The Career Start Traineeship Scheme provides for the possibility of greater amounts of structured training time, longer periods of traineeship, through an enhanced Australian Traineeship System and provides a bridge to the new Australian Vocational Training System.

The purpose of these arrangements is to provide vocational training consistent with the needs of industry and general skills appropriate to the workforce, and to enhance the skill levels and future employment prospects of Career Start Trainees. This is to be achieved through various vocational education and training pathways including a combination of work, education and structured training.

An objective of this Agreement is to provide vocational education and training pathways that maximise credit transfer and articulation with higher level training opportunities.

It is the intention of the parties to this Agreement to encourage development of pilot projects and the implementation of the Australian Vocational Training System where the training system will be increasingly:

(a) based on national competency standards endorsed by the National Training Board;

(b) incorporating key competency training for early school leavers;

(c) articulated and accredited and resulting in nationally recognised credentials; and

(d) including pay rates based on competency rather than age, negotiated by the industrial parties.

An objective of the Career Start Traineeship Scheme is to provide additional employment and training opportunities for young people. Accordingly, these opportunities shall be provided to the fullest extent possible. Existing employees shall not be displaced from employment by Career Start Trainees.

9.—TRAINING CONDITIONS

(1) A Career Start Trainee shall attend an approved structured training course or program prescribed in the training plan or as notified to the trainee by the WA Department of Training.

(2) Career Start Trainees may be engaged by employers registered with the WA Department of Training. The employer shall ensure that the Career Start Trainee is permitted to attend the prescribed off-the-job training course and is provided with on-the-job training in accordance with the approved training plan.

(3) The employer shall provide a level of supervision in accordance with the approved Training Plan during the traineeship period.

(4) The employer agrees that the overall Traineeship Scheme will be monitored by the WA Department of Training and that training record books or work books may be utilised as part of this monitoring process.

10.—EMPLOYMENT CONDITIONS

(1) A traineeship shall be entered into by means of written agreement registered in accordance with the provision of the Industrial and Commercial Training Act, 1975.

(2) A Career Start trainee shall be engaged as a fulltime employee, for a traineeship of a minimum period of one year, provided that the Career Start Trainee shall be subject to a satisfactory probation period of up to one month.

(3) Notwithstanding the foregoing, an employer or employer organisation respondent to the relevant award of agreement and the union may, by agreement in writing and with the consent of the WA Department of Training, vary the duration of the traineeship and the extent of structured training.

(4) The Career Start Trainee is permitted to be absent from work without loss of continuity of employment to attend the structured training in accordance with the Training Agreement.

(5) Where the employment of a Career Start Trainee by an employer is continued after the completion of the traineeship period, such traineeship period shall be counted as service for the purposes of the Award and long service leave/entitlements.

(6) The Training Agreement may restrict the circumstances under which the Career Start Trainee may work overtime and shiftwork in order to ensure the training program is successfully completed. When overtime and shiftwork are worked, the relevant penalties and allowances of the award based on the trainee wage will apply. No Career Start Trainee shall work overtime or shift work on their own, or where it is inconsistent with the provisions of the relevant award.

(7) The ordinary hours of work shall not exceed 38 per week, to be worked in five days of not more than 8 hours per day, (excluding a meal break) between 6.00am and 6.00pm. Where the ordinary hours are worked on Saturday or Sunday, trainees will be paid at the rate of time and one half, as should all additional hours.

(8) Each trainee who is required to handle pesticides and/or herbicides during the course of his/her training, shall be instructed in their proper use and supplied with appropriate protective clothing and equipment.

11.—GENERAL CONDITIONS

(1) The conditions of employment for Horticultural Trainees shall, unless prescribed otherwise by this Agreement, be the conditions of employment laid down by the relevant award/agreement which would but for this Agreement cover such employees.

(2) The normal customs and practice of the employer shall apply except where it is contrary to the relevant award of Agreement.

12.—WAGE RATES

(1) (a) The weekly wage payable to a Trainee shall be calculated by:

(i) determining the hourly rate applicable to the age of the trainee, as prescribed in the relevant award that would otherwise be applicable to the Career Start Trainee; and

(ii) multiplying that hourly rate by the number of weekly ordinary hours of work as specified in the relevant award, less the average weekly time specified in the registered training agreement to be spent in structured training.

(b) (i) The terms of this clause operate in conjunction with a Commonwealth Government Scheme, under which, if the weekly wage calculated using the method outlined above falls below $125 for those under 18 ad $150 for those 18 years and over, the Commonwealth provides a supplementary allowance to bring the total income of the Career Start trainee up to those levels.

(ii) In the event that the Commonwealth Government reduces these minimum income maintenance levels, the terms of this clause shall be reviewed.

(2) The weekly wage shall be the rate of pay for all purposes of this Agreement.

13.—DISPUTES SETTLEMENT

(1) Should any dispute arise as to the operation of this Agreement and the parties are unable to resolve that dispute by amicable negotiation the parties shall refer such dispute tot he Western Australian Industrial Relations Commission for—

(a) conciliation in the first instance and failing that

(b) for arbitration.

(2) Should any dispute arise as to the operation of a "training" agreement such dispute shall be resolved through the settlement mechanisms presented by the Industrial Training Act 1975.

HOWARD PORTER (1936) PTY LTD ENTERPRISE BARGAINING AGREEMENT 1994
No. AG 236 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australian Branch

and

Howard Porter (1936) Pty Ltd.

No. AG 236 of 1995.

COMMISSIONER R. H. GIFFORD.

30 November 1995.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT
No. AG 236 of 1995.

HAVING heard Mr G. Bucknall on behalf of the Applicant and Mr M. Borlase on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT the Howard Porter (1936) Pty Ltd Enterprise Bargaining Agreement 1994, No. AG 236 of 1995, as specified by the following schedule, be registered as an Industrial Agreement.

(Sgd.) R. H. GIFFORD,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the Howard Porter (1936) Pty Ltd Enterprise Bargaining Agreement 1994, No. AG 236 of 1995.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Scope
4. Incidence and Parties Bound
5. Date and period of Operation
6. Relationship to Parent Award

7. Single Bargaining Unit
8. Training
9. Productivity Improvement Programme
10. Wages
11. Hours
12. Travel
13. Signatories

3.—AREA AND SCOPE

This Agreement shall apply to the O'Connor operations of Howard Porter (1936) Pty Ltd with respect to employees engaged in classifications specified in Clause 6.—Definition of the Vehicle Builders' Award 1971 (No. 9 of 1971).

4.—INCIDENCE AND PARTIES BOUND

(1) This Agreement shall apply to and be binding upon Howard Porter (1936) Pty Ltd (the company) and all persons employed in the classifications set out in Clause 6.—Definitions of the Vehicle Builders' Award 1971 (No. 9 of 1971) at it's O'Connor workshops, and the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australian Branch (the union).

(2) The parties to the agreement shall be the company and the union.

5.—DATE AND PERIOD OF OPERATION

This Agreement shall operate from 1 January 1995, and remain in operation until 31 March 1996, and will not continue in force after this date unless renewed. All parties are committed to re-negotiating this Agreement and applying for it's continuation, replacement or cancellation before the expiry date.

6.—RELATIONSHIP TO PARENT AWARD

(1) This Agreement shall be read and interpreted wholly in conjunction with the Vehicle Builders' Award 1971 (No. 9 of 1971).

(2) Where there is any inconsistency between this Agreement and the Award stipulated, this Agreement shall prevail to the extent of inconsistency.

7.—SINGLE BARGAINING UNIT

(1) For the purpose of this Agreement and in accordance with the decision in the December 1994, Western Australian State Wage Case, a single bargaining unit has been established by way of Consultative Committee. This Committee shall be comprised of the following members:

(a) Four representatives appointed by Management.

(b) Four elected representatives of the workforce.

(2) The single bargaining unit shall be given all relevant information to enable effective monitoring of the implementation progress and performance of the continuous improvement programme.

8.—TRAINING

(1) All training should be planned and implemented in accordance with Company Training Procedure 030 (Quality Manual Section 22).

(2) It is the intention of the committee that opportunities for further enhancement of skills will be identified through productivity improvement projects (see Clause 9.—Productivity Improvement Programme).

(3) The committee will also develop a training plan to identify opportunities for general training in such areas as:

- Customer Service
- TQM Implementation and Maintenance
- Team Work Skills Productivity Project Skills
- Process Activities—Welding, Hydraulics etc
- Safety Issues

(4) The committee will identify possible career paths within the company and recommend specific training opportunities.

(5) Where appropriate, training shall be accredited and linked to a competency based career path.

(6) Employees are encouraged to approach their supervisor or consultative committee member regarding training opportunities.

9.—PRODUCTIVITY IMPROVEMENT PROGRAMME

In accordance with the terms of the December 1994, State Wage Case decision, the following productivity, efficiency and flexibility measures have, or will be implemented.

(1) Consultation and Communication:

Two-way communication between Management and employees via:

(a) Quarterly Management Meetings with all employees.

(b) Monthly Consultative Committee Meetings.

(c) Fortnightly Toolbox Meetings to discuss scheduling and preventative programmes, at 3.00 pm on Friday. This will facilitate communication to and from the Consultative Committee.

(2) Employee Involvement:

Employees are committed to become involved and to continue focusing on:

(a) Productivity projects to improve quality and output without increasing overall production costs.

(b) Reduction in Down time and Waste wherever possible.

(c) Customer Service, both internal and external.

(3) Productivity Projects:

The consultative committee will gather information on potential projects and prioritise them for action by teams. Examples include:

- Use of Jigs
- Tool Store Project
- Tool Numbers Types
- Sub Contractors Tools

The consultative committee will instigate and co-ordinate teams to undertake productivity improvement projects. The teams will be selected on the basis of those who can contribute to the identification, solution and implementation of particular productivity, quality and safety projects.

(4) Teams:

Project teams will research the projects:

- Define the scope, objectives, outcomes;
- Measure current productivity or lack there of; and
- Investigate current practice, and alternative solutions.

Obtain consensus on the solution:

- Report and obtain approval;
- Plan, do, check, act to achieve implementation;
- Measure results; and
- Evaluate and report.

(5) Performance Indicators:

The success of the project will be judged by the measurements of the process taken before and after. Appropriate measurements will be designed for each project.

10.—WAGES

(1) Wage Calculation

(a) The wage paid to an individual workshop employee is calculated as follows:

(i) Enterprise Agreement Classification Rate

PLUS

(ii) Any over-rate payment

PLUS

(iii) Tool money allowance per award

PLUS

(iv) Leading hand allowance per award

i + ii + iii + iv = **Employee Wage Rate**

(b) Overtime is calculated on the **Employee Wage Rate** as shown in paragraph (a) above.

(c) Any other award allowances, where applicable, are additional to the above.

(d) Superannuation is calculated on the **Employee Wage Rate** as shown in paragraph (a) above.

(2) Wage Rate Increases

(a) In recognition of expected successful productivity projects all workshop employees will receive a 3%

increase to their current wage rate (minus allowances) from the first pay period after 1 January 1995.

(b) The classification rates shall be re-adjusted on the first pay period after 1 April 1995.

(c) Superannuation contributions by the company will increase from 5% to 6% on first pay period after 1 July 1995.

(d) In recognition of expected successful productivity projects the classification rates shall increase by 2% from the first pay after 1 January 1996.

(e) The following table shows the wage rate increases applicable to the Enterprise Agreement Classification Rates (see (1) (a) (i) above) over the life of the agreement.

Enterprise Agreement Classification	Howard Porter Reference	Award Rate	3% Increase 01/01/95	Re-Adjustment 01/04/95	2% Increase 01/01/96
ATVB	VC6	550.30	566.80	566.80	578.10
ABTLIV	VC7	490.80	505.50	534.60	545.30
ABTLIII	VC8	470.80	484.90	502.40	512.40
ABTLII	VC9	450.80	464.30	470.20	479.60
ABTLI	VC10	425.20	438.00	438.00	446.80
ABTLIV	CV11	393.50	405.30	414.20	422.50
ABTLIII	VC12	372.80	384.00	390.60	398.40
ABTLII	VC13	350.10	360.60	367.00	374.30
ABTLI	VC14	333.40	343.40	343.40	350.30

(3) Enterprise Agreement Classifications

(a) The award classification criteria and levels will be further identified and developed by the Works Management and approved by the Consultative Committee, having regard to the skills, knowledge, experience and competencies required at Howard Porter. These will be known as the Enterprise Agreement Classifications.

(4) Reclassification of Employees

(a) All workshop employees shall have their skills, knowledge, experience, competencies and job requirements reviewed prior to 31 March 1995.

(b) Employees will be classified to an appropriate level.

(c) The review and reclassification of each employee will be undertaken by the Works Management in consultation with the employee.

(d) In the event of an employee feeling he/she has been unfairly treated or inappropriately reclassified, then he/she shall appeal to the Consultative Committee for a review or reassessment of his/her classification.

(e) No employee will suffer a reduction in wages as a result of this reclassification.

(5) Over-Rate Payment

Nothing in this Enterprise Agreement will prevent the payment of wages above the classification rates at the discretion of the Works Management. This over rate payment may be adjusted up or down to reflect employee performance. The employee will be interviewed and advised of the reasons for changes in over rate payment.

(6) Pay Advice

(a) The pay advice is to show an employees wage rate as detailed in subclause (1) above, however;

(b) implementation of this will be dependant on the capability of the new computer system;

(c) otherwise, a separate note will be issued to each employee detailing his/her wage rate each time it changes.

11.—HOURS

The ordinary hours of work shall be an average of 38 hours per week which may be worked on any or all days of the week Monday to Friday inclusive, and except in the case of shift employees, be worked between the hours of 5am and 8pm. Provided that the spread of hours may be altered by agreement between the employer and the majority of employees in the plant, section or sections concerned.

12.—TRAVEL

All travel by the employee at the Company's direction is to be paid at ordinary rates, on any day of the week or hour of the day.

13.—SIGNATORIES

Signed for and on behalf of Howard Porter (1936) Pty Ltd.

Signature: (Sgd.)

Name: COLIN STEWART

Position: MANAGING DIRECTOR

Signed for and on behalf of the Australian Manufacturing Worker's Union.

Signature: (Sgd.)

Name: KEITH PECKHAM

Position: STATE PRESIDENT

INDEPENDENT PUMP HIRE INDUSTRIAL AGREEMENT No. AG 278 of 1995.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Springboard Holdings Pty Ltd trading as Independent Pump Hire.

No. AG 278 of 1995.

Independent Pump Hire Industrial Agreement.

COMMISSIONER P E SCOTT.

7 December 1995.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered with effect from the beginning of the first pay period commencing on or after the 25th day of October 1995.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Independent Pump Hire Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. Ratification

Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Springboard Holdings Pty Ltd trading as Independent Pump Hire(hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees
course books and materials
payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect from the first pay period on or after the 25th day of October 1995.

(signed) (signed)

ON BEHALF OF THE UNION ON BEHALF OF THE COMPANY

Dated this 25th day of October 1995.

APPENDIX A

	1 August 1995 Hourly Rate	1 February 1996 Hourly Rate	1 August 1996 Hourly Rate	1 February 1997 Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

LIDCO ALUMINIUM WINDOWS PTY LTD INDUSTRIAL AGREEMENT No. AG 291 of 1995.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Lidco Aluminium Windows Pty Ltd.

No. AG 291 of 1995.

Lidco Aluminium Windows Pty Ltd Industrial Agreement.

COMMISSIONER P E SCOTT.

21 December 1995.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and Mr P Bolt on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered with effect on and from the 13th day of November 1995.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Lidco Aluminium Windows Pty Ltd Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. Productivity Initiatives

Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Lidco Aluminium Windows Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of ratification as indicated in Clause 16.—Ratification and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees

course books and materials

payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—PRODUCTIVITY INITIATIVES

In exchange for the significant wage increases and other beneifts to employees which are provided in this Agreement, it is agreed that the following initiatives will be implemented as a means to improve productivity:

(1) All demarcation issues will be resolved in accordance with the Dispute Settlement Procedure.

(2) The parties to this Agreement agree to adopt a reasonable and flexible approach to working hours in terms of starting and finishing times. Ordinary hours may be worked between 6am and 6pm on any week day.

(3) Meetings of Union members held on site will be kept to a minimum and, wherever possible, held at a time likely to cause minimal disruption to work being performed on site.

(4) All parties agree to adopt a reasonable and flexible approach to inclement weather in order to minimise lost time caused through inclement weather.

(5) Any employee elected as a Job Steward or Health and Safety Representative will be required to carry out meaningful work, as directed by the Company, in addition to his/her duties as a Job Steward or Health and Safety Representative.

(signed)	PIETER BOLT (DIRECTOR)
ON BEHALF OF THE UNION	ON BEHALF OF THE COMPANY

Dated this 13th day of November 1995.

APPENDIX A

	1 August 1995 Hourly Rate	1 February 1996 Hourly Rate	1 August 1996 Hourly Rate	1 February 1997 Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

McCRACKEN RIGGING INDUSTRIAL AGREEMENT
No. AG 239 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Len McCracken trading as McCracken Rigging.

No. AG 239 of 1995.

McCracken Rigging Industrial Agreement.

COMMISSIONER P E SCOTT.

22 November 1995.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered on the 22nd day of November 1995 to operate with effect on and from the 21st day of September.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the McCracken Rigging Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. Ratification

Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Len McCracken trading as McCracken Rigging (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of ratification as indicated in Clause 16.—Ratification and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees

course books and materials

payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect on and from the 21st day of September 1995.

(signed) (signed)

ON BEHALF OF THE UNION ON BEHALF OF THE COMPANY

Dated this 21st day of September 1995.

APPENDIX A

	1 August 1995 Hourly Rate	1 February 1996 Hourly Rate	1 August 1996 Hourly Rate	1 February 1997 Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

MERYM CONSTRUCTIONS INDUSTRIAL AGREEMENT
No. AG 230 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Merym Pty Ltd trading as Merym Constructions.

No. AG 230 of 1995.

Merym Constructions Industrial Agreement.

COMMISSIONER P E SCOTT.

22 November 1995.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered on the 22nd day of November 1995 to operate with effect on and from the 19th day of September 1995.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Merym Constructions Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. Ratification

Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Merym Pty Ltd trading as Merym Constructions (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of ratification as indicated in Clause 16.—Ratification and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees

course books and materials

payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect on and from the 19th day of September 1995.

(signed)	(signed)
ON BEHALF OF THE UNION	ON BEHALF OF THE COMPANY

Dated this 19th day of September 1995.

APPENDIX A

	1 August 1995 Hourly Rate	1 February 1996 Hourly Rate	1 August 1996 Hourly Rate	1 February 1997 Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

NATIONAL TRAINING WAGE TRAINEESHIP (HOSPITALITY INDUSTRY) AGREEMENT 1995.

No. AG 211 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Federated Liquor and Allied Industries Employees' Union of Australia, Western Australian Branch, Union of Workers

and

Hospitality Group Training (WA) Inc.

No. AG 211 of 1995.

COMMISSIONER R.H. GIFFORD.

13 December 1995.

Order.

REGISTRATION OF AN
INDUSTRIAL AGREEMENT
No. AG 211 OF 1995

HAVING heard Mr E. Fry on behalf of the Applicant and Mr W. Cutts on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders:

THAT the National Training Wage Traineeship (Hospitality Industry) Agreement 1995, No. AG 211 of 1995, as specified by the following schedule, which was executed by the parties on 30 August 1995, be registered as an Industrial Agreement.

(Sgd.) R.H. GIFFORD,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the National Training Wage Traineeship (Hospitality Industry) Agreement 1995, No. AG 211 of 1995.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties Bound
4. Application
5. Objective
6. Definitions
7. Training Conditions
8. Employment Conditions
9. Wages
10. Term
11. Signatories
Schedule A—Relevant Awards

3.—PARTIES BOUND

This Agreement is binding on the

Federated Liquor and Allied Industries Employees' Union of Australia Western Australia Branch, Union of Workers, and

Hospitality Group Training (WA) Inc.

4.—APPLICATION

(1) Subject to subclause (2) hereof, this agreement shall apply to persons:

(a) who are undertaking a Traineeship (as defined); and

(b) who are employed by Hospitality Group Training (WA) Inc; and

(c) whose employment otherwise would be covered by the relevant awards listed in Schedule A—Relevant Awards to this agreement.

(2) This Agreement does not apply to the Apprenticeship system.

(3) At the conclusion of the traineeship this agreement ceases to apply to the employment of the trainee and the relevant award shall apply to the former trainee.

5.—OBJECTIVE

The objective of this Agreement is to assist in the establishment of a system of traineeships which provides approved training in conjunction with employment in order to enhance the skill levels and future employment prospects of trainees, particularly young people, and the long term unemployed. The system is neither designed nor intended for those who are already trained and job ready. It is not intended that existing employees shall be displaced from employment by trainees. Nothing in this agreement shall be taken to replace the prescription of training requirements in the relevant award.

6.—DEFINITIONS

"Approved Training" means training undertaken (both on and off the job) in a Traineeship and shall involve formal instruction, both theoretical and practical, and supervised practice in accordance with a Traineeship Scheme approved by the State Training authority or NETTFORCE. The training will be accredited and lead to qualifications as set out in subclause (5) of Clause 7.—Training Conditions, hereof.

"Relevant Award" means the award(s) referred to in Schedule A—Relevant Awards attached.

"Union" means the Federated Liquor and Allied Industries Employees' Union of Australia, Western Australia Branch, Union of Workers.

"Employer" means Hospitality Group Training (WA) Incorporated.

"Trainee" means an employee who is bound by a Traineeship Agreement made in accordance with this Agreement.

"Traineeship" means a system of training which has been approved by the State Training Authority, or which has been approved on an interim basis by the National Employment and Training Task Force (NETTFORCE), until final approval is granted by the State Training Authority.

"Traineeship Agreement" means an agreement made subject to the terms of this Agreement between the employer and the trainee for a Traineeship and which is registered with the State Training Authority, NETTFORCE, or under the provisions of the appropriate State legislation. A Traineeship Agreement shall be made in accordance with the relevant approved Traineeship Scheme and shall not operate unless this condition is met.

"Traineeship Scheme" means an approved Traineeship applicable to a group or class of employees or to an industry or sector of an industry or an enterprise. A Traineeship Scheme shall not be given approval unless consultation and negotiation with the union upon the terms of the proposed Traineeship Scheme and the Traineeship have occurred. An application for approval of a Traineeship Scheme shall identify the union and demonstrate to the satisfaction of the approving authority that the above mentioned consultation and negotiation have occurred. A Traineeship Scheme shall include a standard format which may be used for a Traineeship Agreement.

"Parties to a Traineeship Scheme" means the employer and the union involved in the consultation and negotiation required for the approval of a traineeship scheme.

Reference in this Agreement to "the State Training Authority or NETTFORCE" shall be taken to be a reference to NETTFORCE in respect of a Traineeship that is the subject of an interim approval but not a final approval by the State Training Authority.

"Appropriate State Legislation" means the State Employment and Skills Development Authority Act 1990 or any successor legislation.

7.—TRAINING CONDITIONS

(1) The trainee shall attend an approved training course or training program prescribed in the Traineeship Agreement or as notified to the trainee by the State Training Authority in accredited and relevant Traineeship Schemes; or NETTFORCE, if the Traineeship Scheme remains subject to interim approval.

(2) A Traineeship shall not commence until the relevant Traineeship Agreement, made in accordance with a Traineeship Scheme, has been signed by the employer and the trainee and lodged for registration with the State Training Authority or NETTFORCE, provided that if the Traineeship Agreement is not in a standard format a Traineeship shall not commence until the Traineeship Agreement has been registered with the State Training Authority or NETTFORCE. The employer shall ensure that the trainee is permitted to attend the training course or program provided for in the Traineeship Agreement and shall ensure that the trainee receives the appropriate on-the-job training.

(3) The employer shall provide a level of supervision in accordance with the Traineeship Agreement during the traineeship period.

(4) The employer agrees that the overall training program will be monitored by officers of the State Authority or NETTFORCE and training records or work books may be utilised as part of this monitoring process.

(5) Training shall be directed at:

(a) the achievement of key competencies required for successful participation in the workplace (where these have not been achieved (eg. literacy, numeracy, problem solving, team work, using technology), and as are proposed to be included in the Australian Vocational Certificate Level 1 qualification. This could be achieved through foundation competencies which are part of endorsed competencies for an industry; and/or

(b) the achievement of competencies required for successful participation in an industry or enterprise (where there are endorsed national standards these will define these competencies) as proposed to be included in the AVC Level 2 qualification or above.

(6) The Union shall be afforded reasonable access to trainees for the purpose of explaining the role and functions of the Union and enrolment of trainees as members.

8.—EMPLOYMENT CONDITIONS

(1) A trainee shall be engaged as a full-time employee for a maximum of one year's duration provided that a trainee shall be subject to a satisfactory probation period of up to one month which may be reduced at the discretion of the employer. By agreement in writing, and with the consent of the State Training Authority or NETTFORCE, the employer and the trainee may vary the duration of the Traineeship and the extent of approved training provided that any agreement to vary is in accordance with the relevant Traineeship Scheme.

(2) The employer shall not terminate the employment of a trainee without firstly having provided written notice of termination to the trainee concerned in accordance with the Traineeship Agreement and subsequently to the State Training Authority or NETTFORCE. The written notice to be provided to the State Training Authority or NETTFORCE shall be provided within 5 working days of the termination.

(3) Trainees are permitted to be absent from work without loss of continuity of employment to attend the off-the-job training in accordance with the training plan. However, except for absences provided for under the relevant primary award referred in Schedule A—Relevant Awards hereof, failure to attend for work or training without an acceptable cause will result in loss of pay for the period of absence.

(4) (a) The Traineeship Agreement may restrict the circumstances under which the trainee may work overtime and shift work in order to ensure the training program is successfully completed.

(b) No trainee shall work overtime or shift work on their own unless consistent with the provisions of the relevant award.

(c) Overtime and shift work shall not be worked by trainees except to enable the requirements of the training plan to be effected. When overtime and shift work is performed the penalties and allowances prescribed in the relevant primary award referred to in Schedule A—Relevant Awards hereof, based on the trainee wage will apply. No trainee shall work overtime or shift work without supervision.

(d) The trainee wage shall be the basis for the calculation of overtime and/or shift penalty rates prescribed by the relevant award, unless otherwise agreed by the parties to a Traineeship Scheme, or unless the relevant award makes specific provision for a trainee to be paid at a higher rate, in which case the higher rate shall apply.

(5) All other terms and conditions of the relevant award are applicable to the trainee unless specifically varied by this Agreement.

(6) A trainee who fails to either complete the Traineeship or who cannot for any reason be placed in full time employment on successful completion of the Traineeship shall not be entitled to any termination, change and redundancy payment or any such like payment.

9.—WAGES

(1) (a) The following minimum weekly wages shall be payable to Trainees:

	Highest Year of Schooling Completed		
School Leaver	Year 10	Year 11	Year 12
	$	$	$
	146.00	175.00	205.00
plus 1 year out of school	175.00	205.00	235.00
plus 2 years	205.00	235.00	275.00
plus 3 years	235.00	275.00	315.00
plus 4 years	275.00	315.00	
plus 5 years or more	315.00		

(b) These wage rates will only apply to trainees while they are undertaking an approved Traineship which includes approved training as defined in this Agreement.

(c) The wage rates prescribed by this clause do not apply to complete trade level training which is covered by the Apprenticeship system.

(2) For the purposes of this clause, "out of school" shall refer only to periods out of school beyond Year 10, and shall be deemed to:

(a) include any period of schooling beyond Year 10 which was not part of nor contributed to a completed year of schooling;

(b) include any period during which a trainee repeats in whole or part a year of schooling beyond Year 10; and

(c) not include any period during a calendar year in which a year of schooling is completed.

10.—TERM

This agreement shall apply from the date of registration and shall remain in force for a period of twelve months.

11.—SIGNATORIES

Executed as an agreement.

Dated on this 30th day of August 1995.

The seal of the FEDERATED LIQUOR AND ALLIED INDUSTRIES EMPLOYEES' UNION OF AUSTRALIA WESTERN AUSTRALIA BRANCH, UNION OF WORKERS was affixed in the presence of LYNNETTE ANN SHAW (President) and EUGENE LESLIE FRY (Secretary):

LYNNETTE ANN SHAW

EUGENE LESLIE FRY

Signed for and on behalf of—

THE HOSPITALITY GROUP TRAINING (WA) INC

AIDEN ARTHUR PATRICK CARROLL

CHAIRPERSON

In the presence of:

WAYNE GREGORY CUTTS

SECRETARY/TREASURER

SCHEDULE A — RELEVANT AWARDS

Hotel and Tavern Workers' Award, 1978 No. R 31 of 1977, as varied.

Motel, Hostel, Service Flats and Boarding House Workers' Award, 1976 No. 29 of 1974, as varied.

Club Workers' Award, 1976 No. 12 of 1976, as varied.

Restaurant, Tearoom and Catering Workers' Award, 1979 No. 48 of 1978, as varied.

NEW CEMENT CO INDUSTRIAL AGREEMENT No. AG 238 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

New Cement Co Pty Ltd.

No. AG 238 of 1995.

New Cement Co Industrial Agreement.

COMMISSIONER P. E. SCOTT.

22 November 1995.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered on the 22nd day of November 1995 to operate with effect on and from the 22nd day of September 1995.

(Sgd.) P. E. SCOTT,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the New Cement Co Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. Ratification

Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and New Cement Co Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of ratification as indicated in Clause 16.—Ratification and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees
course books and materials
payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect on and from the 22nd day of September 1995.

(signed)

ON BEHALF OF THE UNION

(signed)

ON BEHALF OF THE COMPANY

Dated this 22nd day of September 1995.

APPENDIX A

	1 August 1995 Hourly Rate	1 February 1996 Hourly Rate	1 August 1996 Hourly Rate	1 February 1997 Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

OLYMPIC FINE FOODS ENTERPRISE AGREEMENT 1995
No. AG 272 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Shop, Distributive and Allied Employees' Association of Western Australia and Another

and

Olympic Fine Foods Pty Limited.

No. AG 272 of 1995.

COMMISSIONER R.H. GIFFORD.

30 November 1995.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT
No. AG 272 of 1995.

HAVING heard Ms K. Cameron on behalf of the Applicants and Mr J. Uphill on behalf of the Respondent, the Commis-

sion, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT the Olympic Fine Foods Enterprise Agreement 1995, No. AG 272 of 1995, as specified by the following schedule, be registered as an Industrial Agreement.

(Sgd.) R. H. GIFFORD,
[L.S] Commissioner.

———

Schedule.

1.—TITLE

This Agreement shall be known as the Olympic Fine Foods Enterprise Agreement 1995, No. AG 272 of 1995.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Scope
4. Application and Parties Bound
5. Term of Agreement
6. Relationship to Awards
7. No Extra Claims
8. Rates of Pay
9. Classifications
10. Sick Leave Bonus
11. Journey Insurance
12. Grievance Procedure
13. Signatories

3.—AREA AND SCOPE

The area and scope of this Agreement shall be the same as that prescribed in the Food Industry (Food Manufacturing or Processing) Award No. A20 of 1990, and the Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977 No. R32 of 1976 as they respectively apply to employees of Olympic Fine Foods Pty Ltd.

4.—APPLICATION AND PARTIES BOUND

This Agreement shall apply to and be binding on Olympic Fine Foods Pty Ltd ("the Company"), The Food Preservers' Union of Western Australia, Union of Workers ("FPU") and The Shop, Distributive and Allied Employees' Association of Western Australia ("SDA") and all employees employed at the Company's operation in Balcatta, who are members or are eligible to be members of the unions cited and who are covered by either Award or any successor thereto.

5.—TERM OF AGREEMENT

(1) This Agreement shall operate from the date of ratification and shall expire on 31 July 1996.

(2) The parties to this Agreement shall begin negotiations for a new Agreement at least 3 months prior to the expiration of this Agreement.

(3) Following its expiry, the Agreement shall continue to operate until varied or replaced by the parties.

6.—RELATIONSHIP TO AWARDS

(1) This Agreement shall be read and interpreted wholly in conjunction with the Food Industry (Food Manufacturing or Processing) Award No. A20 of 1990, and the Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977 No. R32 of 1976, as varied from time to time, as they respectively apply to employees of the Company.

(2) Where there is any inconsistency between this Agreement and the relevant Award, this Agreement shall prevail to the extent of that inconsistency. Where this Agreement is silent, Award provisions shall apply.

7.—NO EXTRA CLAIMS

The Company, the FPU and the SDA agree that there will be no extra claims for the life of this Agreement, and as such all National Wage Case decisions will be absorbed in this Agreement, with the exception that if such decisions result in an increase to the Award where the Award levels are higher than those being paid under this Agreement at the time of the decision, then the higher rate shall be paid.

The no extra claims provision does not prevent the Unions advancing additional claims while the Agreement is being renegotiated in accordance with subclause (2) of Clause 5.—Term of Agreement hereof.

8.—RATES OF PAY

Full Time Employees

The following wage rates are for 38 ordinary hours per week, and shall come into effect on the first full pay period on or after the date listed below.

	Effective 30 Aug 1995	Effective 5 Oct 1995
CLASSIFICATION		
Production Employee Grade 1	$333.40	$333.40
Production Employee Grade 2	$341.40	$350.00
Production Employee Grade 3	$349.80	$360.00
Production Employee Grade 4	$358.10	$375.00
Production Employee Grade 5	$380.60	$390.00
Warehouse Employee	$409.00	$422.00

9.—CLASSIFICATIONS

Employees shall be classified by the levels prescribed herein and shall undertake work in connection with the production and distribution activities of the Company. Employees may be required to undertake any of the tasks of a lower classification, in addition to the tasks in his/her own classification.

(1) Production Employee Grade 1

This is an entry level probationary position for production employees in their first three months at Olympic Fine Foods, provided the employee has not had any relevant experience elsewhere in the industry enabling the employee to perform tasks at a higher level.

Employees who are recruited into the Company at this level undertake induction training, receive training and detailed instruction to perform simple routine duties under direct supervision.

Indicative of the tasks an employee at this level may perform include:

- packing products into cartons
- stacking cartons
- general cleaning

(2) Production Employee Grade 2

Employees in this classification work under direct supervision and have skills beyond those of a Production Employee Grade 1, or have completed three months employment with the Company.

Grade 2 employees exercise minimal judgement and are responsible for the quality of their own work within the scope of this level.

Indicative of the tasks an employee at this level may perform include:

- manual packing of product into individual packages
- packing product into cartons
- stacking cartons
- using hand trolleys and pallet packs
- general cleaning

(3) Production Employee Grade 3

Employees in this classification perform tasks beyond the skill levels of a Production Employee Grade 2. Employees at this level work under general supervision either individually or in a team environment and understand and undertake basic quality control.

Indicative of the tasks an employee at this level may perform include:

- may be required to perform any of the duties of a lower level

(4) Production Employee Grade 4

Employees in this classification perform tasks beyond the skill levels of a Production Employee Grade 3. Employees at this level:

- work under supervision either individually or in a team environment

- understand and undertake basic quality control/assurance procedures including the ability to recognise basic quality deviations and faults
- exercise minimal decision making
- exercise discretion within the level of skills and training

Indicative of the tasks an employee at this level may perform include:

- may be required to perform any of the duties of a lower level
- manual machine packing of product
- stacking and preparing for storage raw and finished products and packaging material
- stocktaking of raw and packaging material
- basic ingredient blending

(5) Production Employee Grade 5

Employees in this classification perform tasks beyond the skill levels of a Production Employee Grade 4. Employees at this level:

- are responsible for the quality of his/her own work, subject to routine supervision
- work under routine supervision either individually or in a team environment
- exercise discretion within his/her level of skills and training

Employees at this level generally operate automatic machinery and blend ingredients using a predetermined recipe.

(6) Warehouse Employee

Employees in this classification are employed to perform any of the following tasks:

receiving, storing, recording, packing, weighing and/or wrapping, driving company vehicles, despatching or distributing goods.

10.—SICK LEAVE BONUS

The Company shall pay a sick leave bonus in the week prior to Christmas 1995 and on 25 June 1996 on the basis of sick leave taken in the preceding six months of employment as follows:

Sick Leave Taken	Bonus
Nil	$250.00
1 or less days	$125.00
2 or less days	$50.00

11.—JOURNEY INSURANCE

The Company shall insure employees with a recognised insurance company against loss of wages arising from an accidental injury as follows:

(1) Employees will have an entitlement of up to $1,000 per week with a maximum of 85% of weekly income for the first 6 months following accidental injury whilst travelling to and from the workplace, followed by 65% of weekly income for the next 18 months. Benefits will not be paid for the first 10 days of incapacity.

(2) Cover will also be provided for accidental death and other capital benefits 24 hours a day anywhere in Australia during a journey involving a motor vehicle, train, tram, ferry or as a pedestrian up to a limit of $100,000. This cover also extends to the employee's spouse.

Note: This clause is intended as a summary of the cover which will be provided and does not detail all the terms and conditions of the cover. If requested, the Company shall provide a copy of the policy wording for employees' information.

12.—GRIEVANCE PROCEDURE

(1) (a) In the event that an employee(s) has a grievance then it is agreed that the employee(s) should attempt to resolve the grievance with their supervisor.

(b) If the issue has not been resolved, the matter will be referred to the manager. The employee(s) may require their union delegate be present at these meeting(s).

(c) If the dispute has not then been resolved, the union delegate may request assistance from the Union. The matter shall then be discussed between a senior management representative of the Company and an appropriate official of the union.

(2) Whilst the above procedure is being followed the 'status quo' should remain and work proceed normally. No party shall be prejudiced as to the final outcome by the continuation of work in accordance with the clause.

(3) In the event that the issue is still unresolved either party may seek the assistance of the Western Australian Industrial Relations Commission, whose decision shall, subject to any appeal, be final.

(4) The procedure outlined in subclause (1) hereof shall be facilitated by the earliest possible advice by one party to the other of any issue or problem which may give rise to a grievance or dispute. The parties shall co-operate to ensure that these procedures are carried out expeditiously and shall endeavour to keep to the following limits:

Procedure Described By	Time
Subclause (1)(a) above	Within 24 hours (weekends & holidays excepted)
Subclause (1)(b) above	No later than two working days after (a)
Subclause (1)(c) above	No later than two working days after (b)

13.—SIGNATORIES

For and on behalf of the Shop, Distributive and Allied Employees' Association of Western Australia:

(Sgd.) 23/10/95

Signature Date

T.M. BISHOP
Name of Signatory

General Secretaray
Position of Signatory

For and on behalf of the Food Preservers' Union of Western Australia, Union of Workers

(Sgd.) 25 th OCT 95

Signature Date

JOSEPH BULLOCK
Name of Signatory

SECRETARY
Position of Signatory

For and on behalf of Olympic Fine Foods Pty Ltd

(Sgd.) 20.10.95

Signature Date

Mark Perrin
Name of Signatory

Managing Director
Position of Signatory

PAINT SOLUTIONS INDUSTRIAL AGREEMENT No. AG 187 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Paint Solutions.

No. AG 187 of 1995.

Paint Solutions Industrial Agreement.

COMMISSIONER P.E. SCOTT.

22 November 1995.

Order.

HAVING heard Mr G. Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the

Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered on the 22nd day of November 1995 to operate with effect on and from the 30th day of September 1995.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Paint Solutions Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. Ratification
Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Paint Solutions (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of ratification as indicated in Clause 16.—Ratification and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $0.20 per hour per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees

course books and materials

payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect on and from the 30th day of September 1995.

(signed)	(signed)
ON BEHALF OF THE UNION	ON BEHALF OF THE COMPANY PAINT SOLUTIONS

Dated this 29th day of August 1995.

APPENDIX A

	1 August 1995	1 February 1996	1 August 1996	1 February 1997
	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

PERTH RIGGING CO INDUSTRIAL AGREEMENT
No. AG 178 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Perth Rigging Co Pty Ltd.

No. AG 178 of 1995.

Perth Rigging Co Industrial Agreement.

COMMISSIONER P E SCOTT.

22 November 1995.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and Mr R Clark on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered on the 22nd day of November 1995 to operate with effect on and from the 28th day of August 1995.

(Sgd.) P.E. SCOTT,
Commissioner.

[L.S]

Schedule.

1.—TITLE

This Agreement will be known as the Perth Rigging Co Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. Ratification

Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Perth Rigging Co Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of ratification as indicated in Clause 16.—Ratification and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $0.20 per hour per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees
course books and materials
payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect on and from the 28th day of August 1995.

(signed) (signed)

ON BEHALF OF THE UNION ON BEHALF OF THE COMPANY

Dated this 28th day of August 1995.

APPENDIX A

	1 August 1995 Hourly Rate	1 February 1996 Hourly Rate	1 August 1996 Hourly Rate	1 February 1997 Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

PLASTERWISE PLASTERING CONTRACTORS INDUSTRIAL AGREEMENT
No. AG 244 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Formgrow Pty Ltd Trading as Plasterwise Plastering Contractors.

No. AG 244 of 1995.

Plasterwise Plastering Contractors Industrial Agreement.

COMMISSIONER P.E. SCOTT.

22 November 1995.

Order.

HAVING heard Mr G. Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered on the 22nd day of November 1995 to operate with effect on and from the 26th day of September 1995.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Plasterwise Plastering Contractors Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority

15. Sick Leave
16. Ratification
Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Formgrow Pty Ltd Trading as Plasterwise Plastering Contractors (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of ratification as indicated in Clause 16.—Ratification and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees

course books and materials

payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect on and from the 26th day of September 1995.

(signed) (signed)

ON BEHALF OF THE UNION ON BEHALF OF THE COMPANY

Dated this 26th day of September 1995.

APPENDIX A

	1 August 1995	1 February 1996	1 August 1996	1 February 1997
	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

P N M PAINTING CONTRACTORS INDUSTRIAL AGREEMENT INDUSTRIAL AGREEMENT No. AG 237 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Petnee Holdings Pty Ltd trading as P N M Painting Contractors.

No. AG 237 of 1995.

P N M Painting Contractors Industrial Agreement Industrial Agreement.

COMMISSIONER P E SCOTT.

22 November 1995.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered on the 22nd day of November 1995 to operate with effect on and from the 21st day of September 1995.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the P N M Painting Contractors Industrial Agreement Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. Ratification

Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Petnee Holdings Pty Ltd trading as P N M Painting Contractors (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of ratification as indicated in Clause 16.—Ratification and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees
course books and materials
payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect on and from the 21st day of September 1995.

(signed)	(signed)
ON BEHALF OF THE UNION	ON BEHALF OF THE COMPANY

Dated this 21st day of September day of 1995.

APPENDIX A

	1 August 1995 Hourly Rate	1 February 1996 Hourly Rate	1 August 1996 Hourly Rate	1 February 1997 Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

QUALITY WATERPROOFING SERVICES (WA) INDUSTRIAL AGREEMENT
No. AG 231 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Maraglen Pty Ltd trading as Quality Waterproofing Services (WA).

No. AG 231 of 1995.

Quality Waterproofing Services (WA) Industrial Agreement.

COMMISSIONER P.E. SCOTT.

22 November 1995.

Order.

HAVING heard Mr G. Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered on the 22nd day of November 1995 to operate with effect on and from the 19th day of September 1995.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Quality Waterproofing Services (WA) Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. Ratification
Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Maraglen Pty Ltd trading as Quality Waterproofing Services (WA) (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of ratification as indicated in Clause 16.—Ratification and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees

course books and materials

payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect on and from the 19th day of September 1995.

(signed) (signed)

ON BEHALF OF THE UNION ON BEHALF OF THE COMPANY

Dated this 19th day of September 1995.

APPENDIX A

	1 August 1995	1 February 1996	1 August 1996	1 February 1997
	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

READYMIX QUARRIES GOSNELLS OPERATIONS 1995 REDUNDANCY AGREEMENT
No. AG 273 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

CSR Limited Trading As The Readymix Group

and

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch and Others.

No. AG 273 of 1995.

Readymix Quarries Gosnells Operations 1995 Redundancy Agreement.

COMMISSIONER P E SCOTT.

24 November 1995.

Order.

HAVING heard Mr P Cooke on behalf of the Applicant, Mr G C Sturman on behalf of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch, the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch, and The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch, Mr J Binks on behalf of The Australian Workers' Union, West Australian Branch, Industrial Union of Workers, and Mr A Waddell on behalf of the Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch, now therefore the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, and by consent, hereby orders—

1. THAT the Readymix Quarries Gosnells Operations 1995 Redundancy Agreement be registered as an Enterprise Bargaining Agreement with effect on and from the 9th day of November 1995.
2. THAT the Schedule, which is private to the parties, is sealed on the Commission's file and is available for perusal only with the permission of the Commission and the parties.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

REO CRAFT INDUSTRIAL AGREEMENT
No. AG 218 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Mel Hoppa trading as Reo Craft.

No. AG 218 of 1995.

Reo Craft Industrial Agreement.

COMMISSIONER P E SCOTT.

22 November 1995.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered on and from the 22nd day of November to operate with effect on and from the 11th day of September 1995.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Reo Craft Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. Ratification

Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Mel Hoppa trading as Reo Craft (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of ratification as indicated in Clause 16.—Ratification and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $0.20 per hour per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees
course books and materials
payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect on and from the 11th day of September 1995.

(signed)	(signed)
ON BEHALF OF THE UNION	ON BEHALF OF THE COMPANY

Dated this 11th day of September 1995.

APPENDIX A

	1 August 1995 Hourly Rate	1 February 1996 Hourly Rate	1 August 1996 Hourly Rate	1 February 1997 Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

ROOF SAFE INDUSTRIAL AGREEMENT
No. AG 232 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Roof Safe Pty Ltd.

No. AG 232 of 1995.

Roof Safe Industrial Agreement.

COMMISSIONER P.E. SCOTT.

22 November 1995.

Order.

HAVING heard Mr G. Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered on the 22nd day of November 1995 to operate with effect on and from the 18th day of September 1995.

(Sgd.) P.E. SCOTT,
Commissioner.

[L.S]

Schedule.

1.—TITLE

This Agreement will be known as the Roof Safe Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. Ratification
Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Roof Safe Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of ratification as indicated in Clause 16.—Ratification and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2)The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees

course books and materials

payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect on and from the 18th day of September 1995.

(signed) (signed)

ON BEHALF OF THE UNION ON BEHALF OF THE COMPANY

Dated this 18th day of September 1995.

APPENDIX A

	1 August 1995 Hourly Rate	1 February 1996 Hourly Rate	1 August 1996 Hourly Rate	1 February 1997 Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

STRUCTURAL SYSTEMS INDUSTRIAL AGREEMENT No. AG 210 of 1995.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Structural Systems Ltd.

No. AG 210 of 1995.

Structural Systems Industrial Agreement.

COMMISSIONER P E SCOTT.

22 November 1995.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered on the 22nd day of November 1995 to operate with effect on and from the 1st day of August 1995.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Structural Systems Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. Ratification

Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Structural Systems Ltd (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of ratification as indicated in Clause 16.—Ratification and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $0.20 per hour per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year

pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees
course books and materials
payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect on and from the 1st day of August 1995.

(signed)	(signed)
	R W Freedman
ON BEHALF OF THE UNION	ON BEHALF OF THE COMPANY

Dated this 1st day of September 1995.

APPENDIX A

	1 August 1995 Hourly Rate	1 February 1996 Hourly Rate	1 August 1996 Hourly Rate	1 February 1997 Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

THOMSON CLEANING COMPANY INDUSTRIAL AGREEMENT No. AG 242 of 1995.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Alexander Thomson trading as Thomson Cleaning Company.

No. AG 242 of 1995.

Thomson Cleaning Company Industrial Agreement.

COMMISSIONER P.E. SCOTT.

22 November 1995.

Order.

HAVING heard Mr G. Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered on the 22nd day of November 1995 to operate with effect on and from the 26th day of September 1995.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Thomson Cleaning Company Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. Ratification
Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Alexander Thomson trading as Thomson Cleaning Company (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of ratification as indicated in Clause 16.—Ratification and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees

course books and materials

payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect on and from the 26th day of September 1995.

(signed)	(signed)
ON BEHALF OF THE UNION	ON BEHALF OF THE COMPANY

Dated this 26th day of September 1995.

APPENDIX A

	1 August 1995 Hourly Rate	1 February 1996 Hourly Rate	1 August 1996 Hourly Rate	1 February 1997 Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

ULTRA SPEED RIGGING & CONSTRUCTION INDUSTRIAL AGREEMENT
No. AG 213 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Anthony Foreman and Michael Fisher trading as Ultra Speed Rigging & Construction.

No. AG 213 of 1995.

Ultra Speed Rigging & Construction Industrial Agreement.

COMMISSIONER P E SCOTT.

22 November 1995.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered on the 22nd day of November 1995 to operate with effect on and from the 14th day of September 1995.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Ultra Speed Rigging & Construction Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. Ratification

Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Anthony Foreman and Michael Fisher trading as Ultra Speed Rigging & Construction (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of ratification as indicated in Clause 16.—Ratification and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $0.20 per hour per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees
course books and materials
payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect on and from the 14th day of September 1995.

(signed)	(signed)
ON BEHALF OF THE UNION	ON BEHALF OF THE COMPANY

APPENDIX A

	1 August 1995 Hourly Rate	1 February 1996 Hourly Rate	1 August 1996 Hourly Rate	1 February 1997 Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

UNITED CONSTRUCTION ARGYLE AREA MAINTENANCE AGREEMENT 1995
No. AG 320 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch

and

United Construction Pty Ltd.

No. AG 320 of 1995.

United Construction Argyle Area Maintenance Agreement 1995.

SENIOR COMMISSIONER G.G. HALLIWELL.

15 December 1995.

Order.

REGISTRATION OF AN ENTERPRISE BARGAINING INDUSTRIAL AGREEMENT
No. AG 320 OF 1995.

HAVING heard Mr G. Sturman on behalf of the Applicant and Mr C.G. Keys on behalf of the Respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

(1) THAT the Schedule titled United Construction Argyle Area Maintenance Agreement 1995, signed for me for identification, be registered as an Enterprise Bargaining Industrial Agreement and shall take effect on and from the 15th day of December, 1995.

(2) THAT the Schedule, which is private to the parties, is sealed on the Commission's file and is available for perusal only with the permission of the Commission and the parties.

(Sgd.) G.G. HALLIWELL,
[L.S] Senior Commissioner.

UNTEX TEXTURED COATING INDUSTRIAL AGREEMENT
No. AG 233 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Ron Cole trading as Untex Textured Coating.

No. AG 233 of 1995.

Untex Textured Coating Industrial Agreement.

COMMISSIONER P.E. SCOTT.

22 November 1995.

Order.

HAVING heard Mr G. Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered on the 22nd day of November 1995 to operate with effect on and from the 12th day of September 1995.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Untex Textured Coating Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. Ratification

Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Ron Cole trading as Untex Textured Coating (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of ratification as indicated in Clause 16.—Ratification and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $0.20 per hour per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees

course books and materials

payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect on and from the 12th day of September 1995.

(signed)	(signed)
ON BEHALF OF THE UNION	ON BEHALF OF THE COMPANY RON COLE

Dated this 12th day of September 1995.

APPENDIX A

	1 August 1995	1 February 1996	1 August 1996	1 February 1997
	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

V & L CARLINO INDUSTRIAL AGREEMENT
No. AG 222 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Carlino Concreting Pty Ltd trading as V & L Carlino.

No. AG 222 of 1995.

V & L Carlino Industrial Agreement.

COMMISSIONER P E SCOTT.

22 November 1995.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered on the 22nd day of November 1995 to operate with effect on and from the 13th day of September 1995.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the V & L Carlino Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. Ratification

Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Carlino Concreting Pty Ltd trading as V & L Carlino (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of ratification as indicated in Clause 16.—Ratification and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees
course books and materials
payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect on and from the 13th day of September 1995.

(signed)	(signed)
ON BEHALF OF THE UNION	ON BEHALF OF THE COMPANY

Dated this 13th day of September 1995.

APPENDIX A

	1 August 1995 Hourly Rate	1 February 1996 Hourly Rate	1 August 1996 Hourly Rate	1 February 1997 Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

VORTECH INSTALLATIONS PTY LTD INDUSTRIAL AGREEMENT No. AG 288 of 1995.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Vortech Installations Pty Ltd.

No. AG 288 of 1995.

Vortech Installations Pty Ltd Industrial Agreement.

COMMISSIONER P.E. SCOTT.

7 December 1995.

Order.

HAVING heard Mr G. Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered with effect from the beginning of the first pay period commencing on or after the 31st day of October 1995.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Vortech Installations Pty Ltd Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (here-

inafter referred to as the "Union") and Vortech Installations Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $0.20 cents per hour per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees

course books and materials

payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect from the first pay period on or after the 31st day of October 1995.

(signed)	(signed)
ON BEHALF OF THE UNION	ON BEHALF OF THE COMPANY

Dated this 31st day of October 1995.

APPENDIX A

	1 August 1995	1 February 1996	1 August 1996	1 February 1997
	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

WESTERN REO INDUSTRIAL AGREEMENT
No. AG 271 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Sween Pty Ltd trading as Western Reo.

No. AG 271 of 1995.

Western Reo Industrial Agreement.

COMMISSIONER P E SCOTT.

7 December 1995.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered with effect from the beginning of the first pay period commencing on or after the 20th day of October 1995.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Western Reo Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. Ratification

Appendix A

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Sween Pty Ltd trading as Western Reo (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of $11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

course fees
course books and materials
payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect from the first pay period on or after the 20th day of October 1995.

(signed)	(signed)
ON BEHALF OF THE UNION	ON BEHALF OF THE COMPANY

Dated this 20th day of October 1995.

APPENDIX A

	1 August 1995 Hourly Rate	1 February 1996 Hourly Rate	1 August 1996 Hourly Rate	1 February 1997 Hourly Rate
Labourer Group 1	$13.75	$14.21	$14.66	$15.11
Labourer Group 2	$13.27	$13.71	$14.15	$14.59
Labourer Group 3	$12.92	$13.35	$13.77	$14.20
Plasterer, Fixer	$14.29	$14.76	$15.23	$15.70
Painter, Glazier	$13.97	$14.43	$14.89	$15.35
Signwriter	$14.26	$14.73	$15.20	$15.68

WESTRAIL CUSTOMER AND SECURITY SERVICES OFFICER AGREEMENT 1995
No. AG 275 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Australian Government Railways Commission

and

Australian Railways Union of Workers.

No. AG 275 of 1995.

COMMISSIONER P. E. SCOTT.

27 November 1995.

Reasons for Decision.

THE COMMISSIONER : This is an application by the Western Australian Railway Officers' Union ("ROU") seeking to have the Commission re-open the hearing for the registration of AG 275 of 1995 ("the agreement"), an agreement between the Western Australian Government Railways Commission ("Westrail") and the Australian Railways Union of Workers ("ARU"). The agreement deals with the creation of a new position titled Customer and Security Services Officer.

Background

On 27 October 1995, Westrail filed an application for the registration of the agreement, and by letter dated the same date advised the Chief Commissioner that the area and scope of the agreement was within the area and scope of the Railway Employees Award No. 18 of 1969, an Award to which the parties to the agreement were also parties. On this basis, the letter requested that the Chief Commissioner waive the requirements for publication of the area and scope of the agreement as provided by Section 29 (2a) (d) of the Industrial Relations Act 1979. It also advised that the parties wished to have the agreement registered as quickly as possible in order that "the employees whose jobs are about to become surplus to requirements may be offered employment in new positions covered by the agreement".

The parties also, by joint letter also dated 27 October 1995, wrote to the Registrar requesting that, subject to the granting of the previously mentioned waiver, the matter be listed for hearing and saying that neither party required 7 days notice of hearing.

On 27 October 1995, the Chief Commissioner approved the waiver of the requirement to publish the area and scope of the agreement.

The Commission as presently constituted listed the matter of the registration of the agreement for hearing on 2 November 1995. At that hearing, having examined the document lodged and having heard from the two parties to the agreement, the Commission stated that the agreement would be registered with effect on and from 29 October 1995.

Prior to the Commission issuing Minutes of Proposed Order for the agreement's registration, the Commission received a request from the ROU for the hearing to be re-opened on the basis that the ROU wished to seek to intervene and make submissions.

On 17 November 1995, a hearing was convened at which the ROU put to the Commission that the hearing ought be re-opened on the grounds that due to the publication requirements of the Act being waived, the ROU had not had any opportunity to be aware of the agreement. It had therefore, been denied the opportunity to seek to intervene and had thereby been denied natural justice.

The ROU says that employees engaged in new positions covered by the agreement will, in part, perform work currently performed by Patrol Officers, whose employment is currently covered by the terms of the Railway Officers Award No. 1 of 1985, an Award to which it is a party. It says that the positions of Patrol Officers are to become surplus to requirements and they may apply for the new positions covered by the agreement. However, the ROU says that the Commission, in dealing with any matter, is required by section 26(1)(c) to take account of the interests of the employees directly or indirectly affected, and, as Patrol Officers are affected, the ROU ought have an opportunity to seek to be heard regarding the registration, and

accordingly, there needs to be a re-opening of the hearing. In addition the ROU's says that the Commission had no power to register the agreement because the provisions of the Act relating to waiver of publication had not been complied with.

Also, the Commission was advised by the ROU that as the matter involved officer positions, and as Section 80R of the Act gives exclusive jurisdiction to deal with matters involving officers to the Railways Classification Board, the Commission as presently constituted has no power to deal with the matter.

Westrail and ARU oppose the re-opening of the hearing. They say that the matter of the waiver of publication requirements is not a matter for the Commission as presently constituted but a matter within the discretion of the Chief Commissioner. The concerns regarding publication requirements are appropriately for another place.

They also say that, whereas the agreement clearly relates to wages employees whose employment would not be within the scope of the rules of the ROU, if the ROU has any issue with that matter, then it could seek to deal with it pursuant to Section 72A.

The ARU says the Commission has an obligation to register the agreement by virtue of the provisions of Section 41(2) of the Act, and that it is inappropriate and unnecessary to re-open the hearing. It urges the Commission to finalise the registration of the agreement.

The matter of whether a hearing ought be re-opened is one for the exercise of discretion in the particular circumstances. The circumstances of this matter are that the parties to the agreement desire that it be registered. The Chief Commissioner has waived the obligation to publish the area and scope of the agreement on the basis that they fall within the area and scope of an award to which the parties to this agreement are also parties. It is not for the Commission as presently constituted to deal with the appropriateness or otherwise of that waiver.

It should be noted that the Commission is not being asked to determine, at this point, whether the matters raised by the ROU are to be accepted or not, but whether there are issues and circumstances justifying the re-opening of the hearing. It must be assumed, from the context in which the submissions were made, that the Commission has not heard exhaustively the ROU on these issues but that these are matters which it would address should the hearing be re-opened, and should it be granted leave to intervene.

I accept that without the waiver, and should the Commission as presently constituted have listed the matter for hearing at some time later than it did, the ROU would have become aware of the agreement and sought to be heard.

As to jurisdiction of the Commission and of the Railways Classification Board, and the ability of the ROU to participate in hearings of the Commission, I find that the ROU may be able to demonstrate a sufficient interest in any matter before the Commission and be heard, without the matter being one appropriately dealt with by the Railways Classification Board. If, however, it were a matter dealing with Railway Officers then, as submitted by the ROU, the Railways Classification Board would have exclusive jurisdiction. This is not such a matter, but a matter dealing with the registration of an agreement, dealing with a classification of wages employee, not of salaried officer. Such is confirmed by the terms of Clauses 8.—Wages and 9.—Payment of Wages of the Agreement, which clearly designate the employees covered as being employees to be paid wages fortnightly, and by the definition of Railway Officer contained within section 80M(1) of the Act.

I accept that the circumstances leading to the original hearing, being the waiver and the speed at which the hearing was set down, justify providing the ROU with an opportunity to seek to intervene and be heard on matters including whether the Patrol Officers are persons whose interests are required to be and can be considered, particularly in the circumstances of a section 41 agreement, and I would welcome the submissions of the parties on the Commission's powers and obligations in that regard.

On this basis, the hearing for the registration of the agreement will be re-opened, at which time the ROU may seek leave to intervene and to be heard.

Appearances: Mr A. Fiorentino, and with him, Mr N R Pearson, on behalf of the Railway Officers Union.

Mr D. Johnston on behalf of the Western Australian Government Railways Commission.

Mr R. Wells, and with him, Ms J Kaur, on behalf of the Australian Railways Union.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Australian Government Railways Commission

and

Australian Railways Union of Workers, West Australian Branch.

No. AG 275 of 1995.

COMMISSIONER P E SCOTT.

12 December 1995.

Reasons for Decision.

(Given extemporaneously at the conclusion of proceedings as edited by the Commissioner)

THE COMMISSIONER: The background to this matter is set out in the reasons for decision of 27 November 1995 dealing with the application by the Railway Officers Union to reopen the hearing for the registration of AG 275 of 1995. In those reasons the Commission indicated that there were circumstances which led to the original hearing, being the waiver and the speed at which the hearing was set down, which might have denied the opportunity to the Railway Officers Union to seek to intervene and be heard on matters, including whether patrol officers are persons whose interests are to be and can be considered particularly in the circumstances of the section 41 agreement. It was on that basis that the Commission agreed to reopen the hearing.

There has been some contention as to whether or not the Railway Officers Union ought be entitled to intervene and that decision has already been made. The issues to be addressed are in effect whether the Commission has power or obligation or discretion, in dealing with the registration of a section 41 agreement, to reject the agreement on the sorts of grounds which are brought by the Railway Officers Union.

Section 41 of the Industrial Relations Act, 1979 provides in subsection (1):

> An agreement with respect to any industrial matter or for the prevention or resolution under this Act of disputes, disagreements, or questions relating thereto may be made between an organisation or association of employees and any employer or organisation or association of employers.

Subsection (2) says:

> Subject to subsection (3) and section 41A, where the parties to an agreement referred to in subsection (1) apply to the Commission for registration of the agreement as an industrial agreement the Commission shall register the agreement as an industrial agreement

Subsection (2) says that subject to subsection (3) and to section 41A that shall happen. Subsection (3) says:

> Before registering an industrial agreement the Commission may require the parties thereto to effect such variation as the Commission considers necessary or desirable for the purpose of giving clear expression to the true intention of the parties.

Section 41A sets out the circumstances under which the Commission shall not register an agreement and those circumstances are not a limitation in respect of the registration of this agreement. So, in effect, the Commission pursuant to section 41 shall register any agreement made between an organisation or association of employees and an employer subject to giving clear expression to the true intention of the parties.

The Industrial Appeal Court in the Department for Community Services and Others v the Civil Service Association 74 WAIG 1709 and the Bank Employees Union of Australia v Federated Clerks Union 704 WAIG 2086 spell out the mandatory nature of the Commission's responsibilities under section 41.

While the Railway Officers Union may have constitutional coverage of employees engaged by the employer in receipt of an annual salary, and such employees may include patrol officers whose positions are made surplus to requirements, and such officers may apply for positions in a variety of areas within Westrail's operations including the positions covered by the agreement, this does not constitute sufficient grounds to refuse the registration of an agreement between the parties relating to wages employees. That aspect of employment was dealt with in the reasons for decision of 27 November 1995; that in fact, the agreement relates to employees who are defined within Clause 8.—Wages and Clause 9.—Payment of Wages and within the agreement elsewhere as being wages employees.

Bearing in mind the requirements of section 41, that is that the Commission shall register any agreement, etcetera, the Railway Officers Union's interest on behalf of patrol officers is not a matter which would enable the rejection of this agreement. The Australian Railways Union has coverage of the classification of employees covered by this agreement and is entitled to enter into an agreement with the employer.

I have heard of the circumstances surrounding the negotiations between the Railway Officers Union and the employer. It may be that the Railway Officers Union and the patrol officers might feel aggrieved that this agreement has been arrived at, but the parties to the agreement are entitled to arrive at it. The positions covered by the agreement are positions not of patrol officers but of a new classification with a focus that combines a range of different jobs, some of which may have been covered by the patrol officers' position but which are not limited to that.

On these bases I can find no reason to change my original decision and effectively refuse to register the agreement. Firstly, there does not appear to be a discretion to do so by virtue of section 41 and, secondly, this is an agreement between two parties entitled to make such an agreement. I say that in light of the constitutional coverage of both unions and the terms of the agreement. It is not an agreement to cover salaried officers who may fall within the eligibility of the Railway Officers Union.

On these bases the objection raised by the Railway Officers Union is rejected. Minutes of Proposed Order for the registration of the agreement will issue as soon as possible with a view to the registration applying from the date which the Commission originally indicated in the hearing for its registration, being effective on and from 29 October 1995.

Appearances: Mr D Johnston on behalf of the Western Australian Government Railways Commission.

Mr T Fiorentino on behalf of the West Australian Railways Officers' Union.

Mr R Wells on behalf of the Australian Railways Union of Workers, West Australian Branch.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Australian Government Railways Commission

and

Australian Railways Union of Workers, West Australian Branch

No. AG 275 of 1995.

Westrail Customer and Security Services Officer Agreement 1995

COMMISSIONER P E SCOTT.

8 December 1995.

Order.

HAVING heard Mr D Johnston on behalf of the Applicant, Mr R Wells, and with him Ms J Kaur on behalf of the Respondent, and Mr T Fiorentino intervening on behalf of the West Australian Railway Officers' Union, now therefore the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered with effect on and from the 29th day of October 1995.

(Sgd.) P. E. SCOTT,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This agreement shall be known as the Westrail Customer and Security Services Officer Agreement 1995.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties Bound
4. Application
5. Term Of Agreement

Part 1 — Trainee Customer And Security Services Officers

6. Contract Of Employment
7. Hours Of Duty
8. Wages
9. Payment Of Wages
10. Leave
11. Resolution Of Disputes

Part 2 — Customer And Security Services Officers

12. Contract Of Employment
13. Hours Of Duty
14. Additional Hours
15. Optional Shifts
16. Location
17. Stand Down
18. Wages
19. Payment Of Wages
20. Public Holidays
21. Sick Leave
22. Annual Leave
23. Long Service Leave
24. Bereavement Leave
25. Commencement Date For Leave Entitlements
26. Training
27. Uniforms
28. Information Acquired During Employment
29. Health And Fitness
30. Resolution Of Disputes
31. Signatories To The Agreement

Appendix A—Transitional Provisions

3.—PARTIES BOUND

This agreement shall be binding on the Western Australian Government Railways Commission and the Australian Railways Union, West Australian Branch.

4.—APPLICATION

This agreement shall apply to employees of the Western Australian Government Railways Commission (the employer) employed in the classification of Customer and Security Services Officer and Trainee Customer and Security Services Officer, and, in respect of those employees the provisions of the Railway Employees' Award No.18 of 1969 shall not apply.

5.— TERM OF AGREEMENT

This agreement shall operate for a period of twelve months from October 29 1995.

Part 1—Trainee Customer and Security Services Officers

The provisions of this Part shall apply to employees employed in the position of Trainee Customer and Security Services Officer.

6.—CONTRACT OF EMPLOYMENT

(1) Trainee Customer and Security Services Officers will be employed for the term of the training necessary to achieve the position specifications set out in the Customer and Security Services Officer Job Description provided that the employment will be for a period of less than six months.

(2) An employee who successfully completes the training requirements and meets all the other necessary criteria will be eligible for appointment as a Customer and Security Services Officer, provided that in no case is Westrail obliged to offer employment as a Customer and Security Services Officer.

(3) Notwithstanding subclause (1) of this clause an employee's contract of employment may be terminated prior to the completion of the training by on one day's notice (or the payment of one day's pay in lieu of such notice) if the employer at any time deems the employee will not be suited to the role of Customer and Security Services Officer.

(4) In the case of misconduct which contravenes the employer's rules or regulations, or misconduct which at law would justify summary dismissal, the contract of employment may be terminated without notice and without payment as provided in subclause (3) of this clause.

7.— HOURS OF DUTY

The hours of duty may vary according to the requirements of the training and may involve evening classes. An average of 40 ordinary hours will be worked per week.

8.— WAGES

Each employee shall be paid wages of $960 per fortnight which, other than as expressly set out in this agreement, include all allowances, penalties and special rates whatsoever.

9.— PAYMENT OF WAGES

(1) Wages shall be paid fortnightly.

(2) All wages shall be paid into accounts (nominated by the employee) with a bank, building society or credit union.

10.—LEAVE

(1) Employees shall accrue sick and annual leave pro rata based on the entitlements provided in clauses 21.—Sick Leave and 22.—Annual Leave of this agreement.

(2) The employer may require a medical certificate for any absence due to sickness.

(3) Employees shall be entitled to bereavement leave as provided in clause 24.—Bereavement Leave of this agreement

11.—RESOLUTION OF DISPUTES

In the event of any questions arising between the employer and its employees about the meaning or effect of the agreement, including any provisions implied in the agreement by the Minimum Conditions of Employment Act, or any dispute arising during the term of this Agreement, the procedure set out in clause 30 of this agreement will apply.

Part 2—Customer and Security Services Officers

The provisions of this Part shall apply to employees employed in the position of Customer and Security Services Officer.

12.—CONTRACT OF EMPLOYMENT

(1) (a) An employee's appointment as a Customer and Security Services Officer will be subject to a probationary period of three months from the date of appointment.

(b) Subject to satisfactory performance an employee's appointment will be confirmed at the conclusion of the probationary period.

(c) During the probationary period, if the employee's performance is not satisfactory, the employer may terminate the contract of employment by the giving of one week's notice, or payment of one week's pay in lieu of notice.

(2) Except as provided at subclause (1)(c), the contract of employment may be terminated by:

(a) the employee, by the giving of four weeks' notice in writing, or the forfeiture of four weeks' pay in lieu of such notice; or

(b) the employer, by the giving of four weeks' notice in writing, or the payment of four weeks' pay in lieu of such notice; provided that where the employee is aged over 45 years and has more than two years continuous service the period of notice shall be five weeks;

provided that where mutually agreed a shorter period of notice may be given without payment or forfeiture of pay in lieu.

(3) In the case of misconduct which contravenes the employer's rules or regulations, or misconduct which at law would justify summary dismissal, the contract of employment may be terminated without notice and without payment or forfeiture of pay as provided in subclauses (1) and (2) of this clause.

13.—HOURS OF DUTY

(1) (a) The ordinary hours of duty shall be as shown on the Customer and Security Services Officer Roster and may be worked over any days of the week Sunday to Saturday inclusive.

(b) Subject to the other provisions of this clause shifts may be rostered to commence at any time of the day.

(2) (a) Up to 12 hours may be rostered in any one shift.

(b) No rostered shift shall be less than four hours.

(c) Rosters shall provide for a minimum of eight days off duty in 28 days on average.

(3) An employee will be entitled to a minimum of a 10 hour break between any two shifts set out under the roster provided that in the event of a roster change, 8 hours may be substituted for 10 hours under this provision.

(4) (a) An employee will be allowed to take a meal at an appropriate time during any shift which exceeds five hours.

(b) The timing of meals will be such as to cause the minimum of disruption to the service provided.

(c) Meal breaks will have a nominal length of 30 minutes

(5) While the number of hours in each shift and group of shifts may vary, an employee will be expected to work an average of 40 ordinary hours per week over the roster cycle.

(6) Where, at the end of a roster cycle an employee has worked more ordinary hours during the cycle than the total number of rostered ordinary hours in the cycle, the employee shall be paid at the ordinary rate of pay for all extra hours in excess of 1.25% of the total rostered hours in the cycle.

(7) Where, at the end of a roster cycle an employee has been required to work fewer ordinary hours during the cycle than the total number of rostered ordinary hours in the cycle, then to the extent that the shortfall in hours is not caused by absence from duty (either with or without leave) the employee will be deemed to have worked the rostered ordinary hours.

(8) The employer may substitute new rosters and alter rosters at any time.

14.—ADDITIONAL HOURS

(1) An employee may be required to work additional hours immediately before or immediately after the employee's rostered ordinary hours. An employee shall not be required to work more than 12 hours continuously.

(2) An employee may be required to work additional shifts to meet exceptionally busy periods. These periods include, without limitation:

Australia Day
Show Week
Christmas Pageant
Major football matches
New Year's Eve

(3) An employee required to work additional hours in circumstances specified in subclauses (1) or (2) of this clause will be paid $25.20 per hour for all such hours worked. Where an employee is unable to work additional hours due to sickness, no sick leave will be payable for such hours.

(4) In the event that an employee is required to work an additional shift as specified in subclause (2) and the shift is cancelled within 2 hours of its starting time the employee will be compensated by payment of two ordinary hour's pay.

(5) Except where the requirement for specific skills or knowledge makes it desirable to require a particular employee to work an additional shift, the employer shall endeavour to allocate additional shifts to employees covered by this Agreement on an equitable basis.

15.—OPTIONAL SHIFTS

(1) In addition to rostered shifts (referred to in clause 13.—Hours of Duty of this agreement) and additional shifts (referred to in clause 14.—Additional Hours of this agreement), the employer may from time to time offer an employee the opportunity to work optional shifts, provided that should the employee elect to accept these optional shifts, then the maximum number of shifts, including ordinary shifts, the employee can work consecutively without a day off is nine.

(2) An employee will be paid $21.00 per hour for all hours worked in shifts elected to be worked by the employee pursuant to subclause (1) of this clause.

16.—LOCATION

(1) (a) Employees will be appointed to a position of Customer and Security Services Officer at Perth.

(b) An employee may be required to work at any location on the suburban rail system.

(2) Nothing in this clause places any restriction on the locations, whether on the railway line or elsewhere, at which an employee may be required to carry out the duties of the position.

(3) Except where otherwise agreed between the employer and the employee an employee shall commence and finish duty at the same location.

17.— STAND DOWN

(1) Where the employer, for any cause outside of the employer's control, or, through industrial action, whether or not on the part of the employee, is unable to provide useful work for an employee on the suburban rail system in a normal rostered work period, the employer shall be entitled not to pay the employee in respect of any such period; provided that the employee may elect to have such a period paid as annual leave where there is an adequate outstanding entitlement to such leave.

(2) Any period for which the employee is not paid under the provisions of subclause (1) of this clause will count as service for the accrual of leave to which the employee would otherwise be entitled under this Agreement, provided that the employee resumes work as required at the end of such period.

18.—WAGES

(1) Each employee will be paid wages of $1341.90 per fortnight which, other than as expressly set out in this agreement, include all allowances, penalties and special rates whatsoever.

(2) Except as provided in subclause (6) of Clause 13.—Hours of Duty of this agreement ordinary time payment each fortnight shall be for eighty (80) hours irrespective of the rostered hours.

19.—PAYMENT OF WAGES

(1) Wages shall be paid fortnightly.

(2) All wages shall be paid into accounts (nominated by the employee) with a bank, building society or credit union.

20.—PUBLIC HOLIDAYS

(1) "Public holiday" means any of the following days which are proclaimed to be public holidays in the State of Western Australia:

New Year's Day	Anzac Day
Australia Day	Foundation Day
Labour Day	Sovereign's Birthday
Good Friday	Christmas Day
Easter Monday	Boxing Day

(2) Where an employee is not required to work on a day solely because it is a public holiday, the employee will be paid as if the employee were required to work on that day.

(3) Where an employee is required to work ordinary hours on December 25 or on Good Friday the employee will be paid an allowance of 50% of the ordinary hourly rate of pay for each ordinary hour worked on the day.

(4) Except as provided in subclause (3) of this clause, where an employee is required to work on a day that is a public holiday, the employee will not be entitled to receive any additional payment or to receive a day off in lieu because the day is a public holiday.

21.—SICK LEAVE

(1) In the event of an employee being genuinely sick the employee may be paid up to 80 hours sick leave each completed year of service for time lost from duty as a result of such sickness.

(2) The employer may request a medical certificate for:

(a) all future sicknesses after the employee has taken two (2) separate absences without a certificate due to sickness in any one year.

(b) for absences for sickness for two (2) or more days.

22.—ANNUAL LEAVE

(1) Each employee is entitled to 200 hours paid leave per year for each completed year of service.

(2) (a) A minimum of eighty (80) hours leave must be taken each year at a time or times acceptable to the employer and the employee, provided that where agreement cannot be reached the employer shall determine when the leave is to be taken.

(b) An employee may request, and subject to mutual agreement may be permitted, to accrue leave up to a maximum of 400 hours.

(3) Annual leave shall be paid at the rate of pay provided in Clause 18.—Wages of this agreement.

(4) For the purpose of debiting annual leave a day's leave shall be deemed to be eight hours and a week's leave shall be deemed to be 40 hours.

23.—LONG SERVICE LEAVE

(1) After each ten years' continuous service with the employer the employee shall be entitled to 13 weeks' long service leave. The rate of pay for the employee on long service leave shall be the rate of pay provided in Clause 18.—Wages of this agreement.

(2) No pro rata provisions will apply.

(3) (a) For the purpose of this clause service shall include:

(i) any period of leave approved by the employer except any form of leave without pay which exceeds three months, in which case only the first three months of such leave shall count as service;

(ii) any period of employment with the employer as a Trainee Customer and Security Services Officer.

(b) Continuity of service shall not be broken by the absence of the employee on any form of approved leave or by the standing down of an employee under the terms of this agreement.

24.—BEREAVEMENT LEAVE

(1) On the death within Australia of:

(a) the spouse, father, mother, brother, sister, child or stepchild of an employee;

(b) father, mother, brother or sister of the spouse of an employee; or

(c) any other person who, immediately before that person's death, lived with an employee as a member of the employee's family,

that employee shall be entitled on notice, to leave of absence without deduction of pay.

(2) Such leave of absence up to and including the day of the funeral shall be for a period up to but not exceeding the number of hours worked by the employee in three ordinary working days having regard for the circumstances of the case.

(3) Proof of death shall be furnished by the employee to the satisfaction of the employer.

(4) Payment in respect of bereavement leave shall be made only where the employee otherwise would have been on duty and shall not be granted in any case where the employee concerned would have been off duty in accordance with the roster, or on annual leave, long service leave, sick leave, workers' compensation or leave without pay.

25.—COMMENCEMENT DATE FOR LEAVE ENTITLEMENTS

(1) Where employment as a Customer and Security Services Officer is continuous with employment as a Trainee Customer and Security Services Officer under this agreement the commencement date for the calculation of leave entitlements under this agreement shall be the date of appointment to the Trainee position provided that no period of employment shall be counted more than once towards an entitlement to each type of leave.

(2) Where employment as a Customer and Security Services Officer is not continuous with employment as a Trainee Customer and Security Services Officer under this agreement the commencement date for the calculation of leave entitlements under this agreement shall be the date of appointment as a Customer and Security Services Officer.

26.—TRAINING

(1) A joint employer/employee committee shall be established to assess training requirements to enable employees to carry out their role in a professional manner.

(2) Each employee must be prepared to undertake whatever training is necessary and qualify to carry out the employee's role in a professional manner.

27.—UNIFORMS

(1) Each employee will wear and maintain the uniform provided for the employee by the employer and present in a clean pressed uniform at all times.

(2) Each employee will carry and use as required all protective clothing and equipment provided by the employer.

28.—INFORMATION ACQUIRED DURING EMPLOYMENT

(1) Except as expressly authorised by the employer and required by the employee's duties, an employee shall not directly or indirectly reveal to any third party any confidential dealings, finances, transactions or affairs of the employer or any of its clients which may come to the employee's knowledge during the course of employment.

(2) The obligation imposed under subclause (1) of this clause shall continue to apply after the termination of employment without limits in time.

(3) All records, documents and other papers, together with any copies or extracts thereof, made or acquired by an employee in the course of employment shall remain the property of the employer and must be returned to the employer on demand or otherwise no later than upon termination of employment.

(4) Any changes, innovations and ideas initiated by an employee during the course of employment with the employer shall belong to the employer and the employee shall do all such things as are necessary to completely vest ownership of such matters in the employer.

29.—HEALTH AND FITNESS

The employer reserves the right to request an employee to undergo a medical examination if there is concern that the employee may be unable to carry out the work required to be performed in the course of employment as specified in the employee's job description.

30.—RESOLUTION OF DISPUTES

In the event of any questions arising between the employer and its employees about the meaning or effect of the agreement, including any provisions implied in the agreement by the Minimum Conditions of Employment Act, or any dispute arising during the term of this Agreement, the following procedure will apply.

(1) The employer and the employee will make every attempt to resolve the issue amicably and internally.

(2) Reasonable time limits will be allowed to resolve any issue but it must be within 14 days of the dispute arising.

(3) If the matter cannot be successfully resolved the employee may refer the matter to the union and the union and the employer will attempt to resolve the issue.

(4) If the matter is still not resolved, either party may refer the question or dispute to the Western Australian Industrial Relations Commission.

(5) The employer and employees covered by this Agreement will maintain and will not disrupt the provision of services to the public while disputes are being dealt with under this procedure.

31.—SIGNATORIES TO THE AGREEMENT

The Common Seal of the Western Australian Government Railways Commission was hereunto affixed in the presence of

R DRABBLE Acting Commissioner

D CLARKE Secretary

Date 27/10/95

Signed for and on behalf of the Australian Railways Union, West Australian Branch by

R C WELLS State Secretary

Date 27/10/95

APPENDIX A—TRANSITIONAL PROVISIONS

Part 1—Trainee Customer and Security Services Officers

The following provisions apply to any Trainee Customer and Security Services Officer who, immediately prior to appointment to the position was employed by the employer.

1.—CONTRACT OF EMPLOYMENT

(1) Where,

(a) prior to the completion of the training an employee is deemed by the employer to be unsuitable to continue training for the role of Customer and Security Services Officer; or

(b) on completion of the training the employer does not offer an employee employment as a Customer and Security Services Officer

the employee shall continue in the employment of the employer as if the employee had not been employed as a Trainee Customer and Security Services Officer.

(2) The provisions of subclause (1) shall not apply where,

(a) the employee resigns;

(b) the employee's contract of employment is terminated under the provisions of subclause (4) of Clause 6.—Contract of Employment of this agreement; or

(c) the employee's continued employment is subject to some other arrangement agreed between the employer and the employee.

2.—RATE OF PAY

(1) The rate of pay shall be the fortnightly rate of pay for the designated position occupied by the employee immediately prior to appointment as a Trainee Customer and Security Services Officer; provided that where an employee immediately prior to appointment as a Trainee Customer and Security Services Officer is in receipt of a rate of pay in excess of the employee's designated rate and has been so for a period of three months continuous with that time, the rate of pay for the designated position shall be deemed to be the rate which was paid for the majority of the three month period.

(2) Where the rate of pay prescribed by Clause 8.—Wages of this agreement is greater than the rate of pay provided in subclause (1) of this clause then the rate of pay shall be the rate prescribed in Clause 8.—Wages of this agreement.

Part 2—Customer and Security Services Officers

1.—APPOINTMENT

An appointment to the position of Customer and Security Services Officer shall not take effect until the appointee has successfully completed all the required training.

2.—ACCRUED LEAVE ENTITLEMENTS

(1) Accrued sick leave entitlements up to the date of appointment as a Trainee Customer and Security Services Officer shall be transferred to the new position.

(2) (a) Annual leave entitlements transferred to the position of Customer and Security Services Officer shall be treated according to the following formula:

$$\frac{\text{Annual Leave Entitlement (Hours)} \times \text{Rate of Pay A}}{\text{Rate of Pay B}}$$

where

(i) Rate of Pay A is the hourly rate of pay for the designated position occupied by the appointee immediately prior to appointment as a Trainee Customer and Security Services Officer; provided that where an employee immediately prior to appointment as a Trainee Customer and Security Services Officer is in receipt of a rate of pay in excess of the employee's designated rate and has been so for a period of three months continuous with that time, the rate of pay for the designated position shall be deemed to be the rate which was paid for the majority of the three month period; and

(ii) Rate of Pay B is one eightieth of the rate of pay expressed in Clause 18. -Wages of this Agreement.

(b) An employee may transfer annual leave entitlements accrued to the date of appointment as a Trainee Customer and Security Services Officer up to an equivalent of 400 hours after the application of the formula in paragraph (a).

(c) Any annual leave entitlement accrued to the date of appointment and which is not transferred under the provisions of paragraph (b) shall be commuted to cash payment at the rate of pay defined in subparagraph (a)(i).

(3) Any days in lieu of public holidays and accrued credit days shall be commuted to cash payment at the rate of pay defined in subparagraph (a)(i).

(4) (a) Long service leave entitlements transferred to the position of Customer and Security Services Officer shall be treated according to the following formula:

$$\frac{\text{Long Service Leave Entitlement (Weeks)} \times \text{Rate of Pay C}}{\text{Rate of Pay D}}$$

where

(i) Rate of Pay C is the weekly rate of pay for the designated position occupied by the appointee immediately prior to appointment as a Trainee Customer and Security Services Officer; provided that where an employee immediately prior to appointment as a Trainee Customer and Security Services Officer is in receipt of a rate of pay in excess of the employee's designated rate and has been so for a period of 12 months continuous with that time, the rate of pay for the designated position shall be deemed to be the rate which was paid for the majority of the three month period; and

(ii) Rate of Pay D is one half of the rate of pay expressed in Clause 18. -Wages of this Agreement.

(b) (i) An employee may transfer long service leave entitlements accrued to the date of appointment as a Trainee Customer and Security Services Officer up to an equivalent of 13 weeks after the application of the formula in paragraph (a).

(ii) Any long service leave entitlement transferred in accordance with subparagraph (b)(i) shall be taken within three years of the date of appointment.

(c) Any long service leave entitlement accrued to the date of appointment and which is not transferred under the provisions of paragraph (b) shall be commuted to cash payment at the rate of pay defined in subparagraph (a)(i).

(d) Where at the date of appointment to the position of Trainee Customer and Security Services Officer an employee has commenced a seven year qualifying period for accrual of long service leave such qualifying period shall be adjusted on the following basis

$$\frac{\text{Number of Months completed in 7 year qualifying period} \times 120}{84}$$

(5) The provisions of subclauses (2), (3) and (4) are available only on appointment to the position of Customer and Security Services Officer.

WOOLDUMPERS AUSTRALIA (FREMANTLE) PTY LIMITED ENTERPRISE AGREEMENT 1995 No. AG 297 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Shop, Distributive and Allied Employees' Association of Western Australia

and

Wooldumpers Australia Pty Limited.

No. AG 297 of 1995.

COMMISSIONER R.H. GIFFORD.

3 January 1996.

Order.

REGISTRATION OF AN
INDUSTRIAL AGREEMENT

No. AG 297 OF 1995

Having heard Mr J. Bullock on behalf of the Applicant and Mr D. Holloway on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Wooldumpers Australia (Fremantle) Pty Limited Enterprise Agreement 1995, No. AG 297 of 1995, as specified by the following schedule, be registered as an Industrial Agreement.

(Sgd.) R.H. GIFFORD,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Enterprise Agreement shall be known as the Wooldumpers Australia (Fremantle) Pty Limited Enterprise Agreement 1995, No. AG 297 of 1995.

2.—APPLICATION OF AGREEMENT AND PARTIES BOUND

This Agreement shall bind all employees of Wooldumpers Australia Pty Ltd, Port Beach Road, North Fremantle, Western Australia ("the company") who are bound by the terms of the Wool, Hide and Skin Store Employees' Award No. 8 of 1966 or any successor thereto, engaged in or in connection with the processing, handling and preparing for sale of wool (including classing, sorting, dumping, piece picking, receiving, despatching and general handling of wool), wool dumping, and general cleaning maintenance of equipment.

The parties to the Agreement are Wooldumpers Australia Pty Ltd and The Shop, Distributive and Allied Employees' Association of Western Australia ("the union").

3.—DURATION

This Agreement shall take effect from the date of registration by the Western Australian Industrial Relations Commission and shall remain in force for one year, during which time this Agreement shall not be varied, including any variation from matters arising in any State or Federal Wage Cases. The parties agree that it is intended that this Agreement be replaced or renegotiated prior to its expiry.

4.—RELATIONSHIP TO PARENT AWARD

The terms and conditions of this Agreement shall be read and interpreted in conjunction with the Wool, Hide and Skin Store Employees' Award No. 8 of 1966 ("the parent award"). Where a provision of this Agreement is inconsistent with a provision of the parent award the former shall, to the extent of any inconsistency, override the latter.

5.—ARRANGEMENT

1. Title
2. Application of Agreement and Parties Bound
3. Duration
4. Relationship to Parent Award
5. Arrangement
6. Single Bargaining Unit
7. Agreement Not to be Used as a Precedent
8. Agreed Matters
9. Dispute Settlement Procedure
10. Hours of Work
11. Overtime
12. Meal Period and Crib Breaks
13. Classification Structure
14. Wage Rates (Including Productivity Payment)
15. Payment of Wages and Allowances
16. Measures to Achieve Gains in Productivity, Efficiency and Flexibility
17. Termination, Change and Redundancy
18. Signatories

6.—SINGLE BARGAINING UNIT

A single bargaining unit has been established as follows:

- The Manager
- The Shop Steward
- The Store Supervisor
- An elected representative from the dump

Provided that a representative of the relevant employee or employer organisation may attend and participate in any meeting of the Single Bargaining Unit.

7.—AGREEMENT NOT TO BE USED AS A PRECEDENT

This Agreement shall not be used in any manner whatsoever to obtain similar arrangements or benefits in any other plant or enterprise.

8.—AGREED MATTERS

It is a term of the Agreement that the union undertakes that, for the duration of this Agreement, it will not pursue any extra claims.

9.—DISPUTE SETTLEMENT PROCEDURE

The object of the procedure for the prevention of industrial disputes shall be to promote the resolution of disputes by measures based on consultation, co-operation and discussion and to avoid interruption to the performance of work and the consequential loss of production and wages.

The parties to this Agreement shall observe the following settlement of industrial disputes procedure.

(1) The procedure encourages:

(a) The opportunity for the Supervisor in the first instance to discuss with an employee any request or complaint.

(b) An orderly and just method of reviewing an issue on its merits.

(c) A means of resolving an issue without disruption to work and without prejudice to final settlement.

(2) It is agreed by all parties that the following guidelines will be observed:

(a) In the event that an employee(s) has a grievance then it is agreed that the employee(s) should attempt to resolve the grievance with the Supervisor.

(b) If the issue has not been resolved, the matter will be referred to the Manager. The employee(s) may request their Shop Steward be present at these meeting(s).

(c) If the dispute has not been resolved, the Shop Steward may request assistance from the union. The matter shall then be discussed between a Management or Human Resource representative of the company and an appropriate officer of the union.

(3) In the event that the issue is still unresolved either party may seek the assistance of the Western Australian Industrial Relations Commission, whose decision shall, subject to any appeal, be final.

(4) The procedure outlined in subclause (2) hereof shall be facilitated by the earliest possible advice by one party to the other of any issue or problem which may give rise to a grievance or dispute. The parties shall co-operate to ensure that these procedures are carried out expeditiously and shall endeavour to keep to the following time limits:

Procedure described by	Time
Subclause 9(2)(a)	Within 24 hours (weekends and holidays excepted
Subclause 9(2)(b)	No later than two working days after (a)
Subclause 9(2)(c)	No later than two working days after (b)

It is agreed that no industrial action of a kind which affects the operation of Wooldumpers Australia Pty Ltd, North Fremantle will be taken whilst the settlement of disputes procedure outlined in subclause (2) hereof is being observed and that the status quo shall remain whilst the dispute is being resolved.

10.—HOURS OF WORK

(1) Except as provided by the shift work provisions of the parent award and subject to the provisions of this clause, the ordinary hours of work shall be 38 per week to be worked on one of the following basis:

(a) 38 hours within a period of one week; or

(b) 76 hours within a period of two weeks; or

(c) 114 hours within a period of three weeks; or

(d) 152 hours within a period of four weeks.

(2) The ordinary hours of work may be worked on any or all of the days Monday to Friday inclusive. Ordinary hours of work each day shall be worked continuously, except for meal breaks, within a spread of ordinary hours between 5.00 am and 6.30 pm.

(3) The maximum daily ordinary hours of work shall be eight hours provided that in cases, other than where a four day week is worked as part of a 19 day four week roster cycle, where employees are rostered to work a four day week or a sixteen day four week cycle, the maximum daily ordinary hours of work may be ten hours.

(4) Implementation of 38 Hour Week

(a) The method of implementation of the 38 hour week applicable to employees bound by this Agreement at the date of registration is by rostering employees off on various days of the week during a particular four week cycle so that each employee has one week day rostered off during that cycle.

(b) The company shall assess other methods of implementing the 38 hour week from the perspective of the needs of the business and, subject to agreement with the employees and the union, may implement any of the following alternative methods:

(i) By employees working no more than 7.6 ordinary hours each day; or

(ii) by employees working no more than 6 ordinary hours on one day each week; or

(iii) by fixing one weekday on which all employees will be rostered off during a particular work cycle; or

(iv) by employees working four days of up to ten ordinary hours per week or sixteen days of up to ten ordinary hours in each four week cycle; or

(v) by some other method agreed between the parties.

(c) Any day off duty shall be arranged so that it does not coincide with a holiday prescribed by Clause 16.—Holidays and Annual Leave, of the parent award.

(d) Except as provided in paragraph (e) of this subclause, where by virtue of the arrangement of ordinary working hours, an employee is entitled to a day off duty during a work cycle, the employee shall be advised by the company at least two weeks in advance of the day to be taken off duty provided that, by mutual agreement between the employee and the company, the day of taking such a day off duty may be varied.

(e) Banking of Rostered Days Off

Notwithstanding any other provision of this clause where by virtue of the arrangement of ordinary hours an employee is entitled to a day off during a work cycle the company may require an employee to accrue up to five (5) rostered days off in any year. Additional banked RDO's may be accrued by agreement between the company and the employee/s affected. Banked rostered days off will be taken on days agreed by the employee and the company subject to the operational requirements of the company. Banked RDO's will not be taken during the months of peak operation.

(5) Commencing and ceasing times for ordinary hours may be varied by mutual agreement between the company and the employee concerned, consistent with the rostering provisions of this clause, provided that, in the absence of agreement, the company shall provide to the employee at least 48 hours notice of such a change.

11.—OVERTIME

(1) Except as provided by this clause, the provisions of the parent award with respect to overtime apply.

(2) The rate of pay for the first five Saturdays of overtime worked in any year shall be time and a half for the first eight hours and double time thereafter. The rate of pay for overtime worked on any subsequent Saturday shall be as provided by the parent award.

(3) Notwithstanding anything contained in this Agreement or the parent award;

(a) the company may require any employee to work reasonable overtime at overtime rates and such employee shall work overtime in accordance with such requirements.

(b) No organisation party to this Agreement, or employee covered by this Agreement shall in any way, whether directly or indirectly, be party to or concerned in any ban, limitation or restriction upon the working of overtime in accordance with the requirements of this subclause.

12.—MEAL PERIOD AND CRIB BREAKS

(1) An unpaid meal break of 30 minutes shall be allowed for lunch.

(2) (a) Where an employee works up to eight (8) ordinary hours on any day the employee shall not be required to work for more than five hours continuously without a break for a meal.

(b) Where an employee works more than eight (8) ordinary hours on any day the employee shall not be required to work for more than six hours continuously without a break for a meal.

(3) Employees shall be allowed a total of 20 minutes paid crib break per day. The timing of this break(s) shall be agreed between the company and the employees involved.

(4) Consistent with the provisions of this clause, the timing of the meal and crib breaks shall be determined in accordance with operational requirements and may be staggered where necessary.

(5) All other provisions with respect to meal and crib breaks shall be as provided by the parent award.

13.—CLASSIFICATION STRUCTURE

Wool Industry Storeworker Level 1

Relativity: 90%

Pre-requisites:

* Basic interpersonal and communication skills.
* Basic literacy and numeracy skills.

Skills/Duties:

* Become familiar with company policies and procedures.
* Responsible for quality of their own work subject to detailed direction.
* Obtain knowledge and apply appropriate manual handling skills.
* Ability to work in a team environment and/or under routine supervision.
* Ability to exercise discretion within the limits of skills and/or training.
* Ability to undertake duties in a safe and responsible manner.

The following tasks are indicative of the tasks which an employee at this level may be required to perform.

1. Core sampling (non-mechanical).
2. Feeding wool into blending machines.
3. Head marking or branding of head bale at receival or weighing.
4. Inserting lot plates or dividers.
5. Lobbing.
6. Opening or closing bales (including fadging and boodling).
7. Pushing into or taking from elevators or drops.
8. Sewing.
9. Wheeling baskets.
10. Hand trucking.
11. Use of non-licensed material handling equipment.
12. Operate wool blending machine.
13. Responsible for housekeeping in own work environment.

Promotional Criteria:

An employee remains at this level until he/she is capable of completing the tasks required of this level so as to enable him/her to be considered for promotion to the next level when a position becomes available.

Wool Industry Storeworker Level 2

Relativity: 92.4%

Pre-requisites:

* Wool Industry Storeworker Level 1 or equivalent.

Skills/Duties:

In addition to the skills/duties required of a Wool Industry Storeworker Level 1 the following skills/duties are required:

* Able to work in a team environment under limited supervision.
* Responsible for quality of their own work.
* Appropriate licence to operate required materials handling equipment, (other than crane or fork-lift rated in excess of 20,000 kg), (as required).

The following tasks are indicative of the tasks which an employee at this level may be required to perform.

1. Breaking out of specified bales for shipping, showing, pooling or blending.
2. Breaking out for rail trucks (including the use of mechanical aids).
3. Breaking down stacks of wool.
4. Port marking and branding of wool for shipment.

5. Operating and in charge of semi-automatic dump press.
6. Operating of all appropriate materials handling equipment (other than crane or fork-lift rated in excess of 20,000kg), not requiring ancillary or incidental clerical functions.
7. Sheetman or fossicker.
8. Wool pressing.
9. Weight adjusting.

Promotional Criteria:

An employee remains at this level until they are capable of completing the tasks required of this level so as to enable them to be considered for promotion to the next level when a position becomes available.

Wool Industry Storeworker Level 3

Relativity: 94.5%

Pre-requisites:

* Wool Industry Storeworker Level 2 or equivalent.

Skills/Duties:

In addition to the skills/duties required of a Wool Industry Storeworker Level 2 the following skills/duties are required:

* Understands and is responsible for quality control standards.
* Advanced level of interpersonal and communication skills.
* Keyboard skills.
* Able to perform work required with minimal supervision.
* Ability to operate computerised inventory equipment (as required).

Indicative of the tasks which an employee at this level may perform are the following.

1. Sworn weigher or employee (including fork-lift driver) recording or carrying out clerical functions in receiving, weighing and delivering or shipping of bales including notifying locations of bales by radio or other electronic means.
2. Employee In-charge of an out-store.
3. Operation of semi-automatic core line.
4. Employee responsible for the actual packing of containers with dumped bales.

Promotional Criteria:

An employee remains at this level until they are capable of completing the tasks required of this level so as to enable them to be considered for promotion to the next level when a position becomes available.

Wool Industry Storeworker Level 4

Relativity: 97%

Pre-requisites:

* Wool Industry Storeworker Level 3 or equivalent.

Skills/Duties:

In addition to the skills/duties required of a Wool Industry Storeworker Level 3 the following skills/duties are required:

* Appropriate licence to operate required materials handling equipment and/or container handling equipment and/or crane, with capacity rated greater than 20,000 kg (as required).
* Knowledge of operation of fully automated core line operation.
* Able to operate computerised wool handling equipment (as required).

Indicative of the tasks which an employee at this level may perform are the following:

1. Operator in charge of a fully automated core line operation.
2. Operator in charge of a fully automatic Dump Press (ie. Tripak).
3. Operator of container handling equipment rated greater than 20,000 kg.
4. Employee charged by the company with the responsibility of supervising and directing not more than 10 employees (not being a number of employees working as a team).

Promotional Criteria:

An employee remains at this level until they are capable of completing the tasks required of this level so as to enable them to be considered for promotion to the next level when a position becomes available.

14.—WAGE RATES (INCLUDING PRODUCTIVITY PAYMENT)

(1) The total wage rate per week for adult employees performing the work described by any of the classifications in Clause 13.—Classification Structure, of this Agreement shall be as detailed in the following table with effect from the first full pay period on or after the registration of this Agreement:

CLASSIFICATION	TOTAL RATE $ PER WEEK
Level 1	$415.00
Level 2	$425.60
Level 3	$434.80
Level 4	$445.50

(2) No employee shall suffer a reduction in any overaward payments as a result of the operation of this Agreement.

(3) The wage rate for junior employees shall be determined by multiplying the rate specified in this Agreement for a Wool Industry Storeworker Level 1 by the appropriate percentage prescribed by subclause (9)(a) of Clause 13.—Wages and Classification Structure, of the parent award.

(4) Except where inconsistent with the provisions of this clause, the provisions of Clause 13.—Wages and Classification Structure, of the parent award apply.

15.—PAYMENT OF WAGES AND ALLOWANCES

Wages and allowances for all employees shall be paid by Electronic Funds Transfer.

16.—MEASURES TO ACHIEVE GAINS IN PRODUCTIVITY, EFFICIENCY AND FLEXIBILITY

The aim of this Agreement is to adopt a productive culture dedicated to achieving real and measurable improvement through teamwork, participation, trust and mutual respect. In order to further these aims the parties to this Agreement have agreed that:

(a) A three man crew will operate each dumping machine when required.

(b) All employees will assist in the completion of the tasks necessary to achieve ISO 9000 accreditation.

(c) It is agreed that employees will continue to embrace multi-skilling as opposed to specialisation of tasks.

17.—TERMINATION, CHANGE AND REDUNDANCY

(1) Termination of Employment

(a) Should the company wish to terminate a permanent employee, the following period of notice shall be provided:

Period of Continuous Service	Period of Notice
Less than 1 month	1 day
One month or more but less than 1 year	1 week
1 year or more but less than 3 years	2 weeks
3 years or more but less than 5 years	3 weeks
5 years and over	4 weeks

(b) Employees over 45 years of age with two or more years continuous service at the time of termination, shall receive an additional week's notice.

(c) Where the relevant period of notice is not provided, the employee shall be entitled to payment in lieu. Provided that employment may be terminated by part of the period of notice and part payment in lieu.

(d) Payment in lieu of notice shall be calculated using an employee's weekly ordinary time earnings.

(e) The period of notice in this clause shall not apply in the case of dismissal for conduct that justifies instant dismissal, including malingering, dishonesty, inefficiency or neglect of duty or employees engaged

for a specific period time and/or for a specific task or tasks (limited tenure).

(f) Notice of Termination by Employee

The notice of termination required to be given by an employee shall be the same as that required of the company except that employees 45 years and over shall not provide an additional week's notice.

If an employee fails to give notice, or to work out the full period of notice, the company shall have the right to withhold monies due to the employee under this Agreement to a maximum amount equal to the ordinary time earnings for the period of notice required. At the employee's request, and the company's discretion part or all of the period of notice required by an employee may be waived by the company and the employee paid to the date of termination only.

Where an employee has given or been given notice as aforesaid or payment made in lieu of the prescribed notice unless otherwise agreed between the company and the employee he/she shall continue in employment until the date of expiration of such notice. An employee having been given notice as aforesaid who absents themselves from work during such period without reasonable cause (proof whereof shall be upon him/her) shall be deemed to have abandoned his/her employment and shall not be entitled to payment for work done within such period of notice.

(g) Time Off During Notice Period

Where the company has given notice to an employee of intended termination, the employee shall be allowed time off without loss of pay, for a cumulative period of eight hours for the purpose of seeking other employment. Such time off shall be taken at times that are convenient to the employee after consultation with the manager.

(h) Statement of Employment

The company shall, when requested, provide to the employee a written statement specifying the period of their employment and the classification of or the type of work performed by the employee.

(i) Unfair Dismissals

Termination of employment by the company shall not be harsh, unjust or unreasonable, whether notice has been given to the employee or not.

Without limiting the above, except where a distinction, exclusion or preference is based on the inherent requirements of a particular position, termination on the grounds of race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction and social origin shall constitute a harsh, unjust or unreasonable termination of employment.

(2) Introduction of Change

(a) Company's Duty to Notify

Where the company has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the company shall notify the employees who may be affected by the proposed changes and the Union.

"Significant effects" include termination of employment, major changes in the composition, operation or size of the workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs. Provided that where the parent award makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

(b) Company's Duty to Discuss Change

The company shall discuss with the employees affected and their union inter alia, the introduction of the changes referred to above, the effects the changes are likely to have on employees, measures to avert or mitigate the adverse effects of such changes on employees and shall give prompt consideration to matters raised by the employees and/or the union in relation to the changes.

The discussions shall commence as early as practicable after a definite decision has been made by the company to make the changes referred to above.

For the purposes of such discussions, the company shall provide in writing to the employees concerned and the union, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that the company shall not be required to disclose confidential information the disclosure of which would be inimical to the company's interests.

(3) Redundancy

(a) Discussions Before Terminations

(i) Where the company has made a definite decision that the company no longer wishes the job the employee has been doing to be done by anyone and this is not due to the ordinary and customary turnover of labour and that decision may lead to termination of employment, the company shall hold discussions with the employees directly affected and with the union.

(ii) The discussions shall take place as soon as is practicable and shall cover, amongst other matters the reasons the proposed terminations are required, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any terminations on the employees concerned.

(iii) For the purposes of the discussion the company shall, as soon as practicable, provide in writing to the employees concerned and the union, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of employees normally employed and the period over which the terminations are likely to be carried out.

Provided that the company shall not be required to disclose confidential information the disclosure of which would be inimical to the company's interest.

(b) Transfer to Lower Paid Duties

Where an employee is transferred to lower paid duties for reasons set out in paragraph (a) above, the employee shall be entitled to the same period of notice of transfer as they would have been entitled to if they had been terminated, and the company may make payment in lieu thereof of an amount equal to the difference between the former ordinary time rate of pay and the new lower ordinary time rates for the number of weeks of notice still owing.

(c) Severance Pay

In addition to the period of notice provided in subclause (1) hereof, a permanent employee whose employment is terminated for reasons set out above shall be entitled to the following amount of severance pay in respect of a continuous period of service:

Period of continuous service	Severance Pay
less than 1 year	nil
1 year but less than 2 years	4 weeks pay
2 years but less than 3 years	6 weeks pay
3 years but less than 4 years	7 weeks pay
4 years and over	8 weeks pay

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

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

(d) Employee Leaving During Notice

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

(e) Alternative Employment

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

(f) Time Off During Notice Period

(i) During the period of notice of termination given by the company an employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.

(ii) 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 company, be required to produce proof of attendance at an interview or they shall not receive payment for the time absent.

For the purpose a statutory declaration will be sufficient.

(g) Notice to Commonwealth Employment Service

Where a decision has been made to terminate employees in the circumstances outlined in paragraph (a) above, the company shall notify the Commonwealth Employment Service thereof as soon as possible giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

(h) Superannuation Benefits

Subject to further order of the Western Australia Industrial Relations Commission, where an employee who is terminated receives a benefit from a superannuation scheme that in the case of redundancy provides for a specific benefit that has been funded by the company contributions and which is in addition to superannuation benefits which would otherwise apply, the company shall be entitled to offset only the amount of the additional superannuation fund benefit against amounts payable under subclause (c) thereof.

(i) Transmission of Business

(i) Where a business is before or after the date of this Agreement, transmitted from one employer (in this subclause called "the transmittor") to another employer (in this subclause called "the transmittee") and an employee who at the time of such transmission was an employee of the transmittor in that business becomes an employee of the transmittee:

- The continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission;

  and

- the period of employment which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.

(ii) In this subclause "business" includes trade, process, business or occupation and includes part of any such business and "transmission" includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and "transmitted" has a corresponding meaning.

(j) Employees with Less than One Year's Service

This clause shall not apply to employees with less than one year's continuous service and the general obligation on the company shall be not more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

(k) Employees Exempted

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

(l) Incapacity to Pay

The company, in particular redundancy case, may make application to the Western Australian Industrial Relations Commission to have the general severance pay prescription varied on the basis of the company's incapacity to pay within eight weeks of the termination of the employee(s).

18.—SIGNATORIES

(sgd.) for and on behalf of Wooldumpers Australia Pty Limited

D.R. HOLLOWAY
(Name of Signatory)
MANAGER
(POSITION OF SIGNATORY)

(Sgd.) for and on behalf of The Shop, Distributive and Allied Employees' Association of Western Australia

T M BISHOP
(Name of Signatory)
GEN. SECRETARY
(Position of Signatory)

PUBLIC SERVICE ARBITRATOR— Awards/Agreements— Variation of—

CHILDREN'S SERVICES (GOVERNMENT) AWARD 1989 No. A29 of 1985 & PSA A29A of 1985.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch

and

Hon. Minister for Community Services.

No. 1523 of 1990.

Children's Services (Government) Award 1989 No. A29 of 1985 PSA A 29A of 1985.

CHIEF COMMISSIONER W.S. COLEMAN.

7 August 1995.

Order.

HAVING heard Ms S Mayman on behalf of the Applicant and Ms A Hall and Dr G Sefton on behalf of the Respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Children's Services (Government) Award 1989 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 10th day of May, 1993.

(Sgd.) W.S. COLEMAN,
[L.S] Chief Commissioner.

Schedule.

1. Clause 5.—Definitions. Delete the titles and associated definitions of "Senior Child Care Worker", "Child Care Aide", "Child Care Worker" and "Year of Experience" and insert in lieu thereof the following:

"Child Care Support Employee" shall mean an untrained ancillary employee who is employed to undertake cooking duties.

"Child Care Giver" an employee at this level shall be an unqualified employee working under routine supervision, engaged to assist in the supervision and care of children and generally to assist in the functioning of the centre.

"Qualified Child Care Giver" shall mean an employee who holds the qualification of Associate Diploma Social Science (Child Care) or an approved equivalent qualification which is recognised and approved by the Child Care Services Board authorising the employee to be in charge of children 0-6 years and who is so appointed. Qualified Child Care Giver shall also include persons who do not hold approved qualifications but who have obtained an exemption from the Child Care Services Board to work at this level and who are so appointed.

"Senior Qualified Child Care Giver" shall mean a Qualified Child Care Giver appointed to carry out administrative duties in addition to the normal duties of a Qualified Child Care Giver. An employee at this level shall hold qualifications as defined for Qualified Child Care Giver and shall be responsible for the overall implementation and coordination of programme(s).

2. Clause 16.—Salaries and Wages: Following the preamble to this clause delete subclauses (2) through to (4) and insert the following in lieu thereof:

(2) The minimum weekly rate of wage payable to persons employed pursuant to this award shall be:

			i (First MRA) $	ii (First $8) $	iii (Second $8) $
(a)	Qualified Child Care Giver	Step IA	383.80	391.80	399.80
		Step IB	388.30	396.30	404.30
		Step II	420.03	428.03	436.03
	Column A	Step III	439.15	447.15	455.15
		Step IV	458.28	466.28	474.28
		Step V	473.67	481.67	489.67
(b)	Qualified Child Care Giver	Step IA	365.03	373.03	381.03
		Step IB	369.31	377.31	385.31
		Step II	399.54	407.54	415.54
	Column B	Step III	417.73	425.73	433.73
		Step IV	435.94	443.94	451.94
		Step V	450.60	458.60	466.60
(c)	Senior Qualified Child Care Giver **Column A ***		545.50	553.50	561.50
(d)	Senior Qualified Child Care Giver **Column B ***		519.26	526.87	534.50

(*Interim adjustment pending further hearings and adjustments)

			i (1st Minimum Rate Adjustment) Base Rate $	Supplementary Payment $	Total Rate $
(e)	Child Care Giver	Step I	364.60	11.96	376.56
		Step II	374.00	10.54	384.54
	Column A	Step III	383.50	8.64	392.14
		Step IV	393.00	9.78	402.78

			ii (1st $8.00 Adjustment) Base Rate $	Supplementary Payment $	Total Rate $
	Child Care Giver	Step I	372.60	11.96	384.56
		Step II	382.00	10.54	392.54
	Column A	Step III	391.50	8.64	400.14
		Step IV	401.00	9.78	410.78

			iii (2nd $8.00 Adjustment) Base Rate $	Supplementary Payment $	Total Rate $
	Child Care Giver	Step I	380.60	11.96	392.56
		Step II	390.00	10.54	400.54
	Column A	Step III	399.50	8.64	408.14
		Step IV	409.50	9.78	418.78

			i (1st Minimum Rate Adjustment) Base Rate $	Supplementary Payment $	Total Rate $
(f)	Child Care Giver	Step I	347.06	10.88	357.94
		Step II	356.00	9.92	365.92
	Column B	Step III	365.05	8.47	373.52
		Step IV	374.10	8.92	383.02

			ii (1st $8.00 Adjustment) Base Rate $	Supplementary Payment $	Total Rate $
	Child Care Giver	Step I	355.06	10.88	365.94
		Step II	364.00	9.92	373.92
	Column B	Step III	373.05	8.47	381.52
		Step IV	382.10	8.92	391.02

			iii (2nd $8.00 Adjustment) Base Rate $	Supplementary Payment $	Total Rate $
	Child Care Giver	Step I	363.06	10.88	373.94
		Step II	372.00	9.92	381.92
	Column B	Step III	381.05	8.47	389.52
		Step IV	390.10	8.92	399.02

(g) JUNIOR CHILD CARE GIVER

Junior Child Care Giver shall be paid the following percentage of the Child Care Giver rate of this clause in his/her first year of service

under 17 years of age	60%
under 18 years of age	70%
under 19 years of age	90%
at 19 years of age	100%

			i (1st Minimum Rates Adjustment) Base Rate $	Supplementary Payment $	Total Rate $
(h)	Child Care Support Employee	1st year of experience	371.30	8.60	379.90
		2nd year of experience	375.50	12.20	387.70

			ii (1st $8.00 Adjustment) Base Rate	Supplementary Payment	Total Rate
			$	$	$
	Child Care Support	1st year of experience	379.30	8.60	387.90
	Employee	2nd year of experience	383.50	12.20	395.70
		3rd year of experience	391.80	11.60	403.40
	Column A	4th year of experience	391.80	21.80	413.60

			iii (2nd $8.00 Adjustment) Base Rate	Supplementary Payment	Total Rate
			$	$	$
	Child Care Support	1st year of experience	387.30	8.60	395.90
	Employee	2nd year of experience	391.50	12.20	403.70
		3rd year of experience	399.80	11.60	411.40
	Column A	4th year of experience	399.80	21.80	421.60

			i (1st Minimum Rates Adjustment) Base Rate	Supplementary Payment	Total Rate
			$	$	$
(i)	Child Care Support	1st year of experience	353.44	7.81	361.25
	Employee	2nd year of experience	357.44	11.21	368.65
		3rd year of experience	365.34	10.66	376.00
	Column B	4th year of experience	365.34	20.36	385.70

			ii (1st $8.00 Adjustment) Base Rate	Supplementary Payment	Total Rate
			$	$	$
	Child Care Support	1st year of experience	361.44	7.81	369.25
	Employee	2nd year of experience	365.44	11.21	376.65
		3rd year of experience	373.34	10.66	384.00
	Column B	4th year of experience	373.34	20.36	393.70

			iii (2nd $8.00 Adjustment) Base Rate	Supplementary Payment	Total Rate
			$	$	$
	Child Care Support	1st year of experience	369.44	7.81	377.25
	Employee	2nd year of experience	373.44	11.21	384.65
		3rd year of experience	381.34	10.66	392.00
	Column B	4th year of experience	381.34	20.36	401.70

(3) The rate determined for Senior Qualified Child Care Giver is the target rate for the Minimum Rates Adjustment process which recognises the work value of a Senior Qualified Child Care Giver.

(4) The rate payable to persons pursuant to the relevant classification in subclause (1) Column i of this clause shall be operative from the beginning of the first pay period on or after 10 May, 1993 includes the first Minimum Rates Adjustment Instalment.

(5) The rate payable to persons pursuant to the relevant classification in subclause (1) Column ii of this clause shall be operative from the beginning of the first pay period on or after 21 September 1994 and includes the First $8.00 Arbitrated Safety Net Adjustment.

(6) The rate payable to persons pursuant to the relevant classification in subclause (1) Column iii of this clause shall be operative from the beginning of the first pay period on or after 16 June, 1995 and includes the Second $8.00 Arbitrated Safety Net Adjustment.

(7) Except as provided hereunder progression from step to step for Qualified Child Care Giver, Child Care Giver and Child Care Support Employee will be contingent upon:

(a) 12 months' service at each step; and

(b) satisfactory performance at each step.

(8) An employee may be employed as a casual if that employment is for a period of less than four weeks, in which case the employee shall be paid a loading of 20 percent in addition to his/her base rate in lieu of the provisions of Clauses 11.—Public Holidays, 12.—Annual Leave and 13.—Sick Leave of this award.

(9) (a) An employee at Step IA Qualified Child Care Giver shall be a person with no previous experience in the industry. At the completion of twelve months satisfactory performance that person shall be paid the Step II rate.

(b) An employee at Step IB Qualified Child Care Giver shall be a person with previous experience in the industry. At the completion of twelve months satisfactory performance that person shall be paid the Step II rate.

(10) On ceasing employment with an employer, the employee shall be given a written statement of the current Level and Step if appropriate and the date of commencement at that Level and Step to be passed on to the next employer.

(11) On commencing employment with an employer a Qualified Child Care Giver, Child Care Aide, Cook or Senior Qualified Child Care Giver shall, within the appropriate classification be paid at the step or year of experience within the appropriate classification whichever is relevant, recognising their previous experience in the children's services industry.

(12) The weekly salary shall be divided by 38 per week for Child Care Givers and Child Care Support Employees and for other employees by 37.5 for the purposes of adjustment of payment of a hourly rate. For the purposes of adjustment to an annual salary the weekly rate shall be multiplied by 52.167.

(13) It is a condition that no employee shall suffer a reduction in wages by reasons of the coming into operation of any order of the Western Australian Industrial Relations Commission in the implementation of the Minimum Rates Adjustments.

(14) (a) The rates of pay in this award include the first $8.00 per week Arbitrated Safety Net Adjustment payable under the December, 1994 State Wage Decision. This first $8.00 per week Arbitrated Safety Net Adjustment may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November 1991. Increases made 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 Arbitrated Safety Net Adjustments.

(b) The rates of pay in this award include the second $8.00 per week Arbitrated Safety Net Adjustment payable under the December, 1994 State Wage Decision. This second $8.00 per week Arbitrated Safety Net Adjustment may be offset to the extent of any wage increase payable since 1 November, 1991, pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase has not previously been used to offset an Arbitrated Safety Net Adjustment. Increases made 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 Arbitrated Safety Net Adjustments.

(15) DEFINITIONS AND SKILL DESCRIPTORS

(a) Child Care Support Employee

Definition: An untrained ancillary employee who is employed to undertake cooking duties.

Skill Descriptor: Such an employee may:

— work under routine supervision either individually or in a team environment;

— be responsible for assuring the quality of the employee's own working subject to routine supervision;

— be required to exercise discretion during the course of their own work.

(b) Child Care Giver

Definition: An employee at this level shall be an unqualified employee working under routine supervision, engaged to assist in the supervision and care of children and generally to assist in the functioning of the centre.

Skill Descriptor: Responsibilities of a Child Care Giver may include the following:

— Is able to perform routine duties requiring the exercise of knowledge and skills at a primary level.

— Maintain a clean, hygienic environment

— Maintain and attend to personal hygiene of children

— Attend to nutritional needs of children

— Respond to child's apparent ill -health

— Respond to accident, emergency or threat

— Implement routines which enhance well being

— Interact positively and appropriately with children

— Participate in the planning and preparation of programmes

— Assist to prepare an environment based on programme requirements
— Assist in the implementation of programmes
— Contribute to team approach
— Seek to further professional development
— Liaise appropriately with parents
— Uphold the Centre's philosophy
— Participate in appropriate administrative process
— Contribute to maintenance and care of buildings and equipment
— Implement Centre policies and procedures.
— Assisting in the facilitation of programmes suited to the needs of individual children and groups
— Provide input to trained staff by observations of individuals children and groups
— Work under direction with individual children with special needs.

(c) Qualified Child Care Giver:

Definition: shall mean an employee who holds the qualification of Associate Diploma Social Science (Child Care) or an approved equivalent qualification which is recognised and approved by the Child Care Services Board authorising the employee to be in charge of children 0-6 years and who is so appointed.

Qualified Child Care Giver shall also include persons who do not hold approved qualifications but who have obtained an exemption from the Child Care Services Board to work at this level and who are so appointed.

Skill Descriptor: The responsibilities of a Qualified Child Care Giver may include the following

— Ensure the Centre or Service's policies are adhered to
— Ensure the maintenance of a safe working environment
— Display various methods and techniques of child management and where appropriate guide the Child Care Giver in the same
— Direct other staff members as required
— In conjunction with the Coordinator or Senior Qualified Child Care Giver or Medical staff develop, implement, monitor and review developmental programmes
— Display an ability to relate to people from various multicultural backgrounds
— Assist the Coordinator or Senior Qualified Child Care Giver with the assessment of students on placement
— Where appointed work as the person in charge of a group of children in the age range 0-6 years
— Possesses observational skills in excess of an experience Child Care Giver and the ability to programme for a child's development based on these observations. Where appropriate undertake developmental assessments.
— Participate in a team approach to deliver of the programme and if appropriate advise Child Care Givers on reasons for the programme
— Possesses the ability to formulate and implement a child's special needs programme
— Liaise with parents
— Initiate changes to the children's programmes including special needs programmes
— Develop, implement, evaluate and maintain daily routines independently
— Provide advice to Coordinator, Senior Qualified Child Care Giver or Medical staff on the needs of the service.
— Demonstrate the ability to impart knowledge and skills where appropriate to parents, students, and/or other members of the health care team and referral agencies.
— Where appropriate provide support to the family, the support network, and other health professionals.
— Where appropriate, conduct visits to clients home to undertake developmental assessments

(d) Senior Qualified Child Care Giver

Definition: a Senior Qualified Child Care Giver shall mean a Qualified Child Care Giver appointed to carry out administrative duties in addition to the normal duties of a Qualified Child Care Giver. An employee at this level shall hold qualifications as defined for Qualified Child Care Giver and shall be responsible for the overall implementation and coordination of programme(s).

Skill Descriptor: A Senior Qualified Child Care Giver shall be competent to perform work above and beyond the level of a Qualified Child Care Giver. In addition to the normal duties of a Senior Qualified Child Care Giver the responsibilities of a Senior Qualified Child Care Giver may include the following:

— To co-ordinate the developmental programme(s) or therapeutic milieu
— To take referrals from professional health agencies.
— To explain the function and role of the service to other agencies and professional individuals.
— To supervise in-service training of staff.
— Where appropriate initiate programmes for parent/child activity groups.
— Where appropriate liaise with specialist staff (internal and external) on appropriate programmes for children with special needs.
— Participate in In-service education.
— Identification budgetary expenses for service including fund-raising where required.
— Ensure the daily operation of the centre complies with Licensing Regulations where appropriate.
— Handle child care enrolment enquiries and allocate places in accordance with Policy where appropriate.
— Act as a positive role model and care giver for staff, parents, students and children.
— Direct and supervises the duties of support staff, volunteers and students, and ensures that appropriate standards in care are maintained at all times.
— Arrange the placement and/or maintenance of the centres equipment, furnishing, toys and consumable materials as required.
— Where appropriate collect fees, issue receipts and forward monies to appropriate officer.
— Select short-term relief staff as required and assist with appointment and orientation of child care staff.
— To conduct staff meetings and attends other relevant meetings.
— To encourage team-work amongst staff.
— Operate within the requirements of Government Legislation, Regulations and relevant Industrial Awards.
— To provide leadership and direction for other staff.

EXISTING CLASSIFICATION	NEW STRUCTURE	EXISTING RATE BEFORE 1ST $8	TARGET RATE OPERATIONAL DATE 10.5.93	EXISTING RATE AFTER 1st $8.00 21.9.94	TARGET RATE OPERATIONAL DATE 21.9.94	EXISTING RATE AFTER 2ND $8.00 16.6.95	TARGET RATE OPERATIONAL DATE 16.6.95	KEY MINIMUM CLASSIFICATION KMC
SENIOR CHILD CARE WORKER 1st year of exp. Column A	SENIOR CHILD CARE GIVER Column A	448.40	545.50	456.40	553.50	464.40	561.50	108.7%
SENIOR CHILD CARE WORKER 1st year of exp Column B	SENIOR CHILD CARE GIVER Column B	426.41	519.26	434.41	526.87	442.41	534.50	108.7%
SENIOR CHILD CARE WORKER 2nd year of exp. Column A	SENIOR CHILD CARE GIVER Column A	471.33	545.50	479.33	553.50	487.33	561.50	108.7%
SENIOR CHILD CARE WORKER 2nd year of exp. Column B	SENIOR CHILD CARE GIVER Column B	448.25	519.26	456.25	526.87	464.25	534.50	108.7%
SENIOR CHILD CARE WORKER 3rd year of exp Column A	SENIOR CHILD CARE GIVER Column A	494.25	545.50	502.25	553.50	510.25	561.50	108.7%
SENIOR CHILD CARE WORKER 3rd year of exp. Column B	SENIOR CHILD CARE GIVER Column B	470.08	519.26	478.08	526.87	486.08	534.50	108.7%

COLUMN B RATE = 0.9519 OF COLUMN A
KMC = Key Minimum Classification 509.10 (following 1st ASNA) = 100%
Teachers Award = 67.1%
Metal Trades Award = 120.1%

The Adjustments for Senior Child Care Giver are interim pending further hearings and adjustments

1/11/95

EXISTING CLASSIFICATION	NEW STRUCTURE	EXISTING RATE BEFORE 1ST $8	TARGET RATE OPERATION DATE 10.5.93	1st, 2nd, 3rd & 4th MRA	1st MRA OPERATION DATE 10.5.93	2nd MRA	3rd MRA	4th MRA	KEY MINIMUM CLASS KMC	% Indep. Teacher	TARGET RATE AFTER 1st $8.00 21.9.94	TARGET RATE AFTER 2nd $8.00 16.6.95
CHILD CARE WORKERS st year of exp COLUMN A	QUALIFIED CHILD CARE GIVER **Step 1A** COLUMN A	365.07	440.00	(4 x 18.7325	383.80	402.54	421.28	440.00	87.8%	58.9%	448.00	456.00
CHILD CARE WORKERS st year of exp COLUMN A	QUALIFIED CHILD CARE GIVER **Step 1B** COLUMN A	365.07	458.00	(4 x 23.2325)	388.30	411.53	434.76	458.00	91.4%	61.3%	466.00	474.00
CHILD CARE WORKERS nd year of exp COLUMN A	QUALIFIED CHILD CARE GIVER **Step II** COLUMN A	402.58	472.40	(4 x 17.455)	420.03	437.49	454.95	472.40	94.3%	63.3%	480.40	488.40
CHILD CARE WORKERS rd year of exp COLUMN A	QUALIFIED CHILD CARE GIVER **Step III** COLUMN A	423.33	486.60	(4 x 15.8175)	439.15	454.96	470.79	486.60	97.1%	65.2%	494.60	502.60
CHILD CARE WORKERS th year of exp COLUMN A	QUALIFIED CHILD CARE GIVER **Step IV** COLUMN A	444.01	501.10	(4 x 14.2725)	458.28	472.55	486.83	501.10	100%	67.1%	509.10	517.10
CHILD CARE WORKERS th year of exp COLUMN A	QUALIFIED CHILD CARE GIVER **Step V** COLUMN A	464.52	501.10	(4 x 9.145)	473.67	482.81	491.96	501.10	100%	67.1%	509.10	517.10

COLUMN B RATE = 0.9519 OF COLUMN A

KMC = Key Minimum Classification: 509.10 (following 1st ASNA) = 100%
Teachers Award = 67.1%
Metal Trades Award = 120.1%

/11/95

EXISTING CLASSIFICATION	NEW STRUCTURE	EXISTING RATE BEFORE 1ST $8.00	TARGET RATE OPERATION DATE 10.5.93	1st, 2nd, 3rd & 4th MRA Adj	1st MRA OPER DATE 10.5.93	2nd MRA	3rd MRA	4th MRA	KEY MIN CLASS KMC	% Indep. Teacher	TARGET RATE AFTER 1st $8 21.9.94	TARGET RATE AFTER 2nd $8 16.6.95
CHILD CARE WORKERS 1st year of exp COLUMN B	QUALIFIED CHILD CARE GIVER **Step IA** COLUMN B	347.09	418.84	(4 x 17.94)	365.03	382.97	400.90	418.84	87.8%	58.9%	426.84	434.84
CHILD CARE WORKERS 1st year of exp COLUMN B	QUALIFIED CHILD CARE GIVER **Step IB** COLUMN B	347.09	435.97	(4 x 22.22)	369.31	391.53	413.75	435.97	91.4%	61.3%	443.97	451.97
CHILD CARE WORKERS 2nd year of exp COLUMN B	QUALIFIED CHILD CARE GIVER **Step II** COLUMN B	382.82	449.68	(4 x 16.715)	399.54	416.25	432.96	449.68	94.3%	63.3%	457.68	465.68
CHILD CARE WORKERS 3rd year of exp COLUMN B	QUALIFIED CHILD CARE GIVER **Step III** COLUMN B	402.57	463.19	(4 x 15.155)	417.73	432.88	448.04	463.19	97.1%	65.2%	471.19	479.19
CHILD CARE WORKERS 4th year of exp COLUMN B	QUALIFIED CHILD CARE GIVER **Step IV** COLUMN B	422.25	477.00	(4 x 13.6875)	435.94	449.63	463.31	477.00	100%	67.1%	485.00	493.00
CHILD CARE WORKERS 5th year of exp COLUMN B	QUALIFIED CHILD CARE GIVER **Step V** COLUMN B	441.79	477.00	(4 x 8.8025	450.60	459.40	468.20	477.00	100%	67.1%	485.00	493.00

COLUMN B RATE = 0.9519 OF COLUMN A

KMC = Key Minimum Classification 509.10 (following 1st ASNA) = 100%

Teachers Award = 67.1%

Metal Trades Award = 120.1%

1/11/95

EXISTING CLASSIFICATION	NEW STRUCTURE	RATE (Include 1st ASNA $8) 21.9.94	RATE BEFORE 1ST $8.00	1st MRA OPERATIONAL DATE 10.5.93	1st MRA after 1st ASNA 21.9.94	1st MRA after 2nd ASNA 16.6.95
CHILD CARE WORKERS 1st year of exp COLUMN A	QUALIFIED CHILD CARE GIVER **Step IA** COLUMN A	373.07	365.07	383.80	391.80	399.80
CHILD CARE WORKERS 1st year of exp COLUMN A	QUALIFIED CHILD CARE GIVER **Step IB** COLUMN A	373.07	365.07	388.30	396.30	404.30
CHILD CARE WORKERS 2nd year of exp COLUMN A	QUALIFIED CHILD CARE GIVER **Step II** COLUMN A	410.58	402.58	420.03	428.03	436.03
CHILD CARE WORKERS 3rd year of exp COLUMN A	QUALIFIED CHILD CARE GIVER **Step III** COLUMN A	431.33	423.33	439.15	447.15	455.15
CHILD CARE WORKERS 4th year of exp COLUMN A	QUALIFIED CHILD CARE GIVER **Step IV** COLUMN A	452.01	444.01	458.28	466.28	474.28
CHILD CARE WORKERS 5th year of exp COLUMN A	QUALIFIED CHILD CARE GIVER **Step V** COLUMN A	472.52	464.52	473.67	481.67	489.67
CHILD CARE WORKERS 1st year of exp COLUMN B	QUALIFIED CHILD CARE GIVER **Step 1a** of emp COLUMN B	355.09	347.09	365.03	373.03	381.03
CHILD CARE WORKERS 1st year of exp COLUMN B	QUALIFIED CHILD CARE GIVER **Step IB** COLUMN B	355.09	347.09	369.31	377.31	385.31
CHILD CARE WORKERS 2nd year of exp COLUMN B	QUALIFIED CHILD CARE GIVER **Step II** COLUMN B	390.82	382.82	399.54	407.54	415.54
CHILD CARE WORKERS 3rd year of exp COLUMN B	QUALIFIED CHILD CARE GIVER **Step III** COLUMN B	410.57	402.57	417.73	425.73	433.73
CHILD CARE WORKERS 4th year of exp COLUMN B	QUALIFIED CHILD CARE GIVER **Step IV** COLUMN B	430.25	422.25	435.94	443.94	451.94
CHILD CARE WORKERS 5th year of exp COLUMN B	QUALIFIED CHILD CARE GIVER **Step V** COLUMN B	449.79	441.79	450.60	458.60	466.60

COLUMN B RATE = 0.9519 OF COLUMN A

1/11/95

EXISTING CLASSIFICATION	NEW STRUCTURE	RATE (Include 1st ASNA $8) 21.9.94	RATE BEFORE 1ST $8	1st MRA OPERATIONAL DATE 10.5.93			KMC	% METAL TRADES	% IND TEACHER
				base rate	supp	total pay			
CHILD CARE AIDE 1st year of exp COLUMN A	CHILD CARE GIVER 1st year of emp COLUMN A	384.56 10.12ph	376.56 9.90ph	364.60	11.96	376.56	72.8%	87.4%	
CHILD CARE AIDE 1st year of exp COLUMN B	CHILD CARE GIVER 1st year of emp COLUMN B	365.94 9.63ph	357.94 9.42ph	347.06	10.88	357.94	72.8%	87.4%	
CHILD CARE AIDE 2nd year of exp COLUMN A	CHILD CARE GIVER 2nd year of emp COLUMN A	392.54 10.33ph	384.54 10.12ph	374.00	10.54	384.54	74.6%	89.6%	
CHILD CARE AIDE 2nd year of exp COLUMN B	CHILD CARE GIVER 2nd year of emp COLUMN B	373.92 9.84ph	365.92 9.63	356.00	9.92	365.92	74.6%	89.6%	
CHILD CARE AIDE 3rd year of exp COLUMN A	CHILD CARE GIVER 3rd year of emp COLUMN A	400.14 10.53	392.14 10.32ph	383.50	8.64	392.14	76.5%	91.9%	
CHILD CARE AIDE 3rd year of exp COLUMN B	CHILD CARE GIVER 3rd year of emp COLUMN B	381.52 10.04	373.52 9.83	365.05	8.47	373.52	76.5%	91.9%	
CHILD CARE AIDE 4th year of exp COLUMN A	CHILD CARE GIVER 4th year of emp COLUMN A	410.78 10.81ph	402.78 10.60	393.00	9.78	402.78	78.4%	94.2%	
CHILD CARE AIDE 4th year of exp COLUMN B	CHILD CARE GIVER 4th year of emp COLUMN B	391.02 10.29ph	383.02 10.08ph	374.10	8.92	383.02	78.4%	94.2%	

COLUMN B RATE = 0.9519 OF COLUMN A
KMC = Key Minimum Classification 509.10 (following 1st ASNA) = 100%
Teachers Award = 67.1%
Metal Trades Award = 120.1%

EXISTING CLASSIFICATION	NEW STRUCTURE	RATE (Include 1st ASNA $8) 21.9.94	RATE BEFORE 1ST $8	1st MRA OPERATIONAL DATE 10.5.93			KMC	% METAL TRADES	% IND TEACHER
				base rate	supp	total pay			
COOK 1st year of exp COLUMN A	CHILD CARE SUPPORT EMPLOYEE 1st year of emp COLUMN A	387.90	379.90	371.30	8.60	379.90	74.1%	89.0%	
COOK 1st year of exp COLUMN B	CHILD CARE SUPPORT EMPLOYEE 1st year of emp COLUMN B	369.25	361.25	353.44	7.81	361.25	74.1%	89.0%	
COOK 2nd year of exp COLUMN A	CHILD CARE SUPPORT EMPLOYEE 2nd year of emp COLUMN A	395.70	387.70	375.50	12.20	387.70	74.9%	90.0%	
COOK 2nd year of exp COLUMN B	CHILD CARE SUPPORT EMPLOYEE 2nd year of emp COLUMN B	376.65	368.65	357.44	11.21	368.65	74.9%	90.0%	
COOK 3rd year of exp COLUMN A	CHILD CARE SUPPORT EMPLOYEE 3rd year of emp COLUMN A	403.40	395.40	383.80	11.60	395.40	76.6%	92.%	
COOK 3rd year of exp COLUMN B	CHILD CARE SUPPORT EMPLOYEE 3rd year of emp COLUMN B	384.00	376.00	365.34	10.66	376.00	76.6%	92.%	
COOK 4th year of exp COLUMN A	CHILD CARE SUPPORT EMPLOYEE 4th year of emp COLUMN A	413.60	405.60	383.80	21.80	405.60	76.6%	92%	
COOK 4th year of exp COLUMN B	CHILD CARE SUPPORT EMPLOYEE 4th year of emp COLUMN B	393.70	385.70	365.34	20.36	385.70	76.6%	92%	

COLUMN B RATE = 0.9519 OF COLUMN A
KMC = Key Minimum Classification 509.10 (following 1st ASNA) = 100%
Teachers Award = 67.1%
Metal Trades Award = 120.1%

AWARDS/AGREEMENTS—Variation of—

ARTWORKERS AWARD
No. A 30 of 1987.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and Others

and

Town of Narrogin and Another.

No. 1182 of 1995.

Artworkers Award No. A 30/1987.

COMMISSIONER P.E. SCOTT.

22 December 1995.

Order.

HAVING heard Ms J Harrison on behalf of the Applicant and there being no appearance on behalf of the Respondents and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Artworkers Award be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 6th day of December 1995.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

Schedule.

1. Clause 7.—Special Rates and Provisions:
   A. Delete the amount of $11.00 in subclause (9) of this clause and insert $11.30 in lieu thereof.
2. Clause 18.—Living Away From Home—Distance Work
   A. Delete the amount of $21.80 in the preamble of subclause (4) of this clause and insert $23.10 in lieu thereof.

BUILDING TRADES AWARD 1968
No. 31 of 1966.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and Others

and

Coca Cola Bottlers and Others.

No. 1181 of 1995.

Building Trades Award 1968
No. 31/1966.

COMMISSIONER P.E. SCOTT.

22 December 1995.

Order.

HAVING heard Ms J Harrison on behalf of the Builders' Labourers, Painters and Plasterers Union of Workers and the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia and Ms J Wesley on behalf of the Respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Building Trades Award 1968 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 6th day of December 1995.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

Schedule.

1. Clause 10.—Wages: Delete subclause (4) of this clause and insert the following in lieu thereof:

(4) Tool Allowance: (Per Week)	$
(a) Bricklayers and Stoneworkers	13.00
(b) Plasterers	14.90
(c) Carpenters and Joiners	18.10
(d) Joiners—Assembler A or B	9.15
(e) Plumbers	18.10
(f) Painters	4.50
(g) Signwriters	4.50
(h) Glaziers	4.50

Note 1: The tool allowance prescribed in paragraphs (a) to (h) inclusive of this subclause, each include an amount of 5 cents for the purpose of enabling the employees to insure their tools against loss or damage by theft or fire.

Note 2: The abovenamed allowances shall not be paid where the employer supplied the employee with all necessary tools.

2. Clause 14.—Fares and Travelling Time:
   A.. Delete the amount of 60 cents in paragraph (c) of subclause (1) and insert 62 cents in lieu thereof.
   B. Delete the amount of $11.00 in paragraph (d) of subclause (1) and insert $11.30 in lieu thereof.
   C. Delete the amount of 60 cents in subclause (2) and insert 62 cents in lieu thereof.
3. Clause 23.—Distant Work:
   A. Delete the amount of $22.40 in paragraph (a) of subclause (6) and insert $23.10 in lieu thereof.
   B. Delete the amount of $10.70 in subclause (9) and insert $11.30 in lieu thereof.

BUILDING TRADES (GOVERNMENT) AWARD 1968
No. 31A of 1966.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and Others

and

Honourable Minister for Works and Others.

No. 1180 of 1995.

Building Trades (Government) Award 1968.

No. 31A of 1966.

COMMISSIONER P.E. SCOTT.

22 December 1995.

Order.

HAVING heard Ms J Harrison on behalf of the Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA

Branch and Mr M Lewis on behalf of the Respondents and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Building Trades (Government) Award 1968 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 6th day of December 1995.

(Sgd.) P. E. SCOTT,
[L.S.] Commissioner.

Schedule.

1. Clause 9.—Wages: Delete subclause (2) of this clause and insert the following in lieu thereof:

(2) Tool Allowance	(Per Week) $
(a) Bricklayers and Stoneworkers	13.00
(b) Plasterers	14.90
(c) Carpenters and Joiners	18.10
(d) Plumbers	18.10
(e) Painters and Sign-writers	4.50
(f) Glaziers	4.50

(g) Stonemasons: The employer shall supply all necessary tools for the use of stonemasons, except when engaged on building construction, when the worker, if required to supply his/her own tools, shall receive a tool allowance at the rate of $1.43 per week.

NOTE 1: The tool allowance prescribed in paragraphs (a), (b), (c) and (d) of this subclause each include an amount of six cents for the purpose of enabling the employees to insure their tools against loss or damage by theft or fire.

NOTE 2: The abovenamed allowances shall not be paid where the employer supplies an employee with all necessary tools.

2. Clause 14A.—Fares and Travelling Time (Other Than Distance Work):

A. Delete the amount of $11.00 in paragraph (a) of subclause (1) and insert $11.30 in lieu thereof.

B. Delete the amount of 60 cents in subclause (5) and insert 62 cents in lieu thereof.

3. Clause 14B.—Fares and Travelling—Plumbers:

A. Delete the amount of 60 cents in subclause (3) and insert 62 cents in lieu thereof.

B. Delete the amount of $7.30 in paragraph (a) of subclause (5) and insert $7.60 in lieu thereof.

4. Clause 15.—Apprentices: Delete subclause (14) of this clause and insert the following in lieu thereof:

(14) On the completion of the probationary period an apprentice shall be supplied with tools as selected by the foreman up to the value of—

Carpentry and Joinery —	$
Joiners Shop	166.90
Other	181.70
Plumbing	157.20
Painting, Signwriting and Glazing	50.70
Bricklaying	112.90
Plastering	124.60

CLEANERS AND CARETAKERS (GOVERNMENT) AWARD, 1975
No. 32 of 1975.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Fremantle Port Authority
and
The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch and Others.

No. 915 of 1995.

COMMISSIONER C.B. PARKS.

11 December 1995.

Order.

HAVING heard Mr B. Patterson on behalf of the Applicant and Ms J.M. Freeman on behalf of the The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch and with the consent thereof, and the Commission being satisfied that each other respondent not represented had been duly notified of the proceedings before the Commission, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Cleaners and Caretakers (Government) Award, 1975 be varied in accordance with the following Schedule and that such variation shall have effect on and from 29 November 1995.

(Sgd.) C.B. PARKS,
[L.S] Commissioner.

Schedule.

Schedule of Respondents: Delete from this schedule the name and address following—

The General Manager
Fremantle Port Authority
Cliff Street
FREMANTLE WA 6160

CLERKS (RACING INDUSTRY—BETTING) AWARD 1978
No. R 22 of 1977.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Australian Municipal, Administrative, Clerical and Services Union of Employees, WA Clerical and Administrative Branch
and
Totalisator Agency Board of Western Australia.

No. 1369 of 1995.

Clerks (Racing Industry—Betting) Award 1978
No. R 22 of 1977.

COMMISSIONER A.R. BEECH.

28 December 1995.

Reasons for Decision.

(Given extemporaneously at the conclusion of the proceedings, taken from the transcript as edited by the Commissioner.)

THE COMMISSIONER: This application seeks to amend the Clerks (Racing Industry—Betting) Award 1978 (the award) by inserting a separate schedule to give effect to the enterprise bargaining agreement reached between the Australian Municipal, Administrative, Clerical and Services Union of Employees, WA Clerical and Administrative Branch (the union) and

Totalisator Agency Board of Western Australia (the TAB). The application is agreed to by the TAB.

The amendment will affect only the parties to the enterprise bargaining agreement. It will not affect any of the other respondents to the award. The Commission is able to give effect to the agreement of the parties by way of either registration under s.41 of the Act, or by way of award amendment.

In this case, the parties prefer to have their agreement reflected as a schedule to the award. Having regard to the Commission's Statement of Principles in the 1994 State Wage Case, I am satisfied that the Commission should agree to them doing so. In particular, I note that Ms Murphy took me to the various tests to be satisfied in the State Wage Principles, particularly at 75 WAIG p.35, p.36. I am satisfied, both from the submissions of Ms Murphy and the fact that they were effectively adopted by Mr Appleby, that those tests are satisfied and that there is no impediment under the State Wage Principles to the granting of the application.

The Commission congratulates the parties on the agreement that they have reached. The Commission understands from the submissions made this afternoon that agreement has been reached to bring the conditions of employment of the employees to be covered by the schedule more up to date to take account of the increased racing calendar on Sundays, an adjustment to the loading payable accordingly, and also the provision of Sundays to be part of an employee's ordinary roster, together with an ability for the employee not to work that shift if alternative arrangements can be made by the employee.

I believe the agreement to be consistent with the State Wage Principles, particularly the Structural Efficiency Principle, and I am pleased to approve it in these proceedings.

The schedule to be inserted in the award is, in all respects, in the same terms as the agreement that was reached by the parties in November 1995. The only issue in dispute is the date of operation of the schedule.

The union submits that the operative date of the amendment should be the first pay period on or after 7 November 1995. The TAB submits that the schedule should operate from the first pay period on or after today's date.

The Commission is able to award a retrospective date of operation only if there are special circumstances which make it fair and right to do so. The facts of this matter are that the parties have been negotiating what eventually resulted in their agreement since March of this year, for the second time. The Commission understands that earlier negotiations in 1994 did not come to fruition.

On 6 November 1995 the respondent made an offer to the union which included the increases and the change to the rosters which I have mentioned, on the understanding that the operative date of the increase would be from the first pay period on or after 7 November 1995, subject to the ratification of the TAB Board of Management and the approval of the Cabinet Sub Committee of the Minister for Labour Relations.

The offer was accepted by the union on that basis on 7 November 1995. The TAB then requested the union to process the agreement by way of a schedule to the award and it confirmed that the TAB agreed to 7 November 1995. I am referring now to exhibit E. In relation to exhibit E, I do note that the attachment to it contains the following:

> "Please note I have been advised by DOPLAR that it is not government policy to support retrospective payments. The TAB will continue to pursue the agreed approach, however this point may not gain support at Cabinet Sub Committee level."

I note of course that, at the time the agreement in principle was reached between the parties, the date of 7 November 1995 was not of itself a retrospective date.

The union lodged an application to vary the award on 6 December 1995. The Cabinet Sub Committee approved the agreement on 22 December 1995, but subject to the date of operation being the date of registration in the Commission of either a s.41 agreement, or now as modified following a conference in the Commission, the date of ratification of the Commission of the variation to the award.

I also note that the Commission was informed that the employees however have had the Sundays added as part of their roster from at least the race meeting of 26 November of this year.

In my view, the above facts do give rise to special circumstances. I am of the view that an offer in principle was made by the TAB, subject to the ratification of the operative date, and that offer was freely accepted by the union after consultation with its employees. A date of operation is an important consideration in industrial relations and, indeed, where the parties are prepared to reach an agreement at all, in some circumstances a date of operation can be a crucial consideration.

Here an offer was made and accepted as such, and I believe that the TAB should be bound by the offer that was made. I understand that the date offered was subject to approval. In the context of negotiations conducted between industrial parties in good faith, an offer made subject to approval upon acceptance does not have much value if, in fact, it is not going to be approved. It is worse than worthless. It may damage the employer's credibility for negotiating and, perhaps, other matters in the future. If approval is not going to be a formality or, indeed, if the offer is made in the knowledge that "it is not government policy to support retrospective payments" then it should not have been made. The information before the Commission indicates that approval is the province of the Cabinet Sub Committee. However I am satisfied from exhibits A, E and 4 that the offer was accepted on the understanding that 7 November 1995 was at least an achievable date. Indeed, from the first Sunday race meeting after that date, Sunday was made part of the roster for all employees in accordance with the agreement reached. If there was not that understanding about 7 November 1995, then the change to the rosters ought not to have occurred and, indeed, not be implemented until at least the agreement had been formally approved.

I therefore conclude that the offer of the TAB, which was accepted, created a legitimate expectation on the part of the employees to whom it was offered that it would be honoured, and that 7 November 1995 was at least achievable and, perhaps, likely to be implemented. Giver that, the employees participated in the enterprise bargaining agreement from the first race meeting after 7 November 1995 and that therefore the TAB has had the benefit of the implementation of that agreement by the employees at least from that date. I believe that special circumstances do exist which make it fair and right to award a retrospective date of operation.

In doing so I note that the awarding of a retrospective date of operation is not a punishment of the TAB, nor is it a matter that it is being awarded in these circumstances because of any suggestion of delay.

In considering what date of operation to award, the Commission is unable to award a retrospective date of operation back further than the date upon which this application was lodged in the Commission. With respect to Ms Murphy, I am unable to accept that s.26 of the Act is able to override s.39, particularly s.39(3)(b). In this case, the TAB does not consent to a date earlier than the date of application.

In my view, given the implementation of the agreement by the parties, a date earlier than the date of application might well have been fair in the circumstances, but it is unfortunate that the Commission is unable to go back further than 6 December 1995. However, in my view that is the most appropriate date in these circumstances and accordingly the date of operation of the schedule will be, subject to the views of the parties, either on and from 6 December 1995, or from the first pay period on or after 6 December 1995, and the matter is decided accordingly.

Appearances: Ms C. Murphy on behalf of the Applicant.

Mr B. Appleby and Mr M. Kustka on behalf of the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Australian Municipal, Clerical And Services Union
(West Australian Clerical And Administrative Branch)
and
Totalisator Agency Board of Western Australia.
No. 1369 of 1995.

Clerks (Racing Industry—Betting) Award 1978
No. R22 of 1977.

COMMISSIONER A.R. BEECH.

29 December 1995.

Order.

HAVING heard Ms C Murphy on behalf of the Applicant and Mr B Appleby and Mr M Kustka on behalf of the Respondents, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Clerks (Racing Industry—Betting) Award 1978 be varied in accordance with the following Schedule and that such variation shall have effect on and from the 6th day of December 1995.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

Schedule.

1. Clause 2.—Arrangement: Delete this clause and insert the following in lieu.

2.—ARRANGEMENT

1. Title
1A. Statement of Principles December 1994
2. Arrangement
2A. No Extra Claims
3. Area
4. Scope
5. Term
6. Definition
7. Engagement
8. Rates of Pay
9. Payment of Wages
10. Refreshment Break
11. Higher Duties Allowance
12. Shortages
13. Record
14. Right of Entry
15. Long Service Leave
16. Posting of Awards and Notices
17. Superannuation
18. Award Modernisation (Enterprise Agreements)
Schedule A— Respondents
Schedule B—Named Union Party
Schedule C—Enterprise Agreement—Totalisator Agency Board of Western Australia

2. Rename Schedule of Respondents as Schedule A—Respondents.

3. Rename Schedule—Named Union Party as Schedule B—Named Union Party.

4. Schedule B—Named Union Party: Immediately following this schedule insert a new schedule, Schedule C—Enterprise Agreement—Totalisator Agency Board of Western Australia, as follows.

SCHEDULE C—ENTERPRISE AGREEMENT—TOTALISATOR AGENCY BOARD OF WESTERN AUSTRALIA

(1) Application:

(a) The provisions of this Schedule shall apply only to the Totalisator Agency Board and its employees.

(b) The provisions of this Schedule shall be read in conjunction with the provisions of this award and, where these provisions are inconsistent with, or different from, the provisions of the award, the provisions of this Schedule shall prevail.

(2) Rates of Pay:

(a) The minimum hourly rates of pay payable to the employees classified hereunder shall be:

Trainee	$14.70
Clerk	$15.05
Senior Casual and/or Banker	$15.63

(b) An additional payment of 10% above the Clerk rate is made to employees engaged in the capacity of Account Betting Senior and Control Centre Clerk. An additional payment of 20% above the Clerk rate is made to employees engaged in the capacity of Control Centre Senior. Such additional payments are in recognition of the increased responsibilities associated with managing the raceday.

(c) The Trainee rate shall apply to all new employees for a period of 2 months.

(d) The minimum rates of pay incorporate a 36% loading in compensation for the fact that annual leave, annual leave loading, sick leave and penalty rates for work performed on Sundays are not otherwise provided for in this award.

(e) (i) The loading referred to at (d), in relation to penalty rates for work performed on Sundays, is based on the requirement that employees will be required to be rostered to work 16 Sundays during the 1995/96 Racing Calendar.

(ii) The number of Sundays which incorporate Race Days will be regularly reviewed prior to the commencement of each Racing Calendar. Should the number of such Race Days increase the loading shall be increased accordingly.

(3) Sunday Work:

(a) All casual employees shall be available to be rostered to work on Sundays as required.

(b) If an employee is rostered to work on a Sunday he/she may choose not to work that shift provided that the employee makes arrangements to ensure that another employee shall work that shift.

(4) Duration of Schedule

(a) This Schedule shall come into effect on and from the 6th day of December 1995 and remain in force until 31 July 1996.

(b) The parties are committed to renegotiating this agreement prior to its expiry.

FOODLANDS ASSOCIATED LIMITED (WESTERN AUSTRALIA) WAREHOUSE AWARD 1982
No. A 27 of 1982.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Foodland Associated Ltd

and

The Shop, Distributive and Allied Employees' Association of Western Australia.

No. 397 of 1994.

Foodland Associated Limited (Western Australia) Warehouse Award 1982

No. A 27 of 1982.

COMMISSIONER A.R. BEECH.

25 May 1994.

Order.

HAVING heard Ms C. Brown on behalf of the Applicant and Mr J. Bullock on behalf of the Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Foodland Associated Limited (Western Australia) Warehouse Award 1982 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 13th day of May 1994.

(Sgd.) A.R. BEECH,
[L.S.] Commissioner.

———

Schedule.

1. Clause 2.—Arrangement: Immediately following 8.—Hours in this clause insert the following:

8A. Absences From Work

2. Clause 8.—Hours: Immediately following this clause insert a new clause as follows:

8A.—ABSENCES FROM WORK

This clause applies to all absences from work other than authorised absences prescribed by this award.

(1) Subject to subclause (2) hereof on any day that an employee fails to attend his/her place of employment to work rostered hours of duty the employee shall advise the supervisor or manager of his/her department prior to the commencement of rostered hours of duty of the absence and the expected duration of the absence from work.

(2) Where:

(a) an employee has attended his/her place of employment to work the rostered hours of duty and subsequently leaves prior to the completion of the rostered hours; or

(b) it is not reasonably practicable for the employee to provide the advice required by subclause (1) hereof prior to the commencement of the rostered hours of duty

the employee shall, no later than 24 hours from the commencement of any absence, advise his/her supervisor or manager of the absence and the expected duration of the absence.

———

HAIRDRESSERS AWARD 1989
No. A 32 of 1988.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The WA Hairdressers and Wigmakers Employees' Union of Workers

and

The Master Ladies' Hairdressers Industrial Union of Employers of WA and Others.

No. 1111 of 1995.

COMMISSIONER C.B. PARKS.

5 January 1996.

Order.

HAVING heard Mr W.J. Johnston on behalf of the Applicant and Mr D. Higham on behalf of the Master Ladies' Hairdressers Industrial Union of Employers of WA and Ms S. Laferla on behalf of several respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Hairdressers Award 1989 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 1 February 1996.

(Sgd.) C.B. PARKS,
[L.S.] Commissioner.

———

Schedule.

1. Clause 2.—Arrangement:

A. Delete the number and title "12. Engagement" of this clause and insert in lieu thereof—

12. Contract of Employment and Termination

B. Insert after the number and title "34. Consultative Procedures" of this clause the new number and title as follows—

35. Introduction of Change

C. Add after the title "First Schedule—Respondents" of this clause the new title as follows—

Second Schedule—Named Union Party

2. Clause 5.—Definitions: Delete subclause (3) of this clause and insert in lieu thereof—

(3) "Casual employee" shall mean an employee engaged in accordance with the provisions of subclause (3) of Clause 12.—Contract of Employment and Termination.

3. Clause 6.—Hours:

A. In paragraph (a) of subclause (5) delete the words and number "Clause 7.—Overtime" where appearing and insert in lieu thereof—

Clause 8.—Overtime

B. In paragraph (b) of subclause (5) delete the words and number "Clause 8.—Holidays and Annual Leave" where appearing and insert in lieu thereof—

Clause 9.—Holidays

4. Clause 11.—Wages:

A. Delete subclauses (1) and (2) of this clause.

B. Renumber subclause (3) of this clause as subclause (1).

C. Insert after subclause (1) of this clause the following new subclause—

(2) (a) The rate of wage set out in paragraph (b) of this subclause reflects a total rate for ordinary hours of work Monday to Saturday inclusive. This total rate is comprised of a notional base rate plus a 10% all purpose loading in lieu of the penalties which applied prior to the first pay period on or after 1st March,

1993 for work performed in ordinary hours on the one night of late trading and on Saturday.

(b) The minimum wage payable for ordinary hours to employees bound by this Award from the first pay period on or after 1st February, 1996 shall be as follows:

	Base Rate Per Week $	First and Second Arbitrated Safety Net Adjustments $	Award Rate Per Week $
(i) Full Time—			
Principal	489.40	17.60	507.00
Senior	458.90	17.60	476.50

The rates of pay in this award include the first $8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. The first $8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November, 1991. Increases made 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 arbitrated safety net adjustments.

The rates of pay in this award include the second $8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This second $8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase payable since 1 November, 1991, pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment. Increases made 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 arbitrated safety net adjustments.

The Arbitrated Safety Net Adjustments are increased by the 10% all purpose loading in lieu of penalties as specified in paragraph (a) above.

(ii) Part Time—	
Principal	13.34 per hour
Senior	12.54 per hour
(iii) Casual—	
Principal	16.01 per hour
Senior	15.05 per hour

D. Renumber subclauses (4), (5), (6), (7) and (8) of this clause as subclauses (3), (4), (5), (6) and (7) respectively.

5. Clause 12.—Engagement: Delete this clause and insert in lieu thereof—

12.—CONTRACT OF EMPLOYMENT AND TERMINATION

(1) Employment Conditions

An employer may engage an employee on either a full time, part time or casual basis subject to the terms of this Award.

(2) Permanent Employment—Full Time

(a) "Permanent employment" shall mean an employee engaged on a weekly basis who may be dismissed or leave the employer's service only as provided by subclause (5) below, and subject to subclause (4) of this clause, whose ordinary hours of work shall be 38 per week or 76 per two consecutive weeks.

(b) A permanent employee shall be engaged subject to a probationary period of two months. Where the employee is advised by the employer of the probationary period and its duration prior to engagement the notice pursuant to subclause (5) shall not apply.

(c) (i) An employee whose employment is terminated by the employer on the business day preceding a holiday or holidays, otherwise than for refusal or neglect to obey reasonable instructions or for misconduct, shall be paid for such holiday or holidays.

(ii) In the event of Christmas Eve falling on a Saturday or a Sunday, any employee who is terminated by the employer on the preceding Friday, otherwise than for refusal or neglect to obey reasonable instructions or for misconduct, shall be paid for Christmas Day and Boxing Day.

(3) Casual Employment

(a) "Casual employee" shall mean an employee engaged by the hour and who may be dismissed or leave the employer's service as provided by subclause (6) below and except as hereinafter provided shall not be engaged for more than 32 hours per week in ordinary hours with not more than ten work commencements in each roster period of two weeks.

Notwithstanding the aforementioned, a casual employee may be engaged in ordinary hours for 38 hours per week for periods of up to four consecutive weeks at the casual rate during peak trading periods or to relieve employees absent on leave.

Work performed by casual employees in excess of the maximum weekly ordinary hours prescribed in this clause shall be paid for at overtime rates of pay at the casual rate.

(b) The minimum period of engagement for a casual employee shall be three consecutive hours on any day.

(c) Any casual employee engaged but not permitted to commence work shall receive two hours' pay at the casual rate as prescribed in this award.

(4) Permanent Employment—Part Time

(a) "Part Time Employee" shall mean a permanent employee who may be engaged on any day, Monday to Saturday inclusive for a minimum of twelve hours per fortnight and a maximum of sixty four hours per fortnight with not more than ten daily work commencements in any fortnightly period. Provided that a part time employee shall not be engaged for less than three consecutive hours nor more than nine and a half consecutive hours exclusive of meal times on any one day except on the day of late night trading when the maximum daily ordinary hours shall be eleven and a half.

(b) A part time employee shall be engaged subject to a probationary period of two months. Where the employee is advised by the employer of the probationary period and its duration prior to engagement the notice periods pursuant to subclause (5) shall not apply.

(c) A part time employee shall receive payment for wages, annual leave, sick leave and long service leave on a pro-rata basis in the same proportion as the number of hours regularly worked each week bears to 38 hours.

(d) When a day, being a day when a part time employee would have been rostered to work is a holiday under the provisions of Clause 9.—Holidays of this award, then that day shall be a holiday without deduction of pay to such employee.

(5) Termination of full time and part time employees

(a) Where an employer terminates the employment of a full time or part time employee, the following period of notice shall be provided:

Period of Continuous Service	Period of Notice
Less than 2 months during probationary period	No notice required
2 months or more but less than 1 year	1 week
1 year or more but less than 3 years	2 weeks
3 years or more but less than 5 years	3 weeks
5 years or more	4 weeks

(b) Employees over 45 years of age with 2 or more years continuous service at the time of termination, shall receive an additional week's notice.

(c) Where the relevant notice is not provided, the employee shall be entitled to payment in lieu. Provided that employment may be terminated by part of the period of notice and part payment in lieu.

(d) Payment in lieu of notice shall be calculated using the employees weekly ordinary time earnings.

(e) The period of notice specified in this clause shall not apply in the case of dismissal for misconduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty.

(f) Notice of termination by employee

Except in the first 2 months' probationary period, 1 week's notice shall be necessary for an employee to terminate his or her engagement or the forfeiture of 1 week's pay by the employee to his or her employer in lieu of notice provided that an employee with in excess of five years' service shall be required to provide two weeks' notice to terminate his or her engagement or forfeit two weeks' pay in lieu of notice.

During the two month probationary period, an employee may terminate his or her employment at any time and no period of notice is required.

(g) Unfair Dismissals

Termination of employment by an employer shall not be harsh, unjust or unreasonable, whether notice has been given or not.

Without limiting the above, except where a distinction, exclusion or preference is based on the inherent requirements of a particular position, terminations on the grounds of race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction and social origin shall constitute a harsh, unjust or unreasonable termination of employment.

(6) Termination of Casual Employment

Casual employment may be terminated by either party at any time and no period of notice is required.

(7) In all cases, employers bound by this Award are also bound by the provisions of Division 3 of Part VIA of the Industrial Relations Act 1988.

6. Clause 14.—Sick Pay: In paragraph (d) of subclause (7) delete the words and number "Clause 8.—Holidays and Annual Leave" where appearing and insert in lieu thereof—

Clause 10.—Annual Leave

7. Clause 18.—Breakdowns: Delete the words "stoppage or work" appearing in this clause and insert in lieu thereof—

stoppage of work

8. Clause 22.—Tools of Trade: Delete subclause (4) of this clause and insert in lieu thereof—

(4) Tool Allowance

In addition to the weekly wage a tool allowance of $5.00 per week shall be payable to full time Seniors, part time Seniors, indentured apprentices, and probationary apprentices.

9. Clause 26.—Uniforms: Delete the title of this clause and insert in lieu thereof—

CLAUSE 27.—UNIFORMS

10. Clause 29.—Superannuation: In placitum (i) of paragraph (b) of subclause (1) delete the words "The National Superannuation (NSP)" where appearing and insert in lieu thereof—

The National Superannuation Plan (NSP)

11. After "Clause 34.—Consultative Procedures" insert the following new clause—

35.—INTRODUCTION OF CHANGE

(1) Employer's Duty to Notify

(a) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and their Union.

(b) "Significant effects" include termination of employment, major changes in the composition, operation or size of the workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs. Provided that where the award makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

(2) Employer's Duty to Discuss Change

(a) The employer shall discuss with the employees affected and their Union inter alia, the introduction of the changes referred to in subclause (1)(a) hereof, the effects the changes are likely to have on employees, measures to avert or mitigate the adverse effects of such changes on employees and shall give prompt consideration to matters raised by the employees and/or their union in relation to the changes.

(b) The discussions shall commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in subclause (1)(a) hereof.

(c) For the purposes of such discussions, the employer shall provide to the employees concerned and the Union, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that the employer shall not be required to disclose confidential information the disclosure of which would be detrimental to the Employer's interests.

12. First Schedule—Respondents: Delete this schedule and insert in lieu thereof—

FIRST SCHEDULE—RESPONDENTS

The Master Ladies' Hairdressers Industrial Union of Employers of W.A.

Master Gentlemen's Hairdressers Association of W.A. Union of Employers

Armando's Ladies-Gents Hairdressers

Bojangles Hair Stylist

Crimpers

Fidshe Hair Design

J.L. Jenkins

J. Kieneker Haircave Centre

Hair Impossible

Mayfair Salon

Monts Hair Salon

Regent Enterprises Pty Ltd t/a Sam Rifici Hairdressing Salons

Shock Waves Hair Design

Undercuts Hair Salon

13. After "First Schedule—Respondents" add the following new schedule—

SECOND SCHEDULE—NAMED UNION PARTY

The named Union party to this Award is the West Australian Hairdressers and Wigmakers Employees' Union of Workers, WA.

HEALTH WORKERS—COMMUNITY AND CHILD HEALTH SERVICES AWARD, 1980
No. R 21 of 1979.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch

and

Hon Minister for Health and Others.

No. 1120 of 1994.

COMMISSIONER C.B. PARKS.

14 December 1995.

Order.

HAVING heard Ms S. Ellery on behalf of the Applicant and Mr P.G. Brunner on behalf of the Hon Minister for Health, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT by consent the Health Workers—Community and Child Health Services Award, 1980 be varied in accordance with the following Schedule; and

THAT such variation shall have effect from the beginning of the first pay period commencing on or after the 21 November 1995.

(Sgd.) C.B. PARKS,
[L.S] Commissioner.

Schedule.

Clause 19.—Wages: Delete this clause and insert in lieu thereof—

19.—WAGES

(1) The rates of pay in this award include the first $8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. The first $8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November, 1991. Increases made 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 arbitrated safety net adjustments.

(2) The rates of pay in this award include the second $8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This second $8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase payable since 1 November, 1991, pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment. Increases made 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 arbitrated safety net adjustments.

(3) The weekly rate of wage payable to employees covered by this award shall include the base rate plus the arbitrated safety net adjustment expressed hereunder.

Classification	Base Rate Per Week $	First and Second Arbitrated Safety Net Adjustment $	Total Rate Per Week $
Level 1 Currently Practising Conditional Aboriginal Health Worker:			
1st year of employment	398.30	16.00	414.30
2nd year of employment	409.80	16.00	425.80
3rd year of employment	423.40	16.00	439.40
Level 2 Qualified Aboriginal Health Worker:			
1st year of employment	437.06	16.00	453.06
2nd year of employment	447.42	16.00	463.42
3rd year of employment	457.77	16.00	473.77
4th year of employment	468.04	16.00	484.04
Level 3 Senior Aboriginal Health Worker:			
1st year of employment	483.50	16.00	499.50
2nd year of employment	512.90	16.00	528.90
3rd year of employment	542.70	16.00	558.70
4th year of employment	565.50	16.00	581.50
Level 4 Manager of Aboriginal Health Work:			
1st year of employment	603.84	16.00	619.84
2nd year of employment	632.59	16.00	648.59
3rd year of employment	661.35	16.00	677.35
4th year of employment	699.69	16.00	715.69
Level 5 State Co-ordinator Aboriginal Health Work:			
1st year of employment	709.27	16.00	725.27
2nd year of employment	738.03	16.00	754.03
3rd year of employment	766.78	16.00	782.78
4th year of employment	805.12	16.00	821.12
Level 1 Ethnic Health Worker:			
1st year of employment	398.30	16.00	414.30
2nd year of employment	409.80	16.00	425.80
3rd year of employment	423.40	16.00	439.40
4th year of employment	436.11	16.00	452.11
Level 2 Ethnic Health Worker:			
1st year of employment and thereafter	455.27	16.00	471.27

The classifcation prescribed in the relevant minimum rates award on which the rate prescribed for the key classifications* in this award is based, is the wage group C10 in the Metal Trades (General) Award No. 13 of 1965.

* Level 2 Aboriginal Health Worker and Level 2 Ethnic Health Worker

Incremental progression for all Aboriginal and Ethnic Health Workers is subject to satisfactory performance.

INDEPENDENT SCHOOLS ADMINISTRATIVE AND TECHNICAL OFFICERS AWARD 1993
No. A15 of 1991.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers
and
The Anglican School Commission (Inc.) and Others.
No. 1100 of 1995.

Independent Schools Administrative and Technical Officers Award 1993
No. A15 of 1991.

COMMISSIONER A.R. BEECH.

22 December 1995.

Order.

HAVING heard Ms T. Howe on behalf of the Applicant and Dr I. Fraser and Mr P. Andrew on behalf of the Respondents and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Independent Schools Administrative and Technical Officers Award 1993 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 21st day of December 1995.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

Schedule.

1. Clause 14.—Salaries: Delete paragraph (1)(a) of this clause and insert in lieu the following:

(1) (a) The minimum annual salary, according to classification and experience, payable to an officer shall be:

	MINIMUM SALARY $ PER ANNUM	1ST AND 2ND $8 PER WEEK SAFETY NET ADJUSTMENT $ PER ANNUM	TOTAL SALARY $ PER ANNUM
LEVEL SALARY			
LEVEL 1	18,500	834.00	19,334
	18,750	834.00	19,584
	19,000	834.00	19,834
	19,250	834.00	20,084
	19,500	834.00	20,334
	19,750	834.00	20,584
LEVEL 2	20,500	834.00	21,334
	21,000	834.00	21,834
	21,500	834.00	22,334
	22,000	834.00	22,834
	22,500	834.00	23,334
	23,000	834.00	23,834
LEVEL 3	24,000	834.00	24,834
	24,600	834.00	25,434
	25,200	834.00	26,034
	25,800	834.00	26,634
	26,400	834.00	27,234
	27,000	834.00	27,834
LEVEL 4	25,500	834.00	26,334
	26,500	834.00	27,334
	27,500	834.00	28,334
	28,500	834.00	29,334
	29,500	834.00	30,334
	30,500	834.00	31,334

(i) The rates of pay in this award include the first $8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This first $8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November, 1991. Increases made 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 arbitrated safety net adjustments.

(ii) The rates of pay in this award include the second $8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This second $8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase payable since 1 November, 1991, pursuant to enterprise agreements, enterprise flexibility agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment. Increases made 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 arbitrated safety net adjustments.

INDEPENDENT SCHOOLS (BOARDING HOUSE) SUPERVISORY STAFF AWARD
No. A 9 of 1990.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers
and
Aquinas College and Others.
No. 1099 of 1995.

Independent Schools (Boarding House) Supervisory Staff Award
No. A 9 of 1990.

COMMISSIONER A.R. BEECH.

22 December 1995.

Order.

HAVING heard Ms T. Howe on behalf of the Applicant and Dr I. Fraser and Mr P. Andrew on behalf of the Respondents and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Independent Schools (Boarding House) Award be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 21st day of December 1995.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

Schedule.

1. Clause 11.—Salaries: Delete paragraphs (1)(a) and (1)(b) of this clause and insert in lieu the following:

(a) Supervisor:

	MINIMUM SALARY $ PER ANNUM	1ST AND 2ND $8 PER WEEK SAFETY NET ADJUSTMENT $ PER ANNUM	TOTAL SALARY $ PER ANNUM
1st year of experience	18,706	834.00	19,540
2nd year of experience	19,475	834.00	20,309
3rd year of experience	20,500	834.00	21,334
4th year of experience	21,525	834.00	22,359
5th year of experience	22,550	834.00	23,384
6th year of experience	23,575	834.00	24,409

(b) Senior Supervisor:

1st year of experience	25,113	834.00	25,947
Thereafter	26,650	834.00	27,484

2. Clause 11.—Salaries: Immediately following paragraph (1)(e) of this clause insert the following new paragraph:

(f) The rates of pay in this award include the second $8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This second $8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase payable since 1 November, 1991, pursuant to enterprise agreements, enterprise flexibility agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment. Increases made 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 arbitrated safety net adjustments.

INDEPENDENT SCHOOLS' TEACHERS' AWARD 1976
No. R 27 of 1976.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

and

The Anglican School Commission (Inc.) and Others.

No. 1098 of 1995.

Independent Schools' Teachers' Award 1976
No. R 27 of 1976.

COMMISSIONER A.R. BEECH.

22 December 1995.

Order.

HAVING heard Ms T. Howe on behalf of the Applicant and Dr I. Fraser and Mr P. Andrew on behalf of the Respondents and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Independent Schools' Teachers' Award 1976 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 21st day of December 1995.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

Schedule.

1. Clause 11.—Salaries: Delete paragraph (1)(a) of this clause and insert in lieu the following:

(1) (a) The minimum annual rate of salary payable to teachers engaged in the undermentioned classifications shall be:

	MINIMUM SALARY $ PER ANNUM	1ST AND 2ND $8 PER WEEK SAFETY NET ADJUSTMENT $ PER ANNUM	TOTAL SALARY $ PER ANNUM
Step 1	21,935	834.00	22,769
Step 2	23,268	834.00	24,102
Step 3	24,600	834.00	25,434
Step 4	26,138	834.00	26,972
Step 5	27,573	834.00	28,407
Step 6	28,803	834.00	29,637
Step 7	30,033	834.00	30,867
Step 8	31,570	834.00	32,404
Step 9	33,261	834.00	34,095
Step 10	34,645	834.00	35,479
Step 11	35,875	834.00	36,709
Step 12	37,413	834.00	38,247
Step 13	38,950	834.00	39,784

(i) The rates of pay in this award include the first $8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This first $8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November, 1991. Increases made 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 arbitrated safety net adjustments.

(ii) The rates of pay in this award include the second $8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This second $8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase payable since 1 November, 1991, pursuant to enterprise agreements, enterprise flexibility agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment. Increases made 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 arbitrated safety net adjustments.

INDUSTRIAL SPRAYPAINTING AND SANDBLASTING AWARD 1991.

No. A33 of 1987.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and Others

and

Blastcoaters Pty Ltd and Others.

No. 1179 of 1995.

Industrial Spraypainting and Sandblasting Award 1991.
No. A33 of 1987.

COMMISSIONER P.E. SCOTT.

22 December 1995.

Order.

HAVING heard Ms J Harrison on behalf of the Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and Ms J Wesley on behalf of Blastcoaters Pty Ltd and Others and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Industrial Spraypainting and Sandblasting Award 1991 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 6th day of December 1995.

(Sgd.) P. E. SCOTT,
[L.S.] Commissioner.

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Schedule.

1. Clause 18.—Living Away from Home—Distant Work:
   - A. Delete the amount of $13.30 in paragraph (b) of subclause (4) and insert $13.70 in lieu thereof.
   - B. Delete the amount of $22.40 in paragraph (a) of subclause (6) and insert $23.10 in lieu thereof.
   - C. Delete the amounts of $106.30 and $15.30 in paragraph (b) of subclause (7) and insert $112.60 and $16.20 in lieu thereof respectively.

2. Clause 31—Compensation for Clothes and Tools: Delete the amount of $1009 in paragraph (a) of subclause (4) and insert $1054 in lieu thereof.

3. Clause 47—Fares and Travelling:
   - A. Delete the amount of $11.00 in subclause (2) and insert $11.30 in lieu thereof.
   - B. Delete the amount of 33 cents in subparagraph (i) of paragraph (b) of subclause (5) and insert 34 cents in lieu thereof.
   - C. Delete the amount of 60 cents in subclause (10) and insert 62 cents in lieu thereof.

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MEAT INDUSTRY (STATE) AWARD, 1980
No. R9 of 1979.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Australasian Meat Industry Employees' Union, Industrial Union of Workers, West Australian Branch

and

Action Food Barns (WA) Pty Ltd and Others.

No. 1086 of 1995.

Meat Industry (State) Award, 1980
No. R9 of 1979.

SENIOR COMMISSIONER G.G. HALLIWELL.

3 January 1996.

Order.

HAVING heard Mr T. Kucera on behalf of the Applicant, Mr J. Uphill on behalf of the members of the Chamber of Commerce and Industry of Western Australia and Mr M. Darcy on behalf of the members of the Meat and Allied Trades Federation of Australia (Western Australian Division) and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Meat Industry (State) Award, 1980 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 8th day of December, 1995.

(Sgd.) G.G. HALLIWELL,
[L.S] Senior Commissioner.

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Schedule.

Clause 9.—Rates of Wages: Delete this clause and insert in lieu thereof the following:

9.—RATES OF WAGES

The following are the minimum rates of wages payable to employees covered by this Award and shall include the second Arbitrated Safety Net Adjustment of $8.00 per week as expressed hereunder.

The second $8.00 Safety Net Adjustment shall be absorbed against any amount currently paid, whether by overaward payment or enterprise agreement in excess of the rates of pay expressed hereunder.

The provisions of the $16.00 per week Arbitrated Safety Net Adjustments shall not apply to calculations of tally or overtally payments as provided for in Clause 29.—Work of Employees in Boning Rooms and Clause 30.—Work of Employees in Slaughtering. Sections of this Award, except when only tally is paid on any one day, in which case the base daily rate shall increase by $3.20 for that day.

The minimum rates of wages set out hereunder shall be payable for all purposes of the Award and operate from the first pay period commencing or after the 8th day of December, 1995.

(1) Adult employees in retail establishments (other than supermarkets)

	Base Rate $	Safety Net Adjustment $	Minimum Rate $
(a) First Shopperson—in shop employing two or up to five employees inclusive	378.20	16.00	394.20
(b) First Shopperson—in shop employing more than five employees	382.50	16.00	398.50
(c) General Butcher	375.40	16.00	391.40
(d) Smallgoodsperson	375.40	16.00	391.40
(e) Filler Operator	336.50	16.00	352.50
(f) Linker and Table Hand	336.50	16.00	352.50
(g) Salesperson	351.30	16.00	367.30
(h) Cashier	344.20	16.00	360.20
(i) Wrapper and Packer	335.00	16.00	351.00
(j) Counterhand	335.00	16.00	351.00
(k) Cleaner	326.00	16.00	342.00

	Base Rate $	Safety Net Adjustment $	Minimum Rate $
(l) When a General Butcher is required by the employer to accept temporary responsibility additional to his/her normal duties he/she shall be paid the rate equal to a First Shopperson as specified in this subclause.			
(2) Adult employees (supermarkets)			
(a) Supermarket Butcher	414.70	16.00	430.70
(b) Wrapper, Packer, Pricer, Cabinet Attendant	355.20	16.00	371.20
(c) Cleaner	326.00	16.00	342.00
(3) Employees in meat auctions, wholesale, contract caterers, prefacing and export processing establishments			
(a) General Butcher	360.50	16.00	376.50
(b) Boner	363.90	16.00	379.90
(c) Slicer	344.50	16.00	360.50
(d) Carcass Pretrimmer	330.50	16.00	346.50
(e) Electric Meat Saw Operator	314.60	16.00	330.60
(f) Meat Lumper (Auction Room)	331.40	16.00	347.40
(g) Filler Operator	324.90	16.00	340.90
(h) Chiller Hand	322.60	16.00	338.60
(i) Strapping or Wiring Machine Operator	314.60	16.00	330.60
(j) Operator of Electric Wizard Knife	314.60	16.00	330.60
(k) Spotter or Quality Control Tester	333.20	16.00	349.20
(l) Employee in Prefacing Section whose work includes pricing	323.60	16.00	339.60
(m) Wrapper and Packer	323.60	16.00	339.60
(n) Carton Room Employee, being an employee who makes up cartons, stockinets, hessian wraps or polythene or who stencils cartons	314.60	16.00	330.60
(o) General Hand	314.60	16.00	330.60
(4) Employees in saleyards and slaughtering establishments			
(a) (i) Slaughterperson (on rail beef)	378.10	16.00	394.10
(ii) Slaughterperson (on rail mutton chain and dead rail system)	363.90	16.00	379.90
(iii) Slaughterman (solo)	363.90	16.00	379.90
(b) Critter or Dagger	345.70	16.00	361.70
(c) Head Skinner (when not part of slaughtering duties)	336.70	16.00	352.70
(d) Trimmer	330.50	16.00	346.50
(e) Dehorner and Tonga	330.50	16.00	346.50
(f) Jaw Puller, Head Trimmer and Head Splitter	330.50	16.00	346.50
(g) Head Splitter (Mutton or Goats)	330.50	16.00	346.50
(h) Tally Clerk	329.90	16.00	345.90
(i) Viscera Separator	326.70	16.00	342.70
(j) Hide Salter	325.00	16.00	341.00
(k) (i) Skin Shed Hand	320.40	16.00	336.40
(ii) Classer and/or Grader of Skins	388.10	16.00	404.10
(l) Gambrel and Spreader Inserter	324.00	16.00	340.00
(m) Operator of Rumblier Cleaning Roller and Skids	324.00	16.00	340.00
(n) Spray Washer	321.40	16.00	337.40
(o) Weight Recorder	319.70	16.00	335.70
(p) Brander (including labelling of carcass)	314.60	16.00	330.60
(q) Stockperson or Penner Up	319.90	16.00	335.90
(r) Chiller Hand	322.50	16.00	338.50
(s) Watchperson or Caretaker	314.60	16.00	330.60
(t) Laundry Hand	314.60	16.00	314.60
(u) Canteen Employee	314.60	16.00	330.60
(v) General Hand	314.60	16.00	330.60
(w) Quality Standards Officer (Aus Meat)	333.20	16.00	349.20
(x) Scale System Operator	329.90	16.00	345.90
(y) Grader	333.20	16.00	349.20
(5) Employees in by-products processing establishments			
(a) Operator of Continuous Rendering Processing Plant	334.50	16.00	350.50
(b) Blood Cooker or Separator Operator	326.30	16.00	342.30
(c) Employee in Condemned Area	326.30	16.00	342.30
(d) Operator of Hasher Washer	314.60	16.00	330.60
(e) By-products Employee not otherwise classified	314.60	16.00	330.60
(6) Drivers of motor vehicles			
(a) Not exceeding 1.2 tonnes capacity	343.10	16.00	359.10
(b) Exceeding 1.2 tonnes and not exceeding 3 tonnes capacity	346.10	16.00	362.10
(c) Exceeding 3 tonnes and under 6 tonnes capacity	349.80	16.00	365.80
For each complete tonne over 5 tonnes capacity 87 cents additional margin, provided that the maximum shall not exceed $13.11.			
(d) Driver of Fork Lift	349.80	16.00	365.80
(e) Driver of articulated vehicle Exceeding 8 tonnes capacity	362.60	16.00	378.60
For each complete additional tonne, 58 cents additional margin, provided that the maximum amount shall not exceed $12.02. Drivers of loaded motor vehicles (except tractors) drawing a loaded trailer (not to include a mechanical horse), $1.45 per day extra.			
(f) Driver of Tractor	348.80	16.00	364.80
(7) Employees in freezers			
(a) Freezer Hand (i.e., an employee who is required to work in a temperature between minus 15 degrees Celsius (4 degrees Fahrenheit) and 0 degrees Celsius (32 degrees Fahrenheit)	331.40	16.00	347.40
(b) Employees required to work in a temperature below minus 16 degrees Celsius (4 degrees Fahrenheit) shall be paid $1.45 per day extra; provided that if the temperature is below minus 18 degrees Celsius (0 degrees Fahrenheit), he/she shall be paid $2.80 per day extra; and if the temperature is below minus 23 degrees Celsius (minus 10 degrees Fahrenheit), he/she shall be paid $5.60 per day extra.			
(8) Employees in bacon curing and smallgoods making establishments			
(a) Pork Slaughtering and Breaking Up Sections:			
Slaughterperson	363.90	16.00	379.90
Flair Puller	331.00	16.00	347.00
Scales Clerk	329.60	16.00	345.60
Stockperson and/or Penner Up	320.00	16.00	336.00
Chiller Labourer	322.60	16.00	338.60
Labourer on Slaughter Floor	314.60	16.00	330.60
Boner	363.90	16.00	379.90
Breaking Up Hand	335.40	16.00	351.40
Trimmer	335.40	16.00	351.40
Knife Hand, trimming meat pieces and bones received from the pork breaking up team	335.40	16.00	351.40
Viscera Separator	326.70	16.00	342.70
General Hand	314.60	16.00	330.60
Intrascope Operator	329.90	16.00	345.90
(b) Curing Section:			
Making Pickle and/or Pickle Pumper	335.40	16.00	351.40
Bacon and Ham Turner	323.20	16.00	339.20
Dry Salter	323.20	16.00	339.20
General Hand	314.60	16.00	330.60

	Base Rate $	Safety Net Adjustment $	Minimum Rate $
(c) Yard Section:			
Yard Hand	314.60	16.00	330.60
(d) Smallgoods Section:			
Smallgoodsmaker	360.50	16.00	376.50
Butcher	360.50	16.00	376.50
Smallgoods Seller from vehicle who collects cash	365.50	16.00	381.50
Boner	363.90	16.00	379.90
Slicer	344.50	16.00	360.50
Rasher Machine Operator	340.20	16.00	356.20
Salter	340.20	16.00	356.20
Cooker	340.20	16.00	356.20
Knife Hand, removing excess fat from meat in the Pressed Meat Cooking Section	335.20	16.00	351.20
Trimming Ham or Bacon pieces or cutting Lard	328.00	16.00	344.00
Packing Room Hand	323.20	16.00	339.20
Despatch	329.90	16.00	345.90
Fillerperson	324.90	16.00	340.90
Linker	324.90	16.00	340.90
Operator, Linker Machine	324.90	16.00	340.90
Operator, Knobbing Machine where not attached to filling machine	324.90	16.00	340.90
Operator, Slicing Machine not including rasher machine	324.90	16.00	340.90
Tablehand	324.90	16.00	340.90
General Hand	314.60	16.00	340.60
(e) Canning Section:			
Extract Maker	335.20	16.00	351.20
Copper Hand	323.90	16.00	339.90
Evaporator Operator	323.90	16.00	339.90
Open Copper	323.90	16.00	339.90
Fillerperson	324.70	16.00	340.70
Packer or Canning Hand	323.20	16.00	339.20
General Hand	314.60	16.00	330.60
(f) Miscellaneous Section:			
By-Products Employees operating machinery	314.60	16.00	330.60
Smoke and Drying Room employees	323.20	16.00	339.20
Labourer (cleaning skids, gambrels, rollers and other equipment)	314.60	16.00	330.60
Loader and/or Lumper	331.40	16.00	347.40
Watchperson or Caretaker	314.60	16.00	330.60
Gatekeeper	314.60	16.00	330.60
General Hand	314.60	16.00	330.60

(9) Employees in pet food establishments

Boner and/or Skinner	360.50	16.00	376.50
Trimmers and/or Slicers	356.90	16.00	372.90
Cutting and/or Mincing Machine Operator	331.10	16.00	347.10
Counterhand	337.40	16.00	353.40
Knife Hand—an employee who may use a knife, shears or scissors to trim dirt or hair or slice meat prior to being weighed	332.70	16.00	348.70
Wrappers or Packers	323.60	16.00	339.60
Strapping or Wire Machine Operator	314.60	16.00	330.60
General Hand	314.60	16.00	330.60

(10) Employees in casing sections or establishments

General Hand	346.50	16.00	362.50

(11) Apprentices: The minimum weekly wage rate of apprentices shall be based on the percentage of the total wage applicable to a General Butcher, as follows:

	%
(a) Four year term	
First year	40
Second year	50
Third year	75
Fourth year	95
(b) Three year term	
First year	50
Second year	75
Third year	95

(12) Junior employees (other than those in casing sections, retail establishments including supermarkets or those employed as drivers of motor vehicles) and subject to Clause 25.—Junior Employees:

The minimum weekly wage rates of juniors shall be based on the following percentage of the total wage applicable to a General Hand as defined in subclause (3)(o) of this clause:

	%
Under 18 years of age	60
18 to 19 years of age	70
19 to 20 years of age	80
20 to 21 years of age	90

(12A) Junior employees (Retail Establishments other than supermarkets):

The minimum weekly wage rates of juniors shall be based on the following percentage of the total wage applicable to a Cleaner as defined in subclause (1)(k) of this clause:

	%
Under 18 years of age	60
18 to 19 years of age	70
19 to 20 years of age	80
20 to 21 years of age	90

(13) Junior employees (Supermarkets)

Junior employees employed on all or any of the duties of a wrapper/packer/pricer/cabinet attendant, shall be paid as follows:

	%
Under 18 years of age	60
18 to 19 years of age	70
19 to 20 years of age	80
20 to 21 years of age	90

Junior employees employed solely to perform the end of day clean up shall be paid the following percentage of the total wage applicable to a cleaner pursuant to subclause (2)(c) of this clause:

	%
Under 18 years of age	60
18 to 19 years of age	70
19 to 20 years of age	80
20 to 21 years of age	90

(14) (a) Junior employees—drivers of motor vehicles

Rates of Pay—(% of wage payable to Adult Employee for capacity of vehicle being driven)

	%
Under 19 years of age	70
Under 20 years of age	80
20 and over years of age	100

(b) No junior employee under 17 years of age shall be permitted to have sole charge of a motor vehicle.

(15) Junior employees—casing section—subject to Clause 25.—Junior Employees:

The minimum weekly rate of wage of juniors shall be based on the percentage of the General Hand rate expressed in subclause (10) of this clause:

	%
Under 18 years of age	60
18 to 19 years of age	70
19 to 20 years of age	80
20 to 21 years of age	90

(16) Adult leading hands

Any employee who is placed in charge for not less than one day of:

Not less than three and not more than ten other employees, shall be paid per week extra, an all purpose rate of $11.50.

More than ten and not more than twenty employees, shall be paid per week extra, an all purpose rate of $17.95.

More than twenty other employees, shall be paid per week extra, an all purpose rate of $23.60.

2. Clause 9A.—Minimum Wage Adult Males and Females: Delete this clause and insert in lieu thereof the following:

9A.—MINIMUM WAGE—ADULT MALES AND FEMALES

Notwithstanding the provisions of this Award, no employee (including an apprentice), 21 years of age or over, shall be paid less than $317.10 per week as his/her ordinary rate of pay in respect of the ordinary hours of work

prescribed by this award, but that minimum rate of pay does not apply where the ordinary rate of pay (including any part thereof payable in addition to the award rate) is not less than $317.10.

Where the said minimum rate of pay is applicable the same rate shall be payable on holidays, during annual leave, sick leave, long service leave and any other leave prescribed by this Award.

Notwithstanding the foregoing, where in this Award an additional rate is prescribed for any work 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 classification in which the employee is employed.

3. 13.—Meal Money: Delete this clause and inset in lieu thereof the following:

13.—MEAL MONEY

(1) An employee required to work overtime for more than two hours prior to his/her normal starting time or after his/her normal finishing time on any day shall be supplied with a meal by the employer or be paid $6.50 by the employer for a meal.

(2) If the amount of overtime required to be worked necessitates a second or subsequent meal the employer shall supply such meal or pay to the employee the sum of $4.40 for each such second or subsequent meal.

(3) No such meals need to be provided or payments need to be made to employees living in the same locality as their place of employment and who can reasonably return home for such meal.

MOTOR VEHICLE (SERVICE STATION, SALES ESTABLISHMENTS, RUST PREVENTION AND PAINT PROTECTION) INDUSTRY AWARD.

No. 29 of 1980.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Workers' Union, West Australian Branch, Industrial Union of Workers

and

Ampol Petroleum Ltd and Others.

No. 1005A of 1995.

COMMISSIONER C.B. PARKS.

21 December 1995.

Order.

HAVING heard Mr M.J. Lourey on behalf of the Applicant, Mr A. Cameron on behalf of the Shell Oil Company of Australia, Mr J. J. Johnstone on behalf of Allpike's Honda and Peugeot and Ms C. Brown on behalf of Cherana Pty Ltd, Trona Pty Ltd, Asterian Pty Ltd and Jayking Pty Ltd and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Motor Vehicle (Service Station, Sales Establishments, Rust Prevention and Paint Protection) Industry Award No. 29 of 1980 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 12 December 1995.

(Sgd.) C. B. PARKS,
[L.S.] Commissioner.

Schedule.

1. Clause 21.—Wages: Delete this clause and insert in lieu thereof—

21.—WAGES

The following shall be the minimum rate of wages payable to employees under this award from the beginning of the first pay period commencing on or after 12 December 1995.

(1)

	Base Rate Per Week $	First Arbitrated Safety Net Adjustment $	Total Rate Per Week $
Adult Employees:			
Service Station Attendant Grade 1	298.90	8.00	306.90
Service Station Attendant Grade 2	321.30	8.00	329.30
Service Station Attendant Grade 3	337.70	8.00	345.70

(2) Junior Employees:

Shall be paid the appropriate percentage of the "Service Station Attendant Grade 1" Wage Rate inclusive of supplementary payments, having regard to the age of the employee.

	%
Under 16 years of age	40
At 16 years of age	50
At 17 years of age	60
At 18 years of age	70
At 19 years of age	80
At 20 years of age	90

(3) Casual Employees:

A casual employee shall be paid 20 per cent in addition to the ordinary rates prescribed in subclause (1) hereof.

(4) Leading Hand:

An employee appointed by the employer as a leading hand shall be paid the following amount in addition to the ordinary rate of pay for all purposes of the award:

	Rate Per Week $
(a) If placed in charge of not less than three and not more than ten other employees	15.90
(b) If placed in charge of more than ten and not more than 20 other employees	24.40
(c) If placed in charge of more than 20 other employees	31.60

(5) Definitions:

(a) "Service Station Attendant Grade 1" shall mean a person whose duties include dispensing fuel, under bonnet checks, top-up oils, check radiators, batteries levels and inflate tyres as required and clean windscreens. Receive payment, operate cash register, EFT or credit card systems and without limiting the following is responsible for the cleaning, sweeping and general tidiness of the employer's premises.

(b) "Service Station Attendant Grade 2" shall mean a person whose duties include the application of anti-corrosive or paint protective products, lubrications, servicing of vehicles where no mechanical qualifications are required, operating steam cleaning machines and without limiting the foregoing maybe required to wash, polish and detail cars and to carry out grade 1 duties where required.

(c) "Service Station Attendant Grade 3" shall mean a person whose duties require activation of self service pumps and receiving and recording payment for products, petroleum or otherwise on all manual, electronic or digital equipment, balancing of EFT, cash register and accounts, responsible for booking vehicles in and out of the workshop for repair, steam cleaning, anti-corrosive or paint protection applications, car detailing or other trade and non-trade services, and without limiting the foregoing general responsibility for stock control, customer service, security and general tidiness of the employer's premises.

(6) The rates of pay in this award include the first $8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This first $8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November, 1991. Increases made 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 arbitrated safety net adjustments.

2. Schedule A.—Respondents: Delete this Schedule and insert in lieu thereof—

SCHEDULE A.—RESPONDENTS

Allpike's Honda and Peugeot
Amgas Fremantle Service Station
Amgas Pty Ltd
Ampol Armadale Service Station
Ampol Kalgoorlie Service Station
Ampol Melville
Ampol Petroleum Ltd
Ampol South Perth (Trona Pty Ltd as trustee for the K C Greenwell Family Trust No. 2 trading as)
Automotive Holdings Pty Ltd
Beam Rustproofing
BP Broome Service Station
BP Cannington Service Station
BP Cocklebiddy Service Station
BP Mandurah Service Station
BP Oil
Caltex Dianella
Caltex Esperance Roadhouse
Caltex Mosman Park
Caltex Wanneroo Service Station
Caravell Auto Protection
Caravell Car Detailers
Diesel Motors Pty Ltd
Endrust Bunbury
Gull Como Service Station
Gull Petroleum (WA) Pty Ltd
Gull Waterloo Roadhouse
John Hughes Group of Companies
Mick's Caltex (Asterian Pty Ltd trading as)
Prerust Albany
Shell Canning Vale Service Station
Shell Karratha Roadhouse
Shell Kununurra Service Station
Shell Meekatharra Roadhouse
Shell Oil Company of Australia
Skipper Mitsubishi
Solo Osborne Park Service Station
Southern Cross Claremont Service Station
Southern Cross Petroleum WA
Swan Taxi Co-op Ltd
Total Auto Guard Car Care
Williamson's Motor House

STATE RESEARCH STATIONS, AGRICULTURAL SCHOOLS AND COLLEGE WORKERS AWARD 1971 No. 23 of 1971.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Workers' Union, West Australian Branch, Industrial Union of Workers
and
Hon Minister for Education and Others.
No. 1129 of 1995.

State Research Stations, Agricultural Schools and College Workers Award 1971
No. 23 of 1971.

COMMISSIONER A.R. BEECH.

7 December 1995.

Order.

HAVING heard Mr M Llewellyn on behalf of the Applicant and Mr P Connell on behalf of the Respondents, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the State Research Stations, Agricultural Schools and College Workers Award 1971 be varied in accordance with the following Schedule and that such variation shall have effect from the first pay period on or after the 20th day of November 1995.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

Schedule.

1. Clause 26.—Wages: Delete subclauses (1), (2) and (3) of this clause and insert in lieu the following:

(1) Department of Agriculture (increments based on service):

	A RATE PER WEEK FIRST YEAR OF SERVICE	B RATE PER WEEK SECOND YEAR OF SERVICE	C RATE PER WEEK THIRD AND SUBSEQUENT YEARS OF SERVICE
	$	$	$
(a) General Operative Grade II	-	348.09	-
$16.00 per week 1st and 2nd Arbitrated Safety Net Adjustments		16.00	
Total		364.10	
(b) General Operative Grade I	371.66	375.97	379.55
$16.00 per week 1st and 2nd Arbitrated Safety Net Adjustments	16.00	16.00	16.00
Total	387.65	392.00	395.55
(c) Agricultural Operative	379.76	384.17	387.86
$16.00 per week 1st and 2nd Arbitrated Safety Net Adjustments	16.00	16.00	16.00
Total	395.75	400.20	403.85
(d) Senior Agricultural Operative (Tradesperson)	423.83	428.75	432.96
$16.00 per week 1st and 2nd Arbitrated Safety Net Adjustments	16.00	16.00	16.00
Total	439.85	444.75	448.95
(e) Senior Agricultural Operative Special	476.83	484.00	491.18
$16.00 per week 1st and 2nd Arbitrated Safety Net Adjustments	16.00	16.00	16.00
Total	492.85	500.00	507.20

(2) Ministry of Education (increments based on performance provided that for entry to the level of (d) hereof the employee shall hold the appropriate qualification):

		A RATE PER WEEK $	B RATE PER WEEK $	C RATE PER WEEK $
(a)	Agricultural Training Officer Level 1	433.67	438.80	443.21
	$16.00 per week 1st and 2nd Arbitrated Safety Net Adjustments	16.00	16.00	16.00
	Total	449.70	454.80	459.20
(b)	Agricultural Training Officer Level 2	449.87	455.30	459.71
	$16.00 per week 1st and 2nd Arbitrated Safety Net Adjustments	16.00	16.00	16.00
	Total	465.90	471.30	475.70
(c)	Agricultural Training Officer Level 3	466.68	472.42	481.03
	$16.00 per week 1st and 2nd Arbitrated Safety Net Adjustments	16.00	16.00	16.00
	Total	482.70	488.40	497.05
(d)	Agricultural Training Officer Level 4	496.30	511.68	527.05
	$16.00 per week 1st and 2nd Arbitrated Safety Net Adjustments	16.00	16.00	16.00
	Total	512.30	527.70	543.05

(3) Ministry of Education (increments based on performance):

		A RATE PER WEEK $	B RATE PER WEEK $	C RATE PER WEEK $	D RATE PER WEEK $
(a)	Kitchen Staff employee Level 1	370.84	377.50	381.71	
	$16.00 per week 1st and 2nd Arbitrated Safety Net Adjustments	16.00	16.00	16.00	
	Total	386.85	393.50	397.70	
(b)	Kitchen Staff employee Level 2	387.55	395.85	400.98	
	$16.00 per week 1st and 2nd Arbitrated Safety Net Adjustments	16.00	16.00	16.00	
	Total	403.55	411.85	417.00	
(c)	Kitchen Staff employee Level 3	412.15	421.17	435.01	443.51
	$16.00 per week 1st and 2nd Arbitrated Safety Net Adjustments	16.00	16.00	16.00	16.00
	Total	428.15	437.20	451.00	459.50
(d)	Kitchen Staff employee Level 4	448.23	455.92	460.73	
	$16.00 per week 1st and 2nd Arbitrated Safety Net Adjustments	16.00	16.00	16.00	
	Total	464.25	471.90	476.75	

2. Clause 26.—Wages: Immediately following subclause (7) of this clause insert a new subclause as follows:

(8) The rates of pay in this award include the second $8.00 per week arbitrated safety Net Adjustment payable under the December, 1994 State Wage Decision. This second $8.00 per week arbitrated safety Net Adjustment may be offset to the extent of any wage increase payable since 1 November, 1991, pursuant to enterprise agreements, enterprise flexibility agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase has not previously been used to offset an arbitrated safety Net Adjustment. Increases made 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 arbitrated safety Net Adjustments.

TELFER GOLD MINE (PRODUCTION AND MAINTENANCE EMPLOYEES') AWARD 1987 No. A9 of 1987.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Newcrest Mining Limited (Telfer)

and

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch and Others.

No. 766 of 1995.

Telfer Gold Mine (Production and Maintenance Employees') Award 1987.

COMMISSIONER R.N. GEORGE.

29 November 1995.

Order.

HAVING heard Mr H. Dixon (of Counsel) and with him Mr R. Lilburne (of Counsel) on behalf of the Applicant, Mr M. Keogh on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch; Mr D. Bartlem on behalf of the Australian Workers' Union, West Australian Branch, Industrial Union of Workers and Mr C. Young on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Divisions, WA Branch and the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia, Western Australian Branch Respondents and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders that:

1. The Telfer Gold Mine (Production and Maintenance Employees') Award 1987 be varied in accordance with the following Schedule A and consolidated in accordance with the following Schedule B; and that such variation and consolidation shall have effect insofar as it applies to employees of Newcrest Mining Limited who are eligible for membership of the Australian Workers' Union, West Australian Branch, Industrial Union of Workers; Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Divisions, WA Branch and the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia, Western Australian Branch on and from 30 October 1995; and insofar as it applies to employees eligible for membership to the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch on and from 31 October 1995.
2. Notwithstanding 1. above, until such time as an employee commences to work in accordance with Clause 7.—Hours in Schedule B his or her terms and conditions of employment will continue to be governed by the Telfer Gold Mine (Production & Maintenance Employees) Award 1987 prior to the variation set out in 1. above provided that all employees will commence such cycle work upon 21 days notice by Newcrest Mining Limited and no later than 8 January 1996.
3. The counterclaims filed by the organisations referred to above be dismissed.

(Sgd.) R. N. GEORGE,
[L.S.] Commissioner.

SCHEDULE A

1. Clause 1.—Title: Delete this clause and insert in lieu thereof the following—

1.—TITLE

This Award shall be known as the "Telfer Gold Mine Fly In/Fly Out" Award.

2. Clause 2.—Arrangement: Delete this clause and insert in lieu thereof the following—

2.—ARRANGEMENT

1. Title
1A. Statement of Principles December 1994
2. Arrangement
3. Term
4. Scope
5. Annualised Wages
6. Contract of Service
7. Hours
8. Annual Leave
9. Bereavement Leave
10. Long Service Leave
11. Job Stewards
12. Safety Boots and Protective Clothing
13. Sick Leave
14. Redundancy
15. Stand-downs On Site Due to Inclement Weather
16. Right of Entry
17. Definitions
18. Grievance and Disputes Procedure
19. Maternity Leave
20. Payment of Cycle Wages
21. Training
22. Fixed Term Employees
23. Point of Assembly and Transport
24. No Claims
25. Leave Reserved
Schedule A—Parties to the Award

3. Clause 4.—Scope: Delete subclause (1) of this clause and insert in lieu thereof the following—

(1) This Award shall apply to Newcrest Mining Limited, its employees, members of the unions referred to in Schedule A of this Award employed in classifications mentioned in Clause 5.—Annualised Wages of this Award in the area occupied and operated upon by Newcrest Mining Limited at Telfer.

4. Clause 5.—Re-Opening of Award: Delete this clause and insert in lieu thereof the following new clause—

5.—ANNUALISED WAGES

The annualised wages payable under the provisions of this Award for an employee shall be the total of the annual wage for that employee's classification set out in subclause (1) below, plus the annual service payment applicable to the individual employee set out in subclause (2) below plus the Telfer allowance set out in subclause (6) below.

The annual wage covers all payments for the performance of all duties in accordance with the roster and the employee's classification and includes consideration for all allowances, other than those specifically referred to in subclauses (4) and (6) below, including all previously applicable allowances and disabilities associated with cycle work and the periods of duty, all the circumstances related to Telfer, isolation, heat, dust, the absence of the amenities normally found in a town or city environment, the lack of normal home amenities, compensation and penalty payments related to all hours worked in accordance with the roster and work on Saturdays and Sundays, public holidays and annual leave loading.

(1)

Classification	Annual Wage $
(a) Mine Employees	
Level 1	50,136
Level 2	52,391
Level 3	53,706
Level 4	54,261
Level 5	55,364
Level 6	56,692
(b) Mill Employees	
Level 1	50,664
Level 2	52,919
Level 3	53,969
Level 4	54,525
Level 5	55,628
Level 6	56,956
(c) Laboratory Employees	
Level 1	50,664
Level 2	52,919
Level 3	53,969
Level 4	54,525
(d) Metallurgical Laboratory Employees	
Level 1	53,424
Level 2	53,967
(e) Warehouse Employees	
Level 1	50,664
Level 2	52,919
Level 3	53,969
(f) Metal Employees	
Grade M0	51,439
Grade M1	53,086
Grade M2	54,744
(g) Metal Tradespersons	
Level 1	57,730
Level 2	59,975
Level 3	62,220
Level 4	64,465
(h) Electrical Employees	
Grade E0	51,439
Grade E1	53,086
Grade E2	54,744
(i) Electrical Tradespersons	
Level 1	61,061
Level 2	63,305
Level 3	65,550
Level 4	67,795
(j) Crane Driver	
Level 1 Lifting capacity up to and including 15 tonnes	53,969
Level 2 Lifting capacity over 15 tonnes and up to but not including 50 tonnes	54,525
Level 3 Lifting capacity over 50 tonnes and up to 120 tonnes	55,628
Level 4 Lifting capacity over 50 tonnes and up to 120 tonnes and has passed the Skills and Applications Techniques as in documentation recorded in Commission File 964/93	56,956
(k) Geology Field Assistants	
Level 1	50,664
Level 2	52,919
Level 3	53,969
Level 4	54,525

(2) Employees shall be paid a service payment at the rate of the following amounts per year.

Six to nine months service	1,103
Nine to twelve months service	1,677
One to two years service	2,299
Two to three years service	2,780
Three to four years service	3,178
Four to five years service	3,637
Five to six years service	4,041
Six to seven years service	4,527
Seven years and thereafter	5,095

(3) Apprentices: (annual wage expressed as a percentage rate shown for a metal or electrical tradesperson's level 1).

Five Year Term	%
First year	40
Second year	48
Third year	55
Fourth year	75
Fifth year	88
Four Year Term	
First year	42
Second year	55
Third year	75
Fourth year	88
Three and a Half Year Term	
First six months	42
Next year	55
Next year	75
Final year	88
Three Year Term	
First year	55
Second year	75
Third year	88

(4) Leading Hands:

(a) Leading Hands shall be paid the following allowances per rostered cycle or pro-rata for part thereof in addition to the prescribed annualised wage.

If placed in charge of:

	$
not less than 2 but not more than 5 employees	83.17
not less than 6 but not more than 10 employees	114.29
not less than 11 but not more than 20 employees	149.93
more than 20 employees	194.07

(b) Marking off/or Template Marking Allowance

Metal tradespersons, the greater part of whose time is occupied in marking off/or template marking shall be paid an additional amount of $23.76 per cycle on the normal annualised wage rate prescribed in subclause (1)(g) of this Clause.

(5) Reclassifications

(a) In the event that there is a claim for reclassification by an existing employee to a higher level under the new structure on the ground that the employee possesses equivalent skill and knowledge gained through on-the-job experience or on any other ground, the parties agree that the grievance and disputes procedure set out in Clause 18.—Grievance and Disputes Procedure, of this Award will be followed.

(b) In the event the employer claims an employee does not possess the necessary skill and knowledge to be reclassified to a higher level, the parties agree the Award grievance and dispute procedure set out in Clause 18 of this Award will be followed.

(6) Telfer Allowance

Employees shall be paid an allowance of $1,000 per annum to cover all site conditions pertaining to employment by Newcrest Mining Limited not otherwise provided for in this Award and all matters associated with cycle work on a fly in/fly out basis.

(7) The annualised wages referred to in the preamble of this clause, include the 4.5% wage increase granted by the employer pursuant to the Telfer Gold Mine Enterprise Agreement 1993 which was registered by the Western Australian Industrial Relations Commission on 21 February 1994.

5. Clause 6.—Wages: Delete this clause and insert in lieu thereof the following new clause—

6.—CONTRACT OF SERVICE

(1) (a) The contract of service may be terminated by the employer giving notice, or a payment in lieu of notice, in accordance with provisions of the Industrial Relations Act 1988 (Commonwealth).

(b) The employee may terminate the contract of service by giving one calendar weeks' notice and if the employee fails to give the required notice then one third of the employee's Cycle Wage shall be forfeited by the employee to the employer.

(2) The employer shall be under no obligation to pay for any day not worked upon which the employee is required to present himself/herself for duty, except where such absence from work is due to illness and comes within the provisions of Clause 13.—Sick Leave of this Award or such absence is on account of holidays to which the employee is entitled under the provisions of this Award.

(3) This clause does not affect the right to dismiss for misconduct, and in such case annualised wages shall be paid pro-rata up to the time of dismissal only.

(4) The employer shall be entitled to deduct payment for any day or portion of a day upon which the employee cannot be usefully employed because of any strike by the union or unions affiliated with it or by another association or union, or through the breakdown of the employer's machinery, or any stoppage of work by any cause which the employer cannot reasonably prevent except for strikes by third parties that prevent or delay flights from Perth to Telfer which render employees unable to commence work in accordance with their rosters.

(5) (a) An employee engaged on duties carrying a higher rate than the employee's ordinary classification shall be paid the higher rate for the time the employee is so engaged but if so engaged for more than two hours of one day or shift the employee shall be paid the higher rate for the whole day or shift.

(b) Provided that the provisions of this subclause do not apply where an employee is performing duties for the sole purpose of training in accordance with the Enterprise Training programme defined in Clause 21.—Training of this Award.

(6) (a) The employer may direct an employee to carry out such duties as are within the limits of the employee's classification as defined, skill, competence and training consistent with the classification structure of this Award provided that such duties are not designed to promote deskilling.

(b) The employer may direct an employee to carry out such duties and use such tools and equipment as may be required provided that the employee has been properly trained in the use of such tools and equipment.

(c) Any direction issued by the employer pursuant to paragraphs (a) and (b) hereof shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

6. Clause 7.—Area and Industry Allowance: Delete this clause and insert in lieu thereof the following new clause—

7.—HOURS

(1) Employees shall be rostered to work within a 21 day period 14 shifts of 12 hours duration to a maximum of 168 hours and shall have the remaining time off duty.

(2) A roster may provide:

(a) a period of consecutive day shifts; or

(b) a period of consecutive night shifts; or

(c) a combination of day shifts and night shifts.

but shall allow employees not less than 6 consecutive days off site and a break of at least 11 hours between rostered shifts.

(3) The roster (including commencing and finishing times of shifts) may be varied for any section by agreement between the employer and the majority of the employees affected.

(4) (a) "Day shift" means any shift starting at or after 4.00am and finishing at or before 9.00pm.

(b) "Night shift" means any shift starting at or after 5.00pm and finishing at or before 9.00am on the following day.

(5) Employees shall not be required to work more than 6½ hours of a rostered shift without a 30 minute meal break which shall be taken at the nearest available or designated crib room provided by the employer. However, the period of 6½ hours may be altered by agreement between the employer, the relevant union and the employees concerned, or failing such agreement, may be determined by the Western Australian Industrial Relations Commission.

7. Clause 8.—Service Payments: Delete this clause and insert in lieu thereof the following new clause—

8.—ANNUAL LEAVE

(1) An employee is entitled for each year of service, to paid annual leave for a period of 2 roster cycles (28 rostered-on shifts).

(2) An entitlement under subclause (1) accrues pro-rata on a weekly basis.

(3) Annual leave must be taken in periods that coincide with a completed roster cycle.

(4) An employee whilst on annual leave will be paid the full Cycle Wage he/she would have received had they worked the projected roster over that period.

(5) The Cycle Wage paid for annual leave will be paid in the normal pay period.

(6) An employee who as at 30 October 1995 has accrued annual leave under this Award:

(a) may elect in writing to forego that entitlement, or any part thereof, and be paid the equivalent cash benefit calculated on the terms applicable under this Award prior to such variations;

(b) will alternatively, be entitled to take such leave in accordance with subclause (3) above at the rate applicable to such leave under this Award prior to the said variation in lieu of the Cycle Wage payable under subclause (4) above.

8. Clause 9.—Disability and Site Allowances: Delete this clause and insert in lieu thereof the following new clause—

9.—BEREAVEMENT LEAVE

An employee, other than a casual employee, shall on the death within Australia of a wife, husband, father, mother, brother, sister, child or stepchild, be entitled on notice to leave without deduction of pay for a period not exceeding the number of hours worked by the employee in five consecutive rostered days.

9. Clause 10.—Tool Allowance: Delete this clause and insert in lieu thereof the following new clause—

10.—LONG SERVICE LEAVE

The Long Service Leave provisions published in Volume 64 of the Western Australian Industrial Gazette at pages 1 to 4 both inclusive shall apply to the employees and employers upon whom this Award is binding except for the variations thereto set out below.

A. Clause 3.—Period of Leave:

(1) The leave to which an employee shall be entitled or deemed to be entitled shall be as provided in this subclause.

(2) Subject to the provisions of paragraphs (5) and (6) of this subclause—

Where an employee has completed at least ten years' service, the amount of leave shall be—

(a) in respect of each ten years' service completed—thirteen calendar weeks;

(b) in respect of ten years' service completed after the first ten years—thirteen calendar weeks;

(c) in respect of each seven years' service completed after the first twenty years—thirteen calendar weeks;

(d) on the termination of the employee's employment—

(i) by death; or

(ii) in any circumstances otherwise than by his/her employer for serious misconduct;

in respect of the number of years' service with the employer completed since that employee last became entitled to an amount of long service leave—a proportionate amount on the basis of thirteen calendar weeks' leave for ten years' service or as the case may be on the basis of thirteen calendar weeks' leave for seven years' service.

(e) Notwithstanding the provisions of placitum (a) of this paragraph and subject to paragraphs (5) and (6) of this subclause an employee shall be deemed to be entitled to six calendar weeks leave after completing five years continuous service. Leave taken pursuant to this sub-paragraph does not count as service for long service leave purposes but does not break the continuity of service.

(3) Subject to the provisions of paragraph (6) of this subclause, where an employee has completed at least three years' service, but less than ten years' service since its commencement and his/her employment is terminated—

(a) by death; or

(b) by the employer for any reason other than serious misconduct; or

(c) by the employee on account of sickness or injury to the employee or domestic or other pressing necessity where such sickness or injury or necessity is of such a nature as to justify or in the event of a dispute is, in the opinion of the Special Board of Reference, of such a nature as to justify such termination;

the amount of the leave shall be such proportion of thirteen calendar weeks' leave as the number of completed years of such service bears to ten years.

(4) In the cases to which paragraphs (2)(d) and (3) of this subclause apply the employee shall be deemed to have been entitled to and to have commenced leave immediately prior to such termination.

(5) An employee whose service with an employer commenced before 1 June 1979 and whose service would entitle that employee to long service leave under this clause shall be entitled to leave calculated on the following basis—

(a) for each completed year of service commencing before 1 June 1979, an amount of leave calculated on the basis of thirteen calendar weeks' leave for fifteen years' service; and

(b) for each completed year of service commencing on or after 1 June 1979, an amount of leave calculated on the basis of thirteen calendar weeks' leave for ten years' service or on the basis of thirteen calendar weeks' leave for seven years' service as the case may be.

Provided that such an employee shall not be entitled to long service leave until his/her completed years of service entitle him/her to thirteen calendar weeks' leave.

(6) An employee to whom paragraphs (2)(d) and (3) of this subclause apply whose service with an employer commenced before 1 June 1979 shall be entitled to an amount of long service leave calculated on the following basis—

(a) for each completed year of service commencing before 1 June 1979, an amount of leave calculated on the basis of thirteen calendar weeks' leave for fifteen years' service; and

(b) for each completed year of service commencing on or after 1 June 1979, an amount of leave calculated on the basis of thirteen calendar weeks' leave for ten years' service or thirteen calendar weeks' leave for seven years' service as the case may be.

B. Transitional Provision In Respect Of Accruals

(1) The rate of pay for long service leave which accrues from 30 October 1995 shall be 1/52 of the annualised wage for each calendar week of leave.

(2) The rate of pay in respect of long service leave which has accrued to employees under the Award but which has at 30 October 1995 not been or could not yet be taken will, when taken, be the rate applicable under this Award prior to such variation.

10. Clause 11.—Contract of Service: Delete this clause and insert in lieu thereof the following new clause—

11.—JOB STEWARDS

An accredited job steward shall be entitled to time off duty without loss of annualised wages for the time reasonably and necessarily spent on Union business, provided that the absence from duty is subject to prior arrangement and is approved by the employer. The approval of the employer required pursuant to the clause shall not be unreasonably withheld.

11. Clause 12.—Hours: Delete this clause.

12. Clause 13.—Overtime: Delete this clause and insert in lieu thereof the following new clause—

13.—SICK LEAVE

(1) (a) An employee (other than a casual employee) who is unable to attend or remain at his/her place of employment during the rostered hours of work by reason of personal ill health or injury shall be entitled to payment during such absence in accordance with the following provisions.

(b) Entitlement to payment shall accrue at the rate of one sixth of a week for each completed month of service with the employer up to 30 October 1995 and thereafter will be 120 hours per year which shall accrue weekly on a pro-rata basis.

(c) If in the first or successive years of service with the employer an employee is absent on the ground of personal ill health or injury for a period longer than his/her entitlement to paid sick 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 sick leave during that year of service.

(2) The unused portions of the entitlement to paid sick leave in any one year shall accumulate from year to year and subject to this clause may be claimed by the employee if the absence by reason of personal ill health or injury exceeds the period for which entitlement has accrued during the year at the time of the absence. Provided that an employee shall not be entitled to claim payment for any period exceeding 400 hours in any one year of service.

(3) To be entitled to payment in accordance with this clause the employee shall as soon as reasonably practicable advise the employer of his/her inability to attend for work, the nature of his/her illness or injury and the estimated duration of the absence. Provided that such advice, other than in extraordinary circumstances, shall be given to the employer within 24 hours of the commencement of the absence.

(4) The provisions of this clause do not apply to an employee who fails to produce a certificate from a medical practitioner dated at the time of the absence or who fails to supply such other proof of the illness or injury as the employer may reasonably require provided that the employee shall not be required to produce a certificate from a medical practitioner with respect to absences of two days or less unless after two such absences in any year of service the employer requests in writing that the next and subsequent absences in that year if any, shall be accompanied by such certificate.

(5) (a) Subject to the provisions of this subclause, the provisions of this clause apply to an employee who suffers personal ill health or injury during the time when he/she is absent on annual leave and an employee may apply for and the employer shall grant paid sick leave in place of paid annual leave.

(b) Application for replacement shall be made within seven days of resuming work and then only if the employee was confined to his/her place of residence or a hospital as a result of his/her personal ill health or injury for a period of five consecutive days or more and he produces a certificate from a registered medical practitioner that he/she was so confined. Provided that the provisions of this paragraph do not relieve the employee of the obligation to advise the employer in accordance with subclause (4) of this clause if he/she is unable to attend for work on the working shift next following his/her annual leave.

(c) Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the employee was entitled at the time he/she proceeded on annual leave and shall not be made with respect to fractions of a shift.

(d) When paid sick leave has been granted by the employer in accordance with paragraphs (a), (b) and (c) of this subclause, that portion of the annual leave equivalent to the paid sick leave is hereby replaced by the paid sick leave and the replaced annual leave may be taken at another time mutually agreed to by the employer and the employee or, failing agreement, shall be added to the employee's next period of annual leave or, if termination occurs before then, be paid for in accordance with the provisions of Clause 8.—Annual Leave of this Award.

(e) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken.

13. Clause 14.—Rest Period—Overtime: Delete this clause and insert in lieu thereof the following new clause—

14.—REDUNDANCY

(1) An employee shall be deemed to have been made redundant if his/her services are no longer required by the employer because he/she has become surplus to requirements on account of technological change or re-organisation of work or production methods or procedures except if that employee is offered but does not accept alternative employment with the employer, whether in his/her then classification or otherwise.

(2) The employer shall give one calendar month's notice to the Union of which an employee is a member

if it is intended to terminate the services of such employee on the ground that he/she is redundant.

(3) In the event that an employee is made redundant pursuant to subclauses (1) and (2) of this clause that employee shall at termination be paid the equivalent of 5/52 of their annualised wage plus 2/52 of their annualised wage for each completed year of service.

(4) Any dispute over whether an employee should be entitled to redundancy pay shall be referred to the Western Australian Industrial Relations Commission for hearing and determination.

(5) This clause does not affect the right of the employer to dismiss an employee for misconduct or unsatisfactory service.

(6) This clause shall not apply to casual or fixed term employees.

14. Clause 15.—Shift Work (Continuous or Otherwise): Delete this clause and insert in lieu thereof the following new clause—

15.—STAND-DOWNS ON SITE DUE TO INCLEMENT WEATHER

If an employee at the site is stood down due to cyclone or inclement weather there shall be no deduction from the Cycle Wage for a period of no more than 7 rostered shifts for each occurrence.

15. Clause 16.—Holidays: Delete this clause.

16. Clause 17.—Annual Leave: Delete this clause and insert in lieu thereof the following new clause—

17.—DEFINITIONS

(1) Mine Employees

Requirements for the respective Levels 1-6 are as outlined in the documentation presented to the Western Australian Industrial Relations Commission on 21 September 1994 and as recorded in its Application file No. 776 of 1994.

(2) Mill Employees

Requirements for the respective Levels 1-6 are as outlined in the documentation presented to the Western Australian Industrial Relations Commission on 23 August 1990 and as recorded in its Application file No. 1357 of 1990 (R2).

(3) Laboratory Employees

Requirements for the respective Levels 1-4 are as outlined in the documentation presented to the Western Australian Industrial Relations Commission on 2 July 1992 and as recorded in its Application file No. 656 of 1992.

(4) Metallurgical Laboratory Employees

Requirements for the respective Levels 1 and 2 are as outlined in the documentation presented to the Western Australian Industrial Relations Commission on 23 August 1990 and as recorded in its Application file No. 1357 of 1990 (R2).

(5) Warehouse Employees

Requirements for the respective Levels 1-3 are as outlined in the documentation presented to the Western Australian Industrial Relations Commission on 2 July 1992 and as recorded in its Application file No. 656 of 1992.

(6) "Metal Tradesperson—Level 1" shall mean an employee who is employed as a Metal Tradesperson who is capable of performing all work covered in the relevant current W.A. Trades syllabus for the trade and does perform all the work that is required of him/her within that trade.

(7) "Metal Tradesperson—Level 2" shall mean a Metal Tradesperson Level 1 who in addition has completed the relevant training outlined in the documentation presented to the Western Australian Industrial Relations Commission on 1 June 1993 and as recorded in its Application file No. 372 of 1993.

(8) "Metal Tradesperson—Level 3" shall mean a Metal Tradesperson Level 2 who in addition has completed the relevant training outlined in the documentation presented to the Western Australian Industrial Relations Commission on 1 June 1993 and as recorded in its Application file No. 372 of 1993.

(9) "Metal Tradesperson—Level 4" shall mean a Metal Tradesperson Level 3 who in addition has completed the relevant training outlined in the documentation presented to the Western Australian Industrial Relations Commission on 1 June 1993 and as recorded in its Application file No. 372 of 1993.

(10) "Electrical Tradesperson—Level 1" shall mean an employee who is employed as an Electrical Tradesperson who is capable of performing all work covered in the relevant current W.A. Trades syllabus for the trade and does perform all the work that is required of him/her within that trade.

(11) "Electrical Tradesperson—Level 2" shall mean an Electrical Tradesperson Level 1 who has completed the relevant training outlined in the documentation presented to the Western Australian Industrial Relations Commission on 31 August 1993 and as recorded in its Application file No. 963 of 1993.

(12) "Electrical Tradesperson—Level 3" shall mean an Electrical Tradesperson Level 2 who has completed the relevant training outlined in the documentation presented to the Western Australian Industrial Relations Commission on 31 August 1993 and as recorded in its Application file No. 963 of 1993.

(13) "Electrical Tradesperson—Level 4" shall mean an Electrical Tradesperson Level 3 who has completed the relevant training outlined in the documentation presented to the Western Australian Industrial Relations Commission on 31 August 1993 and as recorded in its Application file No. 963 of 1993.

(14) Metal Employee

"Grade M0" means a new employee on probation in the first three calendar months of employment progressing to achieve M1 skills.

"Grade M1" means an employee who has passed the agreed training with respect to hand skills 1, computer skills, location skills 1.

"Grade M2" means an employee appointed as such who has passed the agreed training with respect to hand skills 2, location skills 2.

(15) Electrical Employees

"Grade E0" means a new employee on probation in the first three calendar months of employment progressing to achieve E1 skills.

Grade E1" means an employee who has passed the agreed training with respect to hand skills 1, computer skills, location skills 1.

"Grade E2" means an employee appointed as such who has passed the agreed training with respect to hand skills 2, location skills 2.

(16) (a) Casual employee—shall mean an employee engaged and paid by the hour provided that the minimum engagement shall not be less than 8 hours on any one day. A casual employee shall not be employed continuously for more than one calendar month.

(b) A casual employee shall not be entitled to the provisions of Clauses 8.—Annual Leave, 9.—Bereavement Leave, 13.—Sick Leave, 14.—Redundancy, 15.—Stand-Downs On Site Due to Inclement Weather and 19.—Maternity Leave of this Award.

(17) Geology Field Assistants

Requirements for the respective Levels 1-4 are as outlined in the documentation presented to the Western Australian Industrial Relations Commission on 9 September 1993 and as recorded in its Application file No. 1142 of 1993.

(18) "Cycle Wage" means an employee's annualised wages pro-rated on a fortnightly basis (with each component similarly pro-rated).

(19) For the purposes of superannuation entitlement the annualised wages comprises:

(a) 41% for a 38 hour week (excluding commissions, allowances for overtime or other special services and bonuses); and

(b) 59% of which components total the annual wages set out in subclause (1) of Clause 5.—Annualised Wages of this Award and covers all payments for the performance of all duties in accordance with the roster and the employee's classification and includes consideration for all applicable allowances and disabilities including those previously applicable for all the circumstances related to Telfer, including isolation, heat, dust, the absence of the amenities normally found in a town or city environment, the lack of normal home amenities, compensation and penalty payments related to all hours worked in accordance with the roster and worked on Saturdays and Sundays, public holidays and annual leave loading.

(20) "Calendar Week" means a period of 7 successive days reckoned from any point.

17. Clause 18.—Annual Leave Travel Assistance: Delete this clause.

18. Clause 19.—Bereavement Leave: Delete this clause and insert in lieu thereof the following new clause—

19.—MATERNITY LEAVE

(1) Eligibility for Maternity Leave

An employee who becomes pregnant shall, upon production to her employer of a certificate from a duly qualified medical practitioner stating the presumed date of her confinement, be entitled to maternity leave provided that she has had not less than 12 calendar months' continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

For the purposes of this clause:

(a) An employee shall include a part-time employee but shall not include an employee engaged as a casual.

(b) Maternity leave shall mean unpaid maternity leave.

(2) Period of Leave and Commencement of Leave

(a) Subject to subclauses (3) and (6) hereof, the period of maternity leave shall be for an unbroken period of from 12 to 52 calendar weeks and shall include a period of six calendar weeks' compulsory leave to be taken immediately before the presumed date of confinement and a period of six calendar weeks' compulsory leave to be taken immediately following confinement.

(b) An employee shall, not less than 10 calendar weeks prior to the presumed date of confinement, give notice in writing to her employer stating the presumed date of confinement.

(c) An employee shall give not less than four calendar weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave, stating the period of leave to be taken.

(d) An employee shall not be in breach of this order as a consequence of failure to give the stipulated period of notice in accordance with paragraph (c) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

(3) Transfer to a Safe Job

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

If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (7), (8), (9) and (10) hereof.

(4) Variation of Period of Maternity Leave

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

(b) The period of leave may, with the consent of the employer, be shortened by the employee giving not less than 14 calendar days' notice in writing stating the period by which the leave is to be shortened.

(5) Cancellation of Maternity Leave

(a) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.

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

(6) Special Maternity Leave and Sick Leave

(a) Where the pregnancy of an employee not then on maternity leave terminates after 28 calendar weeks other than by the birth of a living child then—

(i) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, or

(ii) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a duly qualified medical practitioner certifies as necessary before her return to work.

(b) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed 52 calendar weeks.

(c) For the purposes of subclauses (7), (8) and (9) hereof, maternity leave shall include special maternity leave.

(d) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (3), to the position she held immediately before such transfer.

Where such position no longer exists but there are other positions available, for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(7) Maternity Leave and Other Leave Entitlements

Provided the aggregate of leave including leave taken pursuant to subclauses (3) and (6) hereof does not exceed 52 calendar weeks:

(a) An employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is then entitled.

(b) Paid sick leave or other paid authorised Award absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.

(8) Effect of Maternity Leave on Employment

Notwithstanding any Award, or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of services for any purpose of the Award.

(9) Termination of Employment

(a) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this Award.

(b) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(10) Return to Work After Maternity Leave

(a) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than four calendar weeks prior to the expiration of her period of maternity leave.

(b) An employee, upon the expiration of the notice required by paragraph (a) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (3), to the position which she held immediately before such transfer. Where such position no longer exists but there are other positions available for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(11) Replacement Employees

(a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.

(b) Before an employer engages a replacement employee under this subclause, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

(c) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

(d) Providing that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

(e) A replacement employee shall not be entitled to any of the rights conferred by this clause except where her employment continues beyond the 12 calendar months qualifying period.

(12) Other Parental Leave

Employees shall otherwise be entitled to such parental leave as is permitted pursuant to the Minimum Conditions of Employment Act 1993 (WA).

19. Clause 20.—Long Service Leave: Delete this clause and insert in lieu thereof the following new clause—

20.—PAYMENT OF CYCLE WAGES

(1) The Cycle Wage paid will be 2/52 of the individual employee's annualised wages.

(2) Proportionate deductions for the unpaid absences will be made from the Cycle Wage.

(3) The Cycle Wage will be paid into a bank account of the employee's choice every 2 weeks.

20. Clause 21.—Long Service Leave Travel Assistance: Delete this clause.

21. Clause 22.—Job Stewards: Delete this clause and insert in lieu thereof the following new clause—

22.—FIXED TERM EMPLOYEES

(1) Employees may be engaged for a period of not longer than six months on a fixed term contract.

Upon engagement, fixed term employees shall be provided with:

(a) A letter of appointment stating:

(i) date of commencement

(ii) date of completion

(iii) the classification initially applicable.

(2) Fixed term employees shall not be entitled to the provisions of Clause 14.—Redundancy of this Award.

(3) The provisions of Clause 6.—Contract of Service of this Award shall apply to fixed term employees except that fixed term contracts shall expire on their date of completion or may be terminated in accordance with those provisions during their term.

22. Clause 23.—Safety Boots and Protective Clothing:

A. Renumber and relocate this clause as Clause 12.

B. Delete the word "his" where it appears in subclause (1) and insert in lieu the words "that employee's".

23. Clause 22.—Fixed Term Employees: After this clause insert the following new clause—

23.—POINT OF ASSEMBLY AND TRANSPORT

(1) The designated point of assembly and departure for employees to site shall be Perth Airport.

(2) (a) Each employee shall be responsible for travelling to the designated point of assembly. If an employee misses his/her rostered transport to the mine site he/she shall be responsible for arranging and paying for the replacement journey to the mine site.

(b) The employer shall provide, at no cost to the employee, rostered transportation between the designated point of assembly and Telfer and return.

24. Clause 24.—Sick Leave: Delete this clause and insert in lieu thereof the following new clause—

24.—NO CLAIMS

The union parties to this Award shall not pursue any claims for improvements or increases to conditions of employment, wages or allowances, either as award or overaward conditions, or pursuant to enterprise bargaining, for a period of 18 months from 8 January 1996 except in respect of safety net adjustments which may become permissible under future State Wage Case decisions, in which event, the employer shall not oppose any such claim or claims on the grounds of this clause. The employer will, however, in such an event, be entitled to oppose any such claim or claims on all other grounds available to it.

25. Clause 25.—Redundancy: Delete this clause and insert in lieu thereof the following new clause—

25.—LEAVE RESERVED

There shall be leave reserved to the parties to apply to the Western Australian Industrial Relations Commission no earlier than 7 July 1996 to insert an overtime clause into this Award in relation to the working of additional hours beyond 12 hour rostered shifts in a 168 hour cycle.

The parties have acknowledged that, in the interim, such additional hours are only to be worked in unusual and unforeseen circumstances, and only by agreement, and that employees will be credited with an equivalent amount of annual leave for such hours worked.

26. Clause 26.—Stand-down (In Pit) Due to Inclement Weather: Delete this clause.

27. Clause 27.—Right of Entry: Renumber this clause as Clause 16.

28. Clause 28.—Definitions: Delete this clause.

29. Clause 29—Weekend Availability Allowance: Delete this clause.

30. Clause 30.—Grievance and Disputes Procedure:

A. Renumber and relocate this clause to Clause 18.

B. Delete the word 'shop' where it appears in the clause and insert in lieu the word 'job'.

31. Clause 31—Maternity Leave: Delete this clause.

32. Clause 32—Payment of Wages: Delete this clause.

33. Clause 33—Training:

A. Renumber and relocate this clause to Clause 21.

B. Delete subclause (5) of this clause and insert in lieu the following—

(5) Any disputes arising in relation to subclauses (2) and (3) hereof shall be subject to the provisions of Clause 18.—Grievance and Disputes Procedure of this Award.

34. Clause 34—Fixed Term Employees: Delete this clause.

35. Schedule A—Parties to the Award: Delete this schedule and insert in lieu thereof—

SCHEDULE A—PARTIES TO THE AWARD

Union Parties to the Award

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division (WA Branch)

The Australian Workers' Union, West Australian Branch, Industrial Union of Workers

The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers West Australian Branch

Employer Party to the Award

Newcrest Mining Limited.

SCHEDULE B

1.—TITLE

This Award shall be known as the "Telfer Gold Mine Fly In/Fly Out" Award.

1A.—STATEMENT OF PRINCIPLES DECEMBER 1994

It is a condition of this Award/Industrial Agreement that any variation to its terms on or from the 30th day of December 1994, including the $8.00 per week Arbitrated Safety Net Adjustments, shall not be made except in compliance with the Statement of Principles set down by the Commission in the Reasons for Decision in Matter No. 985 of 1994.

2.—ARRANGEMENT

1. Title
1A. Statement of Principles December 1994
2. Arrangement
3. Term
4. Scope
5. Annualised Wages
6. Contract of Service
7. Hours
8. Annual Leave
9. Bereavement Leave
10. Long Service Leave
11. Job Stewards
12. Safety Boots and Protective Clothing
13. Sick Leave
14. Redundancy
15. Stand-downs On Site Due to Inclement Weather
16. Right of Entry
17. Definitions
18. Grievance and Disputes Procedure
19. Maternity Leave
20. Payment of Cycle Wages
21. Training
22. Fixed Term Employees
23. Point of Assembly and Transport
24. No Claims
25. Leave Reserved
Schedule A—Parties to the Award

3.—TERM

This Award shall apply for a period of two years from the beginning of the first pay period commencing on or after 11 May 1987.

4.—SCOPE

(1) This Award shall apply to Newcrest Mining Limited, its employees, members of the unions referred to in Schedule A, of this Award, employed in classifications mentioned in Clause 5.—Annualised Wages of this Award in the area occupied and operated upon by Newcrest Mining Limited at Telfer.

(2) This Award shall replace the Telfer Gold Mine (Production and Maintenance) Workers Award No. A 13 of 1985, Order Nos. C 445 of 1977, and CR 523 of 1978, C 552 of 1986 and C 149 of 1987, and the Building Trades (Goldmining) Award Nos. 29 and 32 of 1965 and 4 of 1966 as varied, the Boilermakers (Goldmining) Award No. 33 of 1947 as varied, the Electrical Trades (Goldmining) Award No. 57 of 1968 as varied, the Engineering Trades (Goldmining) Award No. 26 of 1947 as varied, and the Goldmining Award No. 21 of 1967 as varied, insofar as those awards applied to employees employed at Telfer.

5.—ANNUALISED WAGES

The annualised wages payable under the provisions of this Award for an employee shall be the total of the annual wage for that employee's classification set out in subclause (1) below, plus the annual service payment applicable to the individual employee set out in subclause (2) below plus the Telfer allowance set out in subclause (6) below.

The annual wage covers all payments for the performance of all duties in accordance with the roster and the employee's classification and includes consideration for all allowances, other than those specifically referred to in subclauses (4) and (6) below, including all previously applicable allowances and disabilities associated with cycle work and the periods of duty, all the circumstances related to Telfer, isolation, heat, dust, the absence of the amenities normally found in a town or city environment, the lack of normal home amenities, compensation and penalty payments related to all hours worked in accordance with the roster and work on Saturdays and Sundays, public holidays and annual leave loading.

(1) Classification	Annual Wage $
(a) Mine Employees	
Level 1	50,136
Level 2	52,391
Level 3	53,706
Level 4	54,261
Level 5	55,364
Level 6	56,692
(b) Mill Employees	
Level 1	50,664
Level 2	52,919
Level 3	53,969

	Annual Wage $
Level 4	54,525
Level 5	55,628
Level 6	56,956
(c) Laboratory Employees	
Level 1	50,664
Level 2	52,919
Level 3	53,969
Level 4	54,525
(d) Metallurgical Laboratory Employees	
Level 1	53,424
Level 2	53,967
(e) Warehouse Employees	
Level 1	50,664
Level 2	52,919
Level 3	53,969
(f) Metal Employees	
Grade M0	51,439
Grade M1	53,086
Grade M2	54,744
(g) Metal Tradespersons	
Level 1	57,730
Level 2	59,975
Level 3	62,220
Level 4	64,465
(h) Electrical Employees	
Grade E0	51,439
Grade E1	53,086
Grade E2	54,744
(i) Electrical Tradespersons	
Level 1	61,061
Level 2	63,305
Level 3	65,550
Level 4	67,795
(j) Crane Driver	
Level 1	
Lifting capacity up to and including 15 tonnes	53,969
Level 2	
Lifting capacity over 15 tonnes and up to but not including 50 tonnes	54,525
Level 3	
Lifting capacity over 50 tonnes and up to 120 tonnes	55,628
Level 4	
Lifting capacity over 50 tonnes and up to 120 tonnes and has passed the Skills and Applications Techniques as in documentation recorded in Commission File 964/93	56,956
(k) Geology Field Assistants	
Level 1	50,664
Level 2	52,919
Level 3	53,969
Level 4	54,525

(2) Employees shall be paid a service payment at the rate of the following amounts per year.

Six to nine months service	1,103
Nine to twelve months service	1,677
One to two years service	2,299
Two to three years service	2,780
Three to four years service	3,178
Four to five years service	3,637
Five to six years service	4,041
Six to seven years service	4,527
Seven years and thereafter	5,095

(3) Apprentices: (annual wage expressed as a percentage rate shown for a metal or electrical tradesperson's level 1).

Five Year Term	%
First year	40
Second year	48
Third year	55
Fourth year	75
Fifth year	88
Four Year Term	
First year	42
Second year	55
Third year	75
Fourth year	88
Three and a Half Year Term	
First six months	42
Next year	55
Next year	75
Final year	88
Three Year Term	
First year	55
Second year	75
Third year	88

(4) Leading Hands:

(a) Leading Hands shall be paid the following allowances per rostered cycle or pro-rata for part thereof in addition to the prescribed annualised wage.

If placed in charge of:	$
not less than 2 but not more than 5 employees	83.17
not less than 6 but not more than 10 employees	114.29
not less than 11 but not more than 20 employees	149.93
more than 20 employees	194.07

(b) Marking off/or Template Marking Allowance

Metal tradespersons, the greater part of whose time is occupied in marking off/or template marking shall be paid an additional amount of $23.76 per cycle on the normal annualised wage rate prescribed in subclause (1)(g) of this Clause.

(5) Reclassifications

(a) In the event that there is a claim for reclassification by an existing employee to a higher level under the new structure on the ground that the employee possesses equivalent skill and knowledge gained through on-the-job experience or on any other ground, the parties agree that the grievance and disputes procedure set out in Clause 18.—Grievance and Disputes Procedure, of this Award will be followed.

(b) In the event the employer claims an employee does not possess the necessary skill and knowledge to be reclassified to a higher level, the parties agree the Award grievance and dispute procedure set out in Clause 18 of this Award will be followed.

(6) Telfer Allowance

Employees shall be paid an allowance of $1,000 per annum to cover all site conditions pertaining to employment by Newcrest Mining Limited not otherwise provided for in this Award and all matters associated with cycle work on a fly in/fly out basis.

(7) The annualised wages referred to in the preamble of this clause, include the 4.5% wage increase granted by the employer pursuant to the Telfer Gold Mine Enterprise Agreement 1993 which was registered by the Western Australian Industrial Relations Commission on 21 February 1994.

6.—CONTRACT OF SERVICE

(1)(a) The contract of service may be terminated by the employer giving notice, or a payment in lieu of notice, in accordance with provisions of the Industrial Relations Act 1988 (Commonwealth).

(b) The employee may terminate the contract of service by giving one calendar weeks' notice and if the employee fails to give the required notice then one third of the employee's Cycle Wage shall be forfeited by the employee to the employer.

(2) The employer shall be under no obligation to pay for any day not worked upon which the employee is required to present himself or herself for duty, except where such absence from work is due to illness and comes within the provisions of Clause 13.—Sick Leave of this Award or such absence is on account of holidays to which the employee is entitled under the provisions of this Award.

(3) This clause does not affect the right to dismiss for misconduct, and in such case annualised wages shall be paid pro-rata up to the time of dismissal only.

(4) The employer shall be entitled to deduct payment for any day or portion of a day upon which the employee cannot be usefully employed because of any strike by the union or unions affiliated with it or by another association or union, or through the breakdown of the employer's machinery, or any stoppage of work by any cause which the employer cannot reasonably prevent except for strikes by third parties that prevent or delay flights from Perth to Telfer which render employees unable to commence work in accordance with their rosters.

(5)(a) An employee engaged on duties carrying a higher rate than the employee's ordinary classification shall be paid the higher rate for the time the employee is so engaged but if so engaged for more than two hours of one day or shift the employee shall be paid the higher rate for the whole day or shift.

(b) Provided that the provisions of this subclause do not apply where an employee is performing duties for the sole purpose of training in accordance with the Enterprise Training programme defined in Clause 21.—Training of this Award.

(6)(a) The employer may direct an employee to carry out such duties as are within the limits of the employee's classification as defined, skill, competence and training consistent with the classification structure of this Award provided that such duties are not designed to promote deskilling.

(b) The employer may direct an employee to carry out such duties and use such tools and equipment as may be required provided that the employee has been properly trained in the use of such tools and equipment.

(c) Any direction issued by the employer pursuant to paragraphs (a) and (b) hereof shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

7.—HOURS

(1) Employees shall be rostered to work within a 21 day period 14 shifts of 12 hours duration to a maximum of 168 hours and shall have the remaining time off duty.

(2) A roster may provide:

(a) a period of consecutive day shifts; or

(b) a period of consecutive night shifts; or

(c) a combination of day shifts and night shifts.

but shall allow employees not less than 6 consecutive days off site and a break of at least 11 hours between rostered shifts.

(3) The roster (including commencing and finishing times of shifts) may be varied for any section by agreement between the employer and the majority of the employees affected.

(4)(a) "Day shift" means any shift starting at or after 4.00am and finishing at or before 9.00pm.

(b) "Night shift" means any shift starting at or after 5.00pm and finishing at or before 9.00am on the following day.

(5) Employees shall not be required to work more than 6½ hours of a rostered shift without a 30 minute meal break which shall be taken at the nearest available or designated crib room provided by the employer. However, the period of 6½ hours may be altered by agreement between the employer, the relevant union and the employees concerned, or failing such agreement, may be determined by the Western Australian Industrial Relations Commission.

8.—ANNUAL LEAVE

(1) An employee is entitled for each year of service, to paid annual leave for a period of 2 roster cycles (28 rostered-on shifts).

(2) An entitlement under subclause (1) accrues pro-rata on a weekly basis.

(3) Annual leave must be taken in periods that coincide with a completed roster cycle.

(4) An employee whilst on annual leave will be paid the full Cycle Wage he/she would have received had they worked the projected roster over that period.

(5) The Cycle Wage paid for annual leave will be paid in the normal pay period.

(6) An employee who as at the 30 October 1995 has accrued annual leave under this Award:

(a) may elect in writing to forego that entitlement, or any part thereof, and be paid the equivalent cash benefit calculated on the terms applicable under this Award prior to such variations;

(b) will, alternatively, be entitled to take such leave in accordance with subclause (3) above at the rate applicable to such leave under this Award prior to the said variation in lieu of the Cycle Wage payable under subclause (4) above.

9.—BEREAVEMENT LEAVE

An employee, other than a casual employee, shall on the death within Australia of a wife, husband, father, mother, brother, sister, child or stepchild, be entitled on notice to leave without deduction of pay for a period not exceeding the number of hours worked by the employee in five consecutive rostered days.

10.—LONG SERVICE LEAVE

The Long Service Leave provisions published in Volume 64 of the Western Australian Industrial Gazette at pages 1 to 4 both inclusive shall apply to the employees and employers upon whom this Award is binding except for the variations thereto set out below.

A. Clause 3.—Period of Leave:

(1) The leave to which an employee shall be entitled or deemed to be entitled shall be as provided in this subclause.

(2) Subject to the provisions of paragraphs (5) and (6) of this subclause—

Where an employee has completed at least ten years' service, the amount of leave shall be—

(a) in respect of each ten years' service completed—thirteen calendar weeks;

(b) in respect of ten years' service completed after the first ten years—thirteen calendar weeks;

(c) in respect of each seven years' service completed after the first twenty years—thirteen calendar weeks;

(d) on the termination of the employee's employment—

(i) by death; or

(ii) in any circumstances otherwise than by his/her employer for serious misconduct;

in respect of the number of years' service with the employer completed since that employee last became entitled to an amount of long service leave—a proportionate amount on the basis of thirteen calendar weeks' leave for ten years' service or as the case may be on the basis of thirteen calendar weeks' leave for seven years' service.

(e) Notwithstanding the provisions of placitum (a) of this paragraph and subject to paragraphs (5) and (6) of this

subclause an employee shall be deemed to be entitled to six calendar weeks leave after completing five years continuous service. Leave taken pursuant to this sub-paragraph does not count as service for long service leave purposes but does not break the continuity of service.

(3) Subject to the provisions of paragraph (6) of this subclause, where an employee has completed at least three years' service, but less than ten years' service since its commencement and his/her employment is terminated—

(a) by death; or

(b) by the employer for any reason other than serious misconduct; or

(c) by the employee on account of sickness or injury to the employee or domestic or other pressing necessity where such sickness or injury or necessity is of such a nature as to justify or in the event of a dispute is, in the opinion of the Special Board of Reference, of such a nature as to justify such termination;

the amount of the leave shall be such proportion of thirteen calendar weeks' leave as the number of completed years of such service bears to ten years.

(4) In the cases to which paragraphs (2)(d) and (3) of this subclause apply the employee shall be deemed to have been entitled to and to have commenced leave immediately prior to such termination.

(5) An employee whose service with an employer commenced before 1 June 1979 and whose service would entitle that employee to long service leave under this clause shall be entitled to leave calculated on the following basis—

(a) for each completed year of service commencing before 1 June 1979, an amount of leave calculated on the basis of thirteen calendar weeks' leave for fifteen years' service; and

(b) for each completed year of service commencing on or after 1 June 1979, an amount of leave calculated on the basis of thirteen calendar weeks' leave for ten years' service or on the basis of thirteen calendar weeks' leave for seven years' service as the case may be.

Provided that such an employee shall not be entitled to long service leave until his/her completed years of service entitle him/her to thirteen calendar weeks' leave.

(6) An employee to whom paragraphs (2)(d) and (3) of this subclause apply whose service with an employer commenced before 1 June 1979 shall be entitled to an amount of long service leave calculated on the following basis—

(a) for each completed year of service commencing before 1 June 1979, an amount of leave calculated on the basis of thirteen calendar weeks' leave for fifteen years' service; and

(b) for each completed year of service commencing on or after 1 June 1979, an amount of leave calculated on the basis of thirteen calendar weeks' leave for ten years' service or thirteen calendar weeks' leave for seven years' service as the case may be.

B. Transitional Provision In Respect Of Accruals

(1) The rate of pay for long service leave which accrues from 30 October 1995 shall be 1/52 of the annualised wage for each calendar week of leave.

(2) The rate of pay in respect of long service leave which has accrued to employees under the Award but which has at 30 October 1995 not been or could not yet be taken will, when taken, be the rate appliable under this Award prior to such variation.

11.—JOB STEWARDS

An accredited job steward shall be entitled to time off duty without loss of annualised wages for the time reasonably and necessarily spent on Union business, provided that the absence from duty is subject to prior arrangement and is approved by the employer. The approval of the employer required pursuant to the clause shall not be unreasonably withheld.

12.—SAFETY BOOTS AND PROTECTIVE CLOTHING

(1) Each employee shall be supplied with one pair of safety boots free of charge at the commencement of that employee's employment with the employer. If an employee requires a replacement pair of boots, such replacement will be provided by the employer upon the presentation of the unserviceable boots to the employer.

(2) Boilermakers, Greasers, Servicemen, Drillers and Workshop employees shall, upon their request be issued with 2 pairs of overalls. Such overalls shall be available for replacement upon return of worn out overalls. Such overalls shall be available for replacement upon return of worn out overalls up to a maximum of 3 pairs per annum.

(3) Rubber gloves shall be provided for employees handling cyanide, exanthates or corrosive acids.

(4) Suitable protective clothing shall be provided for employees coming into contact with quick-lime, corrosive acids or hot slag.

13.—SICK LEAVE

(1)(a) An employee (other than a casual employee) who is unable to attend or remain at his/her place of employment during the rostered hours of work by reason of personal ill health or injury shall be entitled to payment during such absence in accordance with the following provisions.

(b) Entitlement to payment shall accrue at the rate of one sixth of a week for each completed month of service with the employer up to 30 October 1995 and thereafter will be 120 hours per year which shall accue weekly on a pro-rata basis.

(c) If in the first or successive years of service with the employer an employee is absent on the ground of personal ill health or injury for a period longer than his/her entitlement to paid sick 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 sick leave during that year of service.

(2) The unused portions of the entitlement to paid sick leave in any one year shall accumulate from year to year and subject to this clause may be claimed by the employee if the absence by reason of personal ill health or injury exceeds the period for which entitlement has accrued during the year at the time of the absence. Provided that an employee shall not be entitled to claim payment for any period exceeding 400 hours in any one year of service.

(3) To be entitled to payment in accordance with this clause the employee shall as soon as reasonably practicable advise the employer of his/her inability to attend for work, the nature of his/her illness or injury and the estimated duration of the absence. Provided that such advice, other than in extraordinary circumstances, shall be given to the employer within 24 hours of the commencement of the absence.

(4) The provisions of this clause do not apply to an employee who fails to produce a certificate from a medical practitioner dated at the time of the absence or who fails to supply such other proof of the illness or injury as the employer may reasonably require provided that the employee shall not be required to produce a certificate from a medical practitioner with respect to absences of two days or less unless after two such absences in any year of service the employer requests in writing that the next and subsequent absences in that year if any, shall be accompanied by such certificate.

(5)(a) Subject to the provisions of this subclause, the provisions of this clause apply to an employee who suffers personal ill health or injury during the time when

he/she is absent on annual leave and an employee may apply for and the employer shall grant paid sick leave in place of paid annual leave.

(b) Application for replacement shall be made within seven days of resuming work and then only if the employee was confined to his/her place of residence or a hospital as a result of his/her personal ill health or injury for a period of five consecutive days or more and he/she produces a certificate from a registered medical practitioner that he/she was so confined. Provided that the provisions of this paragraph do not relieve the employee of the obligation to advise the employer in accordance with subclause (4) of this clause if he/she is unable to attend for work on the working shift next following his/her annual leave.

(c) Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the employee was entitled at the time he/she proceeded on annual leave and shall not be made with respect to fractions of a shift.

(d) When paid sick leave has been granted by the employer in accordance with paragraphs (a), (b) and (c) of this subclause, that portion of the annual leave equivalent to the paid sick leave is hereby replaced by the paid sick leave and the replaced annual leave may be taken at another time mutually agreed to by the employer and the employee or, failing agreement, shall be added to the employee's next period of annual leave or, if termination occurs before then, be paid for in accordance with the provisions of Clause 8.—Annual Leave of this Award.

(e) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken.

14.—REDUNDANCY

(1) An employee shall be deemed to have been made redundant if his/her services are no longer required by the employer because he/she has become surplus to requirements on account of technological change or re-organisation of work or production methods or procedures except if that employee is offered but does not accept alternative employment with the employer, whether in his/her then classification or otherwise.

(2) The employer shall give one calendar month's notice to the Union of which an employee is a member if it is intended to terminate the services of such employee on the ground that he/she is redundant.

(3) In the event that an employee is made redundant pursuant to subclauses (1) and (2) of this clause that employee shall at termination be paid the equivalent of 5/52 of their annualised wage plus 2/52 of their annualised wage for each completed year of service.

(4) Any dispute over whether an employee should be entitled to redundancy pay shall be referred to the Western Australian Industrial Relations Commission for hearing and determination.

(5) This clause does not affect the right of the employer to dismiss an employee for misconduct or unsatisfactory service.

(6) This clause shall not apply to casual or fixed term employees.

15.—STAND-DOWNS ON SITE DUE TO INCLEMENT WEATHER

If an employee at the site is stood down due to cyclone or inclement weather there shall be no deduction from the Cycle Wage for a period of no more than 7 rostered shifts for each occurrence.

16.—RIGHT OF ENTRY

A duly accredited official of a union party to this award shall have the right to enter the employer's premises, but shall not without the permission of the employer interview workers during their working hours.

17.—DEFINITIONS

(1) Mine Employees

Requirements for the respective Levels 1-6 are as outlined in the documentation presented to the Western Australian Industrial Relations Commission on 21 September 1994 and as recorded in its Application file No. 776 of 1994.

(2) Mill Employees

Requirements for the respective Levels 1-6 are as outlined in the documentation presented to the Western Australian Industrial Relations Commission on 23 August 1990 and as recorded in its Application file No. 1357 of 1990 (R2).

(3) Laboratory Employees

Requirements for the respective Levels 1-4 are as outlined in the documentation presented to the Western Australian Industrial Relations Commission on 2 July 1992 and as recorded in its Application file No. 656 of 1992.

(4) Metallurgical Laboratory Employees

Requirements for the respective Levels 1 and 2 are as outlined in the documentation presented to the Western Australian Industrial Relations Commission on 23 August 1990 and as recorded in its Application file No. 1357 of 1990 (R2).

(5) Warehouse Employees

Requirements for the respective Levels 1-3 are as outlined in the documentation presented to the Western Australian Industrial Relations Commission on 2 July 1992 and as recorded in its Application file No. 656 of 1992.

(6) "Metal Tradesperson—Level 1" shall mean an employee who is employed as a Metal Tradesperson who is capable of performing all work covered in the relevant current W.A. Trades syllabus for the trade and does perform all the work that is required of him/her within that trade.

(7) "Metal Tradesperson—Level 2" shall mean a Metal Tradesperson Level 1 who in addition has completed the relevant training outlined in the documentation presented to the Western Australian Industrial Relations Commission on 1 June 1993 and as recorded in its Application file No. 372 of 1993.

(8) "Metal Tradesperson—Level 3" shall mean a Metal Tradesperson Level 2 who in addition has completed the relevant training outlined in the documentation presented to the Western Australian Industrial Relations Commission on 1 June 1993 and as recorded in its Application file No. 372 of 1993.

(9) "Metal Tradesperson—Level 4" shall mean a Metal Tradesperson Level 3 who in addition has completed the relevant training outlined in the documentation presented to the Western Australian Industrial Relations Commission on 1 June 1993 and as recorded in its Application file No. 372 of 1993.

(10) "Electrical Tradesperson—Level 1" shall mean an employee who is employed as an Electrical Tradesperson who is capable of performing all work covered in the relevant current W.A. Trades syllabus for the trade and does perform all the work that is required of him/her within that trade.

(11) "Electrical Tradesperson—Level 2" shall mean an Electrical Tradesperson Level 1 who has completed the relevant training outlined in the documentation presented to the Western Australian Industrial Relations Commission on 31 August 1993 and as recorded in its Application file No. 963 of 1993.

(12) "Electrical Tradesperson—Level 3" shall mean an Electrical Tradesperson Level 2 who has completed the relevant training outlined in the documentation presented to the Western Australian Industrial Relations Commission on 31 August 1993 and as recorded in its Applicaiton file No. 963 of 1993.

(13) "Electrical Tradesperson—Level 4" shall mean an Electrical Tradesperson Level 3 who has completed the relevant training outlined in the documentation presented to the Western Australian Industrial Relations Commission on 31 August 1993 and as recorded in its Application file No. 963 of 1993.

(14) Metal Employee

"Grade M0" means a new employee on probation in the first three calendar months of employment progressing to achieve M1 skills.

"Grade M1" means an employee who has passed the agreed training with respect to hand skills 1, computer skills, location skills 1.

"Grade M2" means an employee appointed as such who has passed the agreed training with respect to hand skills 2, location skills 2.

(15) Electrical Employees

"Grade E0" means a new employee on probation in the first three calendar months of employment progressing to achieve E1 skills.

Grade E1" means an employee who has passed the agreed training with respect to hand skills 1, computer skills, location skills 1.

"Grade E2" means an employee appointed as such who has passed the agreed training with respect to hand skills 2, location skills 2.

(16) (a) Casual employee—shall mean an employee engaged and paid by the hour provided that the minimum engagement shall not be less than 8 hours on any one day. A casual employee shall not be employed continuously for more than one calendar month.

(b) A casual employee shall not be entitled to the provisions of Clauses 8.—Annual Leave, 9.—Bereavement Leave, 13.—Sick Leave, 14.—Redundancy, 15.—Stand-Downs On Site Due to Inclement Weather and 19.—Maternity Leave of this Award.

(17) Geology Field Assistants

Requirements for the respective Levels 1-4 are as outlined in the documentation presented to the Western Australian Industrial Relations Commission on 9 September 1993 and as recorded in its Application file No. 1142 of 1993.

(18) "Cycle Wage" means an employee's annualised wages pro-rated on a fortnightly basis (with each component similarly pro-rated).

(19) For the purposes of superannuation entitlement the annualised wages comprises:

(a) 41% for a 38 hour week (excluding commissions, allowances for overtime or other special services and bonuses); and

(b) 59% of which components total the annual wages set out in subclause (1) of Clause 5.—Annualised Wages of this Award and covers all payments for the performance of all duties in accordance with the roster and the employee's classification and includes consideration for all applicable allowances and disabilities including those previously applicable to all the circumstaces related to Telfer, including isolation, heat, dust, the absence of the amenities normally found in a town or city environment, the lack of normal home amenities, compensation and penalty payments related to all hours worked in accordance with the roster and worked on Saturdays and Sundays, public holidays and annual leave loading.

(20) "Calendar Week" means a period of 7 successive days reckoned from any point.

18.—GRIEVANCE AND DISPUTES PROCEDURE

Grievance or disputes shall be dealt with in accordance with the following:

(1) In the event of a grievance or dispute arising at work an employee shall first raise it with his/her foreman or supervisor. At the employee's option the appropriate job steward may also be present.

(2) Any matter which has been fully discussed between an employee or employees and the foreman or supervisor and is still in dispute shall be referred to the job steward concerned.

(3) Notwithstanding subclause (9) hereof, an employee may refer the matter directly to the job steward.

(4) The job steward shall then discuss the matter with the foreman or supervisor concerned.

(5) If the matter remains unresolved, the job steward shall discuss it with the appropriate superintendent.

(6) If unresolved at this level the job steward shall consult with the Resident Manager or other nominated officer.

(7) If the matter remains unresolved the job steward shall inform the organiser of the Union, or other appropriate official of the Union concerned, of the nature of the issue in dispute and discussions shall then be held between a representative of the Confederation of Western Australian Industry and the Union official and/or delegate(s).

(8) If agreement has not been reached the matter shall be referred to the Western Australian Industrial Relations Commission for resolution.

(9) While the above procedure is being followed work shall continue normally without interruption and all the parties will use their best endeavours to ensure that continuation.

(10) No party shall be prejudiced as to final settlement by a continuance of work in accordance with subclause (9) hereof.

19.—MATERNITY LEAVE

(1) Eligibility for Maternity Leave

An employee who becomes pregnant shall, upon production to her employer of a certificate from a duly qualified medical practitioner stating the presumed date of her confinement, be entitled to maternity leave provided that she has had not less than 12 calendar months' continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

For the purposes of this clause:

(a) An employee shall include a part-time employee but shall not include an employee engaged as a casual.

(b) Maternity leave shall mean unpaid maternity leave.

(2) Period of Leave and Commencement of Leave

(a) Subject to subclauses (3) and (6) hereof, the period of maternity leave shall be for an unbroken period of from 12 to 52 calendar weeks and shall include a period of six calendar weeks' compulsory leave to be taken immediately before the presumed date of confinement and a period of six calendar weeks' compulsory leave to be taken immediately following confinement.

(b) An employee shall, not less than 10 calendar weeks prior to the presumed date of confinement, give notice in writing to her employer stating the presumed date of confinement.

(c) An employee shall give not less than four calendar weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave, stating the period of leave to be taken.

(d) An employee shall not be in breach of this order as a consequence of failure to give the stipulated period of notice in accordance with paragraph (c) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

(3) Transfer to a Safe Job

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

If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (7), (8), (9) and (10) hereof.

(4) Variation of Period of Maternity Leave

(a) Provided the addition does not extend the maternity leave beyond 52 calendar weeks, the period may be lengthened once only, save with the agreement of

the employer, by the employee giving not less than 14 calendar days' notice in writing stating the period by which the leave is to be lengthened.

(b) The period of leave may, with the consent of the employer, be shortened by the employee giving not less than 14 calendar days' notice in writing stating the period by which the leave is to be shortened.

(5) Cancellation of Maternity Leave

(a) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.

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

(6) Special Maternity Leave and Sick Leave

(a) Where the pregnancy of an employee not then on maternity leave terminates after 28 calendar weeks other than by the birth of a living child then—

(i) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, or

(ii) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a duly qualified medical practitioner certifies as necessary before her return to work.

(b) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed 52 calendar weeks.

(c) For the purposes of subclauses (7), (8) and (9) hereof, maternity leave shall include special maternity leave.

(d) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (3), to the position she held immediately before such transfer.

Where such position no longer exists but there are other positions available, for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(7) Maternity Leave and Other Leave Entitlements

Provided the aggregate of leave including leave taken pursuant to subclauses (3) and (6) hereof does not exceed 52 calendar weeks:

(a) An employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is then entitled.

(b) Paid sick leave or other paid authorised Award absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.

(8) Effect of Maternity Leave on Employment

Notwithstanding any Award, or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of services for any purpose of the Award.

(9) Termination of Employment

(a) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this Award.

(b) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(10) Return to Work After Maternity Leave

(a) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than four calendar weeks prior to the expiration of her period of maternity leave.

(b) An employee, upon the expiration of the notice required by paragraph (a) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (3), to the position which she held immediately before such transfer. Where such position no longer exists but there are other positions available for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(11) Replacement Employees

(a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.

(b) Before an employer engages a replacement employee under this subclause, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

(c) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

(d) Providing that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

(e) A replacement employee shall not be entitled to any of the rights conferred by this clause except where her employment continues beyond the 12 calendar months qualifying period.

(12) Other Parental Leave

Employees shall otherwise be entitled to such parental leave as is permitted pursuant to the Minimum Conditions of Employment Act 1993 (WA).

20.—PAYMENT OF CYCLE WAGES

(1) The Cycle Wage paid will be 2/52 of the individual employee's annualised wages.

(2) Proportionate deductions for the unpaid absences will be made from the Cycle Wage.

(3) The Cycle Wage will be paid into a bank account of the employee's choice every 2 weeks.

21.—TRAINING

(1) The parties to this award recognise that in order to increase efficiency, productivity and international competitiveness of industry, a greater commitment to training and skill development is required. Accordingly, the parties commit themselves to:

(a) developing a more highly skilled and flexible workforce;

(b) providing employees with career opportunities through appropriate training to acquire additional skills; and

(c) removing barriers to the utilisation of skills acquired.

(2) Following proper consultation with the on-site restructuring committees established as agreed by the parties in the first stage of structural efficiency, the employer shall develop a training programme consistent with—

(a) the current and future skill needs of the enterprise;

(b) the size, structure and nature of the operations of the enterprise;

(c) the need to develop vocational skills relevant to the enterprise and the metal and engineering industry through courses conducted by accredited educational institutions and providers.

(3) The consultation shall involve consideration of—

(a) formulation of a training programme and availability of training courses and career opportunities to employees;

(b) dissemination of information on the training programme and availability of training courses and career opportunities to employees;

(c) the recommending of individual employees for training and reclassification;

(d) monitoring and advising management and employees regarding the on-going effectiveness of the training.

(4)(a) Where, as a result of consultation with the employee concerned, it is agreed that additional training in accordance with the programme developed pursuant to paragraph (b) hereof should be undertaken by an employee, that training may be undertaken either on or off the job but shall be at Telfer and if the training is undertaken during ordinary working hours, the employee concerned shall not suffer any loss of pay. The employer shall not unreasonably withhold such paid training leave.

(b) Any costs associated with standard fees for prescribed courses and prescribed textbooks (excluding those textbooks which are available in the employer's technical library) incurred with the undertaking of training shall be reimbursed by the employer upon production of evidence of such expenditure.

(5) Any disputes arising in relation to subclauses (2) and (3) hereof shall be subject to the provisions of Clause 18.—Grievance and Disputes Procedure of this Award.

22.—FIXED TERM EMPLOYEES

(1) Employees may be engaged for a period of not longer than six months on a fixed term contract.

Upon engagement, fixed term employees shall be provided with:

(a) A letter of appointment stating:

(i) date of commencement

(ii) date of completion

(iii) the classification initially applicable.

(2) Fixed term employees shall not be entitled to the provisions of Clause 14.—Redundancy of this Award.

(3) The provisions of Clause 6.—Contract of Service of this Award shall apply to fixed term employees except that fixed term contracts shall expire on their date of completion or may be terminated in accordance with those provisions during their term.

23.—POINT OF ASSEMBLY AND TRANSPORT

(1) The designated point of assembly and departure for employees to site shall be Perth Airport.

(2)(a) Each employee shall be responsible for travelling to the designated point of assembly. If an employee misses his/her rostered transport to the mine site he/she shall be responsible for arranging and paying for the replacement journey to the mine site.

(b) The employer shall provide, at no cost to the employee, rostered transportation between the designated point of assembly and Telfer and return.

24.—NO CLAIMS

The union parties to this Award shall not pursue any claims for improvements or increases to conditions of employment, wages or allowances, either as award or overaward conditions, or pursuant to enterprise bargaining, for a period of 18 months from 8 January 1996 except in respect of safety net adjustments which may become permissible under future State Wage Case decisions, in which event, the employer shall not oppose any such claim or claims on the grounds of this clause. The employer will, however, in such an event, be entitled to oppose any such claim or claims on all other grounds available to it.

25.—LEAVE RESERVED

There shall be leave reserved to the parties to apply to the Western Australian Industrial Relations Commission no earlier than 7 July 1996 to insert an overtime clause into this Award in relation to the working of additional hours beyond 12 hour rostered shifts in a 168 hour cycle.

The parties have acknowledged that, in the interim, such additional hours are only to be worked in unusual and unforeseen circumstances, and only by agreement, and that employees will be credited with an equivalent amount of annual leave for such hours worked.

SCHEDULE A—PARTIES TO THE AWARD

Union Parties to the Award

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division (WA Branch)

The Australian Workers' Union, West Australian Branch, Industrial Union of Workers

The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers West Australian Branch

Employer Party to the Award

Newcrest Mining Limited.

TRANSPORT WORKERS (GENERAL) AWARD No. 10 of 1961.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch

and

W.D. Moore and Co and Others.

No. 1290 of 1994.

Transport Workers (General) Award
No. 10 of 1961.

COMMISSIONER P.E. SCOTT.

22 December 1995.

Order.

HAVING heard Mr A Waddell on behalf of the Applicant and Mr J Uphill on behalf of W.D. Moore and Co and Others, now therefore the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, and by consent, hereby orders—

THAT the Transport Workers (General) Award No. 10 of 1961 as amended be further varied in the terms of the following Schedule with effect from the beginning of the first pay period commencing on or after the 25th day of October 1995.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

Schedule.

1. Clause 3.—Scope: Delete this clause and insert the following in lieu thereof:

3.—SCOPE

This award shall apply to all workers following the vocations referred to in the wages schedule who are eligible for membership in the applicant union and who are employed in the industries referred to in the Schedule of Respondents. Provided that this award shall not apply to bread carters, workers engaged in the timber industry within the South West Land Division nor to workers whose duties involve them in delivering goods or materials solely beyond the West Australian State border.

2. Schedule of Respondents: Immediately following the title of this Schedule, delete the word "REPRESENTATIVE".

TRANSPORT WORKERS (GOVERNMENT) AWARD, 1952
No. 2A of 1952.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Fremantle Port Authority

and

Transport Workers' Union of Australia, Industrial Union of Workers, WA Branch and Others.

No. 913 of 1995.

COMMISSIONER C.B. PARKS.

11 December 1995.

Order.

HAVING heard Mr B. Patterson on behalf of the Applicant and Mr A.J. Waddell on behalf of the Transport Workers' Union of Australia, Industrial Union of Workers, WA Branch and with the consent thereof, and the Commission being satisfied that each other respondent not represented had been duly notified of the proceedings before the Commission, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Transport Workers (Government) Award, 1952 be varied in accordance with the following Schedule and that such variation shall have effect on and from 29 November 1995.

(Sgd.) C.B. PARKS,
[L.S] Commissioner.

Schedule.

Schedule of Respondents: Delete from this schedule the name "Fremantle Port Authority".

AWARDS/AGREEMENTS— Application for variation of— No variation resulting—

COCKBURN CEMENT LIMITED AWARD 1991
No. A 14 of 1991.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch

and

Cockburn Cement Ltd.

No. 676 of 1995.

Cockburn Cement Limited Award 1991
No. A 14 of 1991.

COMMISSIONER P.E. SCOTT.

29 December 1995.

Order.

WHEREAS this application to vary an award was filed on the 16th day of June 1995; and

WHEREAS the matter was listed for hearing on the 4th day of August 1995; and

WHEREAS the Applicant on the 3rd day of August 1995 requested that the matter be adjourned before the hearing;

WHEREAS despite repeated communication from the Commission, the Applicant has failed to further proceed with the matter;

NOW THEREFORE the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT this matter be dismissed for want of prosecution.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

COCKBURN CEMENT LTD LABORATORY EMPLOYEES AWARD 1980
No. CR 175 of 1980.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch

and

Cockburn Cement Ltd.

No. 677 of 1995.

Cockburn Cement Ltd Laboratory Employees Award 1980
No. CR 175 of 1980.

COMMISSIONER P.E. SCOTT.

29 December 1995.

Order.

WHEREAS this application to vary an award was filed on the 16th day of June 1995; and

WHEREAS the matter was listed for hearing on the 4th day of August 1995; and

WHEREAS the Applicant on the 3rd day of August 1995 requested that the matter be adjourned before the hearing;

WHEREAS despite repeated communication from the Commission, the Applicant has failed to further proceed with the matter;

NOW THEREFORE the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT this matter be dismissed for want of prosecution.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

TELFER GOLD MINE (PRODUCTION AND MAINTENANCE EMPLOYEES') AWARD 1987
No. A 9 of 1987.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Newcrest Mining Limited

and

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch and Others.

No. 766 of 1995.

Telfer Gold Mine (Production and Maintenance Employees) Award 1987.

COMMISSIONER R.N. GEORGE.

5 January 1996.

Reasons for Decision.

THE COMMISSIONER: In the course of the hearing of the above Application Mr Keogh on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch raised what he referred to as a perception of bias which had arisen in the conduct of the proceedings and submitted that I should disqualify myself from further hearing and determining the matter. Mr A. Lovell on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch and Mr Dixon on behalf of the Applicant employer also made submissions on the matter.

Having heard from the parties the Commission concluded that there was no basis for a reasonable apprehension of bias and the application was dismissed for the following reasons given on transcript and now published in edited form.

The tests and the principles to be applied in any consideration of bias are set out by His Honour the President in Lyndsay Barrington Carter v Margery Anne Drake and Others (72 WAIG 736). I adopt what is said by His Honour the President in that matter but for current purposes refer in particular to the following passage which formed part of a number of extracts from a range of authorities cited for the purpose of identifying the principles to be applied in the consideration of matters of alleged bias.

"(5) (a) .....

(b) .....

(c) That part of Mason J's judgment in Re JRL; ex parte CJL (op cit) at page 352 goes on to say—

"In cases of this kind, disqualification is only made out by showing that there is a reasonable apprehension of bias by reason of prejudgment and this must be "firmly established" ... Although it is important that justice must be seen to be done, it is equally important that judicial officers discharge their duty to sit and do not, by acceding too readily to suggestions of appearance of bias, encourage parties to believe that by seeking the disqualification of a judge, they will have their case tried by someone thought to be more likely to decide the case in their favour."

(d) In other words, the duty of a judge to disqualify himself for proper reason is matched by an equal duty not to disqualify himself save for a proper reason. Parties ought not to be encouraged to believe that, by an application for the disqualification of a judge, they can have their case heard by a judge thought to be more likely to decide a case in their favour.

(6) Dixon CJ, Williams, Webb and Fullagar JJ in R v Australian Stevedoring Industry Board; ex parte Melbourne Stevedoring Co Pty Ltd (1953) 88 CLR 100 at 116 also referred to Re Polites; ex parte Hoyts Corporation Pty Ltd (op cit) at page 448 and said—

"When bias of this kind is in question, as distinguished from a bias through interest, before it amounts to a disqualification, it is necessary that there should be strong grounds for supposing that the judicial or quasi-judicial officer has so acted that he cannot be expected fairly to discharge his duties. Bias must be 'real'. The officer must so have conducted himself that a high probability arises of a bias inconsistent with the fair performance of his duties, with the result that a substantial distrust of the result must exist in the minds of reasonable persons. It has been said that 'preconceived opinions—though it is unfortunate that a judge should have any—do not constitute such a bias, nor even the expression of such opinions, for it does not follow that the evidence will be disregarded', per Charles J, R v London County Council; Ex parte Empire Theatre (1984) 71 LT 638 at 639." "

[72 WAIG 736 at 738/9]

The submissions of Mr Keogh in the present matter were that a perception of bias had arisen for reasons which may be briefly summarised as follows.

(1) A statement from the bench to Mr Keogh that his approach conveyed an impression of time wasting, which he interpreted as placing on him an onus to establish that such was not the case if his submission for an adjournment, should amendments to the Application before the Commission be granted, were to receive favourable consideration.

(2) Statements alleged to have been made by the Commission concerning an unspecified limitation on the number of witnesses that should be called in the matter.

These submissions were generally supported by Mr Lovell on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch who added that the perception of bias was furthered by an apparent recognition by the Commission of a deadline which existed in relation to a proposed change to the operations of the Applicant employer, and the Applicant employer's view that there was a need to vary the existing award to accommodate that change.

Mr Lovell further submitted that the perception of bias was added to by questions from the bench about the opportunity for the Responent unions to consider proposed amendments to the Application before the Commission notified by the Applicant employer in writing on 25 September 1995 and further, that the way the matter had proceeded, in its entirety, represented an abuse of the process.

Mr Dixon for the Applicant employer submitted that the application concerning bias was misconceived and rejected the proposition that there had been any attempt by the Commission to limit the number of witnesses to be called in proceedings. He properly acknowledged, however, that the determination of the question was one for the Commission to decide in accordance with the relevant tests and principles.

Having considered the submissions of the parties and my own conduct in proceedings, it was not accepted that a fair-minded observer would have formed a reasonable apprehension of bias in the circumstances.

It is the responsibility of this Commission and the parties who appear before it to attempt to resolve matters with expedition, taking into account the surrounding circumstances of each particular case. The record will show the circumstances under which the question of delaying tactics was raised by the Commission and that the criticism of the submission being made by Mr Keogh was not attached to any onus, as perceived by him, to prove that he was not deliberately delaying proceedings.

The Application that I disqualify myself on the grounds of bias from further hearing and determining the matter was accordingly refused.

Appearances: Mr H. Dixon (of Counsel) and with him Mr R. Lilburne (of Counsel) on behalf of the Applicant employer

Mr Keogh on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and the Australian Workers' Union, West Australian Branch, Industrial Union of Workers

Mr A. Lovell on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch and the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia, Western Australian Branch.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Newcrest Mining Ltd (Telfer)

and

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch and Others.

No. 766 of 1995.

COMMISSIONER R.N. GEORGE.

8 January 1996.

Order.

HAVING heard Mr M. Keogh and with him Mr D. Hicks on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch; Mr D. Bartlem on behalf of the Australian Workers' Union, West Australian Branch, Industrial Union of Workers; Mr A. Lovell on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch and the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia, Western Australian Branch, and Mr H. Dixon (of Counsel) and with him Mr R. Lilburne (of Counsel) on behalf of Newcrest Mining Ltd (Telfer), the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Application that the Commission as constituted disqualify itself from further hearing and determining the matter before it be and is hereby refused.

(Sgd.) R.N. GEORGE,
[L.S] Commissioner.

CANCELLATION OF AWARDS/ AGREEMENTS/ RESPONDENTS—

BUILDING TRADES (FREMANTLE PORT AUTHORITY) AWARD, 1968
No. 31B of 1966.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Fremantle Port Authority

and

Building Trades Association of Unions of Western Australia, Association of Workers.

No. 911 of 1995.

COMMISSIONER C.B. PARKS.

11 December 1995.

Order.

HAVING heard Mr B. Patterson on behalf of the Applicant and there being no appearance on behalf of the Respondent, but the Commission being satisfied that the Respondent had been duly notified of the proceedings before the Commission, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Building Trades (Fremantle Port Authority) Award, 1968 be and is hereby cancelled on and from 29 November 1995.

(Sgd.) C.B. PARKS,
[L.S] Commissioner.

CANCELLATION OF ORDERS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mindarie Keys Pty Ltd

and

Emma M.J. Franken.

No. 1341 of 1995.

COMMISSIONER C.B. PARKS.

4 January 1995.

Order.

WHEREAS an application was filed in the Commission on 29 November 1995 pursuant to s27 of the Industrial Relations Act, 1979 requesting that application 1323 of 1993 be dismissed; and

WHEREAS on 13 December 1994 application 1341 of 1995 was listed to be heard on 8 January 1995; and

WHEREAS on 18 December the respondent, the applicant in matter 1323 of 1993, notified the Commission in writing that she does not wish to proceed with matter 1323 of 1993; and

WHEREAS solicitors for the applicant have advised the Commission, by facsimile transmission, that the applicant, the respondent in matter 1323 of 1993, does not object to the making of an order that such be discontinued and does not require to be heard in relation thereto.

NOW THEREFORE the Commissioner, pursuant to the powers conferred upon him under the Industrial Relations Act, 1979, by consent hereby orders—

THAT the hearing date of 8 January 1996 be vacated; and

THAT application 1341 of 1995 be and is hereby wholly discontinued.

(Sgd.) C.B. PARKS,
[L.S] Commissioner.

PUBLIC SERVICE ARBITRATOR— Matters Dealt With—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Commissioner of Police

and

The Civil Service Association of Western Australia Incorporated.

No. P 70 of 1995.

PUBLIC SERVICE ARBITRATOR.
COMMISSIONER R.N. GEORGE.

4 January 1996.

Order.

HAVING heard Mr P. Kelly on behalf of the Applicant and Mr E. Rea on behalf of the Respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

(1) THAT not withstanding the provisions contained in Public Service Award 1992 the following arrangements shall apply to officers employed in the Police Communications Branch. Where the award is inconsistent with this order the provisions in the order shall apply to the extent of any inconsistency.

(2) (a) Shifts of twelve (12) hours and in excess of thirty seven and one half (37.5) hours per week will be rostered and worked in a manner agreed by management and the majority of employees employed in the Police Communications Branch.

(b) (i) Shift allowance for afternoon, night, Saturday and Sunday shifts shall not be paid and in lieu a commuted allowance of $5,700 per annum shall be paid on a pro rata basis fortnightly with salary.

(ii) The commuted allowance shall be paid during periods of annual leave in lieu of the leave loading prescribed in the award and during any period of sick leave but will not be paid during any periods of long service leave.

(3) The terms and conditions of this arrangement as agreed by management and the majority of employees in the Police Communications Branch shall have a term of twelve (12) months on and from the first day of January 1996, subject to a review of this order by the parties following a period of six (6) months operation.

(4) In the case of changed circumstances during the term of this order either party may make application to vary or cancel its terms.

(Sgd.) R.N. GEORGE,
[L.S] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Department of Agriculture

and

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch And Others.

No. PSA AG 7 of 1995.

PUBLIC SERVICE ARBITRATOR C.B PARKS.

22 December 1995.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT
No. PSA AG 7 OF 1995

HAVING heard Mr D. Seal on behalf of the Director General of Agriculture, the Chairperson of the Agriculture Protection Board, the Rural Adjustment and Finance Corporation, and Mr N.D. Ellery on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers' Division, Western Australian Branch, Mr M. Llewellyn on behalf of the Australian Workers' Union, West Australian Branch, Industrial Union of Workers, Mr T. Hodgson on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, WA Branch, Mr E. Rea on behalf of the Civil Service Association of Western Australia Incorporated, Mr C. Butler on behalf of the Civil Service Association of Western Australia Incorporated and the Communications, Electrical, Electronic, Energy, Information, Postal and Plumbing and Allied Workers' Union of Australia, Engineering and Electrical Division, WA Branch, Mr E. Fry on behalf of the Federated Liquor and Allied Industries Employees Union of Australia, Western Australian Branch, Mr A. Waddell on behalf of the Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch and by consent, the Commission pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the document titled Agriculture Western Australia Enterprise Agreement 1995, filed in the Commission on 22 December 1995 and subsequently signed by me for identification, be and is hereby registered as an Industrial Agreement.

(Sgd.) C.B. PARKS,
[L.S] Public Service Arbitrator.

BOARDS OF REFERENCE— Decisions of—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Claire Gibbons

and

Finesse Foods (Aust) Pty Limited.

No. BOR 1 of 1995.

COMMISSIONER R.H. GIFFORD.

8 December 1995.

Order.

BY this application, the Applicant sought the convening of a Board of Reference to deal with her claim for the reclassification of her position with the Respondent company.

The Commission commenced arrangements on 9 February 1995 to hold a Conference to consider the claim, but was requested by the Applicant not to list such a Conference at that time.

The Applicant later advised the Commission that she did not wish to proceed with her claim in this jurisdiction, as she intended to pursue the matter by way of proceedings in the Industrial Magistrate's Court.

A letter from the Commission, dated 10 March 1995, was sent to the Applicant, requesting her to advise of her intentions in writing. No response to this letter was forthcoming.

A further letter was sent, dated 26 April 1995, in which the Applicant was once again requested to advise of her intentions. Still no response was forthcoming.

A final letter dated 16 May 1995, was sent to the Applicant, in order to ascertain her intentions. The Applicant was informed that if there was no contact made by her with the Commission by 30 May 1995, then her claim would be formally discontinued.

To date, no further contact has been made with the Commission, by the Applicant.

NOW THEREFORE, I, the undersigned, pursuant to the powers conferred by the Industrial Relations Act, 1979, do hereby Order—

THAT the application be discontinued.

(Sgd.) R.H. GIFFORD,
[L.S] Commissioner.

UNFAIR DISMISSAL/ CONTRACTUAL ENTITLEMENTS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

John Boyd
and
Tamcorp Australia Pty Limited.
No. 130 of 1995.

COMMISSIONER R.H. GIFFORD.

8 December 1995.

Order.

BY this application, the Applicant claimed that he was dismissed in a harsh, oppressive or unfair manner and had been denied contractual benefits, by the Respondent company. The claims were denied by the company.

A Conference, involving the parties, was conducted before the Commission on 22 March 1995, to consider the claims.

The Conference was adjourned to enable the parties to hold further discussions, to explore a basis of settlement of the claims.

A further Conference was conducted before the Commission on 27 March 1995, to enable a report back upon the discussions to occur.

A settlement of the claims was reached at this Conference.

By letter received from the Applicant's solicitors, dated 16 August 1995, the Commission was advised that the matter had been settled between the parties, and informed that the Applicant did not wish to proceed any further with his application.

NOW THEREFORE, I, the undersigned, pursuant to the powers conferred by the Industrial Relations Act, 1979, do hereby Order—

THAT the application be discontinued.

(Sgd.) R.H. GIFFORD,
[L.S] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

Andrew Peter Brownhill
and
Kiko Pty Limited, trading as Villa Bianchi.
No. 358 of 1995.

COMMISSIONER R.H. GIFFORD.

8 December 1995.

Order.

BY this application, the Applicant claimed that he was dismissed in a harsh, oppressive or unfair manner by the Respondent company.

The Commission commenced arrangements on 10 April 1995 to conduct a Conference to consider the claim, but was requested by the Applicant's agent not to list such a Conference at that time.

A Notice of Discontinuance was filed with the Commission by the Applicant's agent on 9 August 1995.

NOW THEREFORE, I, the undersigned, pursuant to the powers conferred by the Industrial Relations Act, 1979, do hereby Order—

THAT the application be discontinued.

(Sgd.) R.H. GIFFORD,
[L.S] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

Cyril Noel Chandler
and
Wolfe Construction Company.
No. 1293 of 1994.

COMMISSIONER R.H. GIFFORD.

8 December 1995.

Order.

BY this application, the Applicant claimed that he was dismissed in a harsh, oppressive or unfair manner and had been denied contractual benefits, by the Respondent company. The claims were denied by the company.

On 1 February 1995, a Conference was conducted before the Commission, to consider the claims.

The Conference was adjourned to enable the Applicant to review his position in light of matters raised at the Conference, and advise the Commission of his intentions.

By letter dated 21 June 1995, the Applicant's solicitors requested that this application be discontinued.

NOW THEREFORE, I, the undersigned, pursuant to the powers conferred by the Industrial Relations Act, 1979, do hereby Order—

THAT the application be discontinued.

(Sgd.) R.H. GIFFORD,
[L.S] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

Kevin Nicholas Dragicevich
and
Lisson Nominees Pty Ltd as Trustee of the PBS Unit Trust
T/A BGC Builders Supplies.
No. 879 of 1995.

COMMISSIONER A.R. BEECH.
13 December 1995.

Reasons for Decision.

THE COMMISSIONER: Mr Dragicevich was dismissed on the 21st July 1995. He claims that his dismissal was unfair because he had had "perhaps one warning verbally and nothing in writing" and considered that his work was up to standard. He seeks compensation for the dismissal which occurred.

BGC Builders Supplies (BGC) states that it dismissed Mr Dragicevich for repeated poor work performance, repeated poor time keeping and repeated absenteeism without backup documentation. It states that the decision to dismiss Mr Dragicevich was not harsh, unjust or unreasonable. BGC argues that due to the excessive number of days absent without notification or the support of any doctor's certificate, or the courtesy of informing BGC of the intended absence, there was no alternative other than to dismiss Mr Dragicevich. BGC argues that Mr Dragicevich was afforded every opportunity to defend himself against allegations of inadequate performance and was given sufficient warning of impending dismissal if his performance did not improve.

Mr Dragicevich was employed on the 15th March 1994. He was employed as a storeperson at BGC's Canning Vale premises. He was paid all wages and entitlements due to him. He was also paid what the parties consider to have been the appropriate period of notice although it is not clear whether one week was paid (see exhibit 5) or two weeks was paid (transcript p.11). The only issue argued before the Commission is the fairness or otherwise of the dismissal.

The onus is on BGC to show that there is a ground or are grounds on which the Commission could find that the dismissal was justified. If it does not, or if Mr Dragicevich establishes that, whether or not it was justified, the dismissal was harsh, oppressive or unfair, the claim is taken to have been established. The Commission therefore turns to the first of the reasons given by BGC. This relates to an allegation of repeated poor work performance. Mr Dragicevich gave evidence that he considered his performance at work to be up to standard. On behalf of BGC Mr O'Sullivan put to Mr Dragicevich that he had received many warnings, but Mr Dragicevich denied this. It is not clear from Mr O'Sullivan's questions what warnings were in fact given. Subsequently Mr O'Sullivan stated that:

> "Mr Dragicevich was afforded every opportunity to defend himself against allegations of inadequate performance and was given sufficient warning of impending dismissal if his performance did not improve." (Transcript p.34)

BGC called evidence from Mr Rowlands who is the operations manager for BGC. He gave the following evidence:

> "Question: Could you please describe to the court the manner in which you issued Kevin Dragicevich with verbal warnings if any for poor work performance?
>
> Answer: There would have been numerous times where he has been at a work station. I would have approached and said, these orders must be done. You're running late. We are going to get into trouble if they don't get out. That would relate to a certain part of an order. On one occasion I can remember calling him into the office. That was the one where I have written in my own diary saying he was bludging on his work mates and appeared to be affected by alcohol." (Transcript p.36/37)

Mr Rowlands subsequently stated that he would have verbally warned Mr Dragicevich on several occasions, in the double figures not the single (transcript p.38). He stated that orders would have been behind sometimes by up to three or four days, maybe a week.

Under cross-examination he stated that Mr Dragicevich's work performance was satisfactory when he was at work and working hard. On the bad days, it was very bad. Mr Rowlands maintained that 75% of the time, packing the benches, packing orders for different types of a house and drain orders were left incomplete. Mr Dragicevich clearly did not accept this evidence. However, he did not pursue the issue further.

I must say that I have some doubts regarding Mr Rowlands' evidence on this point. There is a difference between telling an employee that orders are behind, or that the work is running late and warning an employee that their work performance is so bad that the employer is considering dismissing them. Leaving work incomplete for 75% of the time strikes me as being a serious matter and one which would have warranted far greater remedial action on the part of Mr Rowlands than would appear to have been the case. The only warning given of any substance relates to the occasion when Mr Dragicevich was called into Mr Rowlands' office and reprimanded for "bludging on his workmates" and being hung over. This occurred on the 21st April 1995. I am satisfied from the evidence of Mr Rowlands and Mr Dragicevich that this related to one specific occasion when, according to Mr Dragicevich's own evidence, he admits coming to work inebriated and not working very hard. However the evidence before the Commission seems to relate the warning to that one incident. Mr Rowlands' own evidence seems to indicate that the warning was in relation to Mr Dragicevich's conduct on that particular day (transcript p.38). I find it difficult to accept that particular warning as being a warning to Mr Dragicevich about overall poor work performance.

Mr Rowlands did give evidence that on several occasions he spoke to Mr Dragicevich and, despite Mr Dragicevich's overall denial that this occurred, I am prepared to accept that Mr Rowlands did speak to Mr Dragicevich from time to time. I note that on the day before the dismissal, Mr Rowlands made a memorandum to himself regarding Mr Dragicevich (exhibit 4). This also states that Mr Dragicevich had been spoken to on several occasions regarding work performance "but nothing appeared to happen". However, the evidence on this point is not strongly in BGC's favour.

Mr Dragicevich's case was supported to some extent by the evidence of Mr Forrest, the purchasing officer of BGC who stated that he thought Mr Dragicevich had been always very helpful in his performance at work (transcript p.20) although the force of his evidence was reduced when it became apparent that he had no official work contact with Mr Dragicevich and that the only time Mr Dragicevich was seen by Mr Forrest was when he came to Mr Forrest's office.

Mr Dragicevich also called as a witness Mr West, the warehouse and transport supervisor. He was of the opinion that Mr Dragicevich's work performance was satisfactory (transcript p.25). He had never complained about Mr Dragicevich not having completed work on time (transcript p.26). Although under cross-examination he stated that he had spoken on several occasions to Mr Dragicevich about getting orders done (transcript p.29) that evidence overall does little more than amount to occasions when Mr Dragicevich had been told that he needed to get orders out on time and did not really alter the earlier evidence that Mr West thought Mr Dragicevich's work performance was satisfactory.

On the evidence overall, given the lack of detail in Mr Rowland's evidence, the evidence falls far short of BGC's suggestion that Mr Dragicevich was "given sufficient warning of impending dismissal if his performance did not improve" (transcript p.34).

Mr Dragicevich gave evidence that he thought there was a three-warning system operated by BGC which meant that two warnings had to be given and on the third occasion of a repeat offence an employee would be dismissed, but BGC denied that such a warning system exists in its operations. It is not necessary for such a warning system to be in existence. But it is necessary for an employee who is going to be dismissed for poor work performance to be given a sufficient warning that dismissal will occur if the employee's performance does not improve (*Margio v. Fremantle Arts Centre Press* (1990) 70 WAIG 2561). In this regard also it is appropriate to note that an employer must not terminate an employee's employment for reasons related to the employee's conduct or performance

unless the employee has been given the opportunity to defend himself or herself against the allegations made or the employer could not reasonably be expected to give the employee that opportunity (Industrial Relations Act 1988, s170 DC Commonwealth). The one warning that was given was in relation to a specific event on one particular day and does not seem to relate overall to Mr Dragicevich's work performance. The other occasions referred to by Mr Rowlands, and to some degree by Mr West, may well have occurred, but it does not appear from the evidence that BGC believed on those occasions that the poor work performance could lead to termination. Further, there is no other evidence before the Commission of late orders or other consequences of late orders on BGC's operations which might otherwise lead the Commission to the conclusion that Mr Dragicevich's work performance warranted his dismissal in any event. And there is nothing in the evidence to suggest that it was unreasonable for BGC to have given Mr Dragicevich the opportunity to defend himself.

I conclude on this point that BGC has not shown that there are grounds on which the Commission could find that the dismissal was justified.

The second reason given by BGC relates to repeated poor time keeping. According to exhibit 5 the matters upon which BGC relies occurred as follows:

> "6/7/95 Wednesday 1 hour late for work.
> 18/7/95 Monday 1 hour late for work—no notification.
> 21/7/95 Thursday 3/4 hour late for work—no notification.
> 3/8/95 Wednesday 1/2 hour late for work—no notification."

An examination of this exhibit after the hearing reveals that the dates must refer to 1994 and not 1995 as typed in the exhibit. Mr Dragicevich was terminated on the 21st July 1995 and therefore reference to the 3rd August 1995 is clearly incorrect. Furthermore, a comparison with the photocopied time sheets which became exhibit 1 confirms that the dates referred to in exhibit 5 indeed refer to 1994.

Mr Dragicevich gave evidence about those occasions and admits that he was late. In his defence he argued that his personal circumstances changed and he was reliant on a lift to work with a fellow employee. If the fellow employee ran late, so did he. Such a defence may or may not be a valid defence—it will depend upon the circumstances. Here, it is to be noted that according to BGC's exhibit 5 the lateness upon which BGC relies to justify its dismissal were all in a group in July and the beginning of August 1994. Although there is other evidence Mr Dragicevich had been a poor time keeper (and this will be discussed in a moment) Mr Dragicevich does not appear to have been so late on other occasions. Whilst I do not find his excuse very satisfactory BGC's complaint seems to relate only to a period in July/August 1994. And such absences do not appear to have been repeated, at least according to BGC's own exhibit.

There is no evidence that Mr Dragicevich was warned that his employment would be terminated for these four occasions. Although the evidence in this regard is not precise it is open to conclude that his lateness was the subject of comments from Mr West, and possibly Mr Rowlands. But evidently BGC did not believe in July/August that these incidents warranted dismissal because they did not dismiss him at that time. And these events occurred twelve months before Mr Dragicevich was in fact dismissed. I do not believe BGC can attempt to justify its dismissal of Mr Dragicevich now by relying on his lateness more than twelve months earlier. If his lateness on those occasions warranted disciplinary action, it should have occurred then.

It was Mr Rowlands' evidence that he believed Mr Dragicevich had been warned because on the 23rd January 1995 he issued a memorandum to all warehouse personnel regarding the hours of employment (exhibit 3). This memorandum was in the following form:

> "Please be advised that the hours of employment for storepersons employed by BGC Builders Supplies is as follows:
>
> | | |
> |---|---|
> | Monday to Friday | 8.00am to 4.30pm |
> | Morning Tea Break | 9.15am to 9.30am |
> | Lunch Break | 12.15pm to 1.00pm |
> | Afternoon Smoko | 2.30pm to 2.40pm |
>
> Overtime will be worked as and when requested by management.
>
> It should be noted that the continual abuse of the break hours, will cause the removal of the afternoon smoko break.
>
> Regards
> Barry Rowland
> Operations Manager"

I cannot accept that this general memorandum to all staff can be seen as a warning to Mr Dragicevich that his timekeeping was poor and that any continuation of his absences from work would result in his dismissal. A general notice to all staff regarding hours of employment is just that: a general notice. It does not suggest that the attendance hours were being abused. Indeed, it suggests that the problem it sought to address was over the break hours, the penalty for abusing which is the removal of the smoko break, and not dismissal. Furthermore, this memorandum was issued at least five months after the incidents upon which BGC relies. Clearly, the memorandum, whilst quite proper and appropriate in itself, cannot be seen as a warning to Mr Dragicevich that his employment was in jeopardy for poor timekeeping in July/August 1994.

However, BGC has established that Mr Dragicevich was not punctual. Exhibit 1 consists of copies of Mr Dragicevich's time cards. They show that he was frequently late at work by between one and fifteen minutes. Mr Dragicevich has no excuse for this, and although he attempted to suggest that when that occurred he stayed back for the corresponding period to make up the time, a careful reading of the time cards does not support his assertion. It was put to Mr Dragicevich that over the period of his employment between March 1994 and July 1995 he had been late on 116 occasions. Mr Dragicevich may be correct in suggesting that being late for "one or two minutes" was petty, but taken overall such frequent lateness presents a poor picture of Mr Dragicevich. Unfortunately, the evidence from BGC about warnings it gave on this matter to Mr Dragicevich is also not entirely satisfactory. Mr Rowlands stated:

> "I would have spoken to Mr Dragicevich about his hours of employment with us, yes, stating that they were from 8.00am to 4.30pm. I should imagine that would have been on a lot of occasions." (Transcript p.39)

That evidence is really quite vague and does not suggest Mr Rowlands can actually remember warning Mr Dragicevich. However when asked a question by the Commission Mr Rowlands stated:

> "I can remember speaking to Kevin about timekeeping."

This evidence was also supported by evidence from Mr West that on occasions he would speak to Kevin about turning up late for work.

It is difficult to read into the evidence that Mr Dragicevich understood from these discussions that his employment was in jeopardy if he did not become more punctual. An examination of the time cards which became exhibit 1 show that Mr Dragicevich was consistently late throughout his employment. However the lateness in the last few weeks of his employment was no different from the lateness on other occasions. His lateness does not do him credit, and there did not appear to be any appreciable improvement in his attendance following Mr Rowlands' memorandum of the 23rd January 1995. I also note that, contrary to Mr Dragicevich's evidence, it was more usual that Mr Dragicevich's pay was not reduced because of the lateness. On the evidence before the Commission Mr Dragicevich frequently ran late for periods of between one and ten minutes throughout the sixteen months of his employment. But it certainly is not clear what, if anything, BGC actually did about expressing its concern to him. And the frequent lateness was not relied on by BGC in its given reasons for dismissing Mr Dragicevich. The evidence does not reveal that prior to dismissing Mr Dragicevich, BGC informed him that it considered his timekeeping to be so poor that it warranted his dismissal and give him an opportunity to improve. Rather, Mr Dragicevich was merely told that BGC had made that decision and that he was dismissed. In doing so BGC denied Mr Dragicevich procedural fairness.

The third reason relied on by BGC to support its dismissal of Mr Dragicevich are instances of absenteeism "amounting

to what we call chronic levels" (transcript p.42). Mr O'Sullivan contended that Mr Dragicevich had been in contravention of the sick leave clauses of the award in taking more time off than he was entitled to and failing to provide a medical certificate on, apparently, all occasions. Mr Dragicevich was absent for seventeen days over the sixteen months relied on by BGC. This is supported by exhibit 5, which lists seventeen occasions. Mr Rowlands' evidence is that on no occasion was a doctor's certificate provided. As I understand the evidence of Mr Dragicevich he accepts that the dates of absence set out in exhibit 5 are correct (transcript p.16). Mr Dragicevich did not offer any explanation regarding the frequency of the absences. Rather, he protested in his evidence that if he was sick he would provide a doctor's certificate. However, that has not been borne out by the evidence.

Certainly, the frequency of not attending for work is, again, not to the credit of Mr Dragicevich. Mr Rowlands' evidence is that of the last sixteen reported absences ten related to a Friday or a Monday. The significance of this evidence is that BGC did inform all employees by circular dated the 30th January 1995 that a doctor's certificate is required when more than one day is taken or where a day is taken prior to a weekend, after a weekend, day before a public holiday and also day after a public holiday (exhibit 6). I am satisfied from the evidence of Mr Dragicevich that he was aware of this requirement. Notwithstanding that memorandum, Mr Dragicevich was absent on Friday the 17th and Monday the 20th February 1995 without providing a doctor's certificate, on the 27th and 28th March, a Monday and Tuesday, without providing a doctor's certificate, on Monday the 1st May, Thursday the 15th June, Monday the 10th July and Thursday the 20th July 1995, in each case without the provision of a doctor's certificate. In the absence of any explanation from Mr Dragicevich, and in particular any evidence of illness on his part then it is difficult to give him the benefit of the doubt in this matter. It must be accepted that an employee is entitled to be absent from work on account of sickness. Indeed, the award concerned makes provision for such absences. However, such absences are acceptable only if they are for reasons of genuine illness. Where, as here, the reasons for the absences are open to doubt then Mr Dragicevich has some difficulty in persuading BGC that although it has been inconvenienced, it was for genuine reasons. Similarly, it is not irrelevant to note that the Industrial Relations Act 1988 (Commonwealth) states than an employer must not terminate an employee's employment by reason of temporary absence from work because of illness or injury (s.170 DF). In that regard, if Mr Dragicevich had been able to demonstrate that the absences that he took were for reasons of illness then that would be a defence against his termination.

The point also needs to be made that there is no evidence before the Commission that, prior to dismissing Mr Dragicevich for this reason, BGC required some explanation of him for those absences. Therefore at the time of termination BGC was simply unaware whether Mr Dragicevich's absences were related to genuine reasons of illness. For the reasons already referred to above, the general interoffice memorandum of the 30th January 1995 (exhibit 6) cannot be seen as a warning to Mr Dragicevich. The evidence in this matter is that Mr Rowlands decided on the 20th July 1995 to dismiss Mr Dragicevich the following day (exhibit 4). At that time he did not speak to Mr Dragicevich regarding the issues he intended to rely upon in his decision and did not give Mr Dragicevich an opportunity to defend himself. Furthermore, and contrary to the assertion made on behalf of BGC that Mr Dragicevich "was afforded every opportunity to defend himself against allegations of inadequate performance" (transcript p.34), the evidence is that as well as Mr Rowlands making up his mind the day before the dismissal, at the time of dismissal Mr Dragicevich was merely presented with BGC's decision already made. For the above reasons the evidence presented by BGC does not match the submissions made on its behalf.

Overall I am not satisfied that the evidence shows that there are grounds on which the Commission could find that the dismissal was justified. The allegation of poor work performance has not really been made out; his poor timekeeping, for the reasons set out above, cannot really be relied upon to ground the dismissal; and the absences on sick leave without doctor's notifications, whilst serious, do not of themselves automatically lead to the conclusion that Mr Dragicevich should be dismissed. Even if I am wrong in that conclusion I think the evidence shows that the dismissal itself was unfair. That is, while Mr Dragicevich's employment history is poor, it has not been established on the evidence that he deserved the ultimate penalty of dismissal when he had not been warned that BGC was considering his dismissal. For those reasons I find that his dismissal was unfair.

Mr Dragicevich does not seek re-instatement. Rather, he seeks compensation. In those circumstances re-employment or re-instatement would not appear to be practicable. Certainly, if both parties are unwilling to work together in the future it makes it rather difficult for the Commission to require it by an order of re-instatement. Mr Dragicevich believes that a sum of $5,000 is an appropriate amount of compensation although he admits that this is a mere figure derived from his imagination. The difficulty which Mr Dragicevich faces is that while BGC may have acted unfairly in dismissing him as it did, he contributed substantially to his own misfortunes. He was late on a number of occasions other than the ones for which he was prepared to offer an excuse. He was absent from work on occasions without explanation and without providing a doctor's certificate as had been requested of all members of staff. His rather casual attitude to clocking on, and in some cases indeed for clocking off, do not inspire confidence regarding his overall attitude on these issues. Furthermore, the evidence of BGC is that such absences did cause inconvenience. There were occasions when BGC took the trouble to send a car to Mr Dragicevich's residence to bring him to work, a matter which is very much in BGC's favour. Against that is to be balanced BGC's less than adequate warning system to its employees which did not require any real improvement in these matters from Mr Dragicevich. I am satisfied from the evidence that he was unaware that his employment was in jeopardy and that, to the extent that he realised his own attendance was not satisfactory, he believed that BGC's intention was only to dock his pay.

Mr Dragicevich had been employed for some sixteen months. He has not been in regular employment since the termination, although it is not clear from his evidence that he has been actively seeking alternative employment other than as required in order to be eligible for unemployment benefit. In all of the circumstances any compensation due to Mr Dragicevich for having been unfairly dismissed is not large. In the circumstances I would require that BGC pay to Mr Dragicevich the amount of two weeks' wages as compensation for loss or injury caused by his unfair dismissal.

A Minute of an Order to that effect now issues and the parties may speak to the minutes if that is required.

Appearances: The applicant on his own behalf.

Mr P. O'Sullivan on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Kevin Nicholas Dragicevich

and

Lisson Nominees Pty Ltd as Trustee of the PBS Unit Trust T/A BGC Builders Supplies.

No. 879 of 1995.

COMMISSIONER A.R. BEECH.

22 December 1995.

Order.

HAVING HEARD Mr K. Dragicevich on his own behalf as the applicant, and Mr P. O'Sullivan on behalf of the respondent;

NOW THEREFORE, I the undersigned, Commissioner of the Western Australian Industrial Relations Commission, pur-

suant to the powers conferred on me under the Industrial Relations Act 1979, hereby order—

THAT Lisson Nominees Pty Ltd as Trustee of the PBS Unit Trust T/A BGC Builders Supplies forthwith pay to Mr K.N. Dragicevich a sum equal to two weeks' wages at the rate applicable to him at the 21st day of July 1995.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Emma J. Franken

and

Mindarie Keys Hotel Pty Ltd.

No. 1323 of 1993.

COMMISSIONER C.B. PARKS .

4 January 1995.

Order.

WHEREAS an application was filed in the Commission on 23 September 1993 pursuant to s29 of the Industrial Relations Act, 1979; and

WHEREAS the applicant notified the commission by letter, dated

18 December 1995, that she did not wish to proceed with the application; and

WHEREAS the solicitors for the respondent, by facsimile transmission on

2 January 1996, notified the Commission that the respondent consents to the application being discontinued and does not require to be heard in relation thereto;

NOW THEREFORE the Commission pursuant to the powers conferred on it under the Industrial Relations Act, 1979, by consent, hereby orders—

THAT application 1323 of 1993 be and is hereby wholly discontinued.

(Sgd.) C. B. PARKS,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mr J Gilmore

and

Cecil Bros Pty Ltd.

No. 667(1) of 1995.

COMMISSIONER A.R. BEECH.

6 December 1995.

Order.

WHEREAS the Commission has before it a claim of unfair dismissal;

AND WHEREAS during the course of the hearing and determination of the above matter evidence or submissions were made concerning the financial performance, profits or financial affairs of the Cecil Bros group of companies;

AND WHEREAS an application was made that that evidence be given in private;

AND HAVING heard Mr H Dixon (of Counsel) on behalf of the applicant and Mr P. Nisbet QC (of Counsel) on behalf of the respondent;

NOW THEREFORE, I the undersigned, Commissioner of the Western Australian Industrial Relations Commission, and by consent, pursuant to the powers conferred on me under the Industrial Relations Act 1979, hereby order—

THAT any evidence or submission, oral or written (including any transcript of such evidence or submission) concerning the financial performance, profits or financial affairs of any member of the Cecil Bros group of companies, including the respondents in this application, be given in private and no party or person is permitted to divulge or disclose any information concerning such financial performance, profits or financial affairs without the prior written consent of the Western Australian Industrial Relations Commission.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ross James Hall

and

Design 2000 Homes Pty Ltd.

No. 1425 of 1995.

COMMISSIONER A R BEECH.

22 December 1995.

Order.

WHEREAS Mr Ross James Hall has filed Application No 1424 of 1995 in the Commission alleging that he has not been allowed a benefit to which he is entitled under his contract of service;

AND WHEREAS an application has been made by for a reduction in the time for filing a Notice of Answer and Counterproposal in accordance with the Industrial Relations Act, 1979 in Application No 1425 of 1995;

AND WHEREAS the Commission has dealt with this matter ex parte in Chambers, I, the undersigned Commissioner, pursuant to the powers conferred on me under the Industrial Relations Act, 1979, do hereby order and direct—

(1) THAT Mr Ross James Hall shall forthwith serve application 1424 of 1995 and a copy of this Order on Design 2000 Homes Pty Ltd.

(2) THAT a Notice of Answer and Counterproposal to the claim in Application No. 1424 of 1995, lodged with the Commission on the 20th day of December 1995, shall be lodged with the Commission and a copy thereof served on Mr Ross James Hall within 7 days from the date of service of this Order.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Russell Jason Hayter

and

Edna Margaret Ward, Trading As
BP Roadhouse Cataby.

No. 715 of 1995.

COMMISSIONER R.H. GIFFORD.

8 December 1995.

Order.

BY this application, the Applicant claimed that he was dismissed in a harsh, oppressive or unfair manner by the Respondent. The claim was denied by the Respondent.

A Conference involving the parties, was conducted before the Commission on 8 August 1995, to consider the claim.

A settlement of the matter was reached at the Conference.

A Notice of Discontinuance was filed by the Applicant with the Commission at the conclusion of the Conference, on 8 August 1995.

NOW THEREFORE, I, the undersigned, pursuant to the powers conferred by the Industrial Relations Act, 1979, do hereby Order—

THAT the application be discontinued.

(Sgd.) R. H. GIFFORD,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mr M S Hendley

and

G & S Paving.

No. 570 of 1995.

COMMISSIONER P.E. SCOTT.

29 December 1995.

Order.

WHEREAS this is a claim of unpaid contractual benefits in accordance with section 29(1)(b)(ii) of the Industrial Relations Act, 1979; and

WHEREAS conferences were held before the Commission on the 22nd day of June 1995 and the 13th day of July 1995; and

WHEREAS the Applicant failed to respond to letters sent on the 25th day of October 1995 and the 5th day of December 1995 requesting advice as to the progress of the application;

NOW THEREFORE the Commission pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT this matter be and is dismissed.

(Sgd.) P. E. SCOTT,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

John Stephen Marston

and

Computer Corp Pty Ltd.

No. 990 of 1995.

COMMISSIONER C.B. PARKS.

11 December 1995.

Order.

WHEREAS on 28 August 1995 an application was filed in the Commission pursuant to s29 of the Industrial Relations Act, 1979; and

WHEREAS the matter was listed for hearing on 13 November 1995 and thereon was adjourned to a date to be fixed; and

WHEREAS on 5 December 1995 counsel for the respondent informed the Commission that the matter had been settled and it had been agreed between the parties that the application would be discontinued;

AND WHEREAS on 7 December 1995 a Notice of Discontinuance was filed in the Registry of the Commission;

NOW THEREFORE the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT this application be and is hereby wholly discontinued.

(Sgd.) C.B. PARKS,
[L.S] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Monitire Pty Limited

and

Robert Norcott.

No. 1306 of 1995.

COMMISSIONER C.B. PARKS.

20 December 1995.

Order.

WHEREAS the Full Bench of the Commission has held that the applicant has been unfairly dismissed from his employment, and has ordered the Commission the "hear and determine the question of whether there should be reinstatement (of Mr Norcott in employment) or any other remedy or remedies ordered, according to law"; and

WHEREAS on 22 November 1995 a Notice of Application was filed in the Commission wherein the applicant applies for an order that the respondent produce for inspection, documents and other material in relation to application No. 1366 of 1993, pursuant to Regulation 80 of the Industrial Relations Commission Regulations 1985; and

HAVING heard Mr A.C. Tomlinson on behalf of the applicant and Mr R.T. Norcott on his own behalf, in chambers on 11 December 1995; and

WHEREAS the respondent objects to the production of the information sought on the grounds that such is not relevant to the disposition of application No. 1366 of 1993 and, in addition, the action by the applicant is "a fishing expedition"; and

WHEREAS the Commission is satisfied that certain of the information sought to be discovered is relevant to a consideration of the remedy in this matter; and

WHEREAS, the Commission, in chambers on 11 December 1995 issued oral orders for the production of documents for inspection;

NOW THEREFORE the Commission, pursuant to the powers conferred upon it under the Industrial Relations Act, 1979, hereby commits the aforementioned oral orders to writing and orders—

THAT Robert Norcott produce for inspection by the applicant no later than 20 December 1995, any book, paper, software or other documentation in his possession, power or control relating to, referencing in any manner or containing anything relative to—

(1) all income received by the respondent for the provision of his physical or intellectual services.

(2) all applications for employment made by the respondent

(3) all work performed or solicited by the respondent in the capacity of a sub-contractor

(4) all medical information pertaining to the respondents knee complaint/injury

(5) a record of the respondent's enrolment at any educational institution, the nature of studies there undertaken and the extent of attendance at any such institution.

(6) income received by the respondent by reason of income protection insurance

Notwithstanding the foregoing this order does not require that the respondent produce for inspection any bank statements of account; and by consent

THAT the respondents to Order No 1091 of 1995, dated 13 October 1995, produce for inspection of Robert Norcott no later than 20 December 1995 that which is ordered to be produced by such order.

(Sgd.) C.B. PARKS,
[L.S] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Gaye Elizabeth North

and

Bunbury Bowling Club.

No. 546 of 1995.

COMMISSIONER R.H. GIFFORD.

8 December 1995.

Order.

BY this application, the Applicant claimed that she was dismissed in a harsh, oppressive or unfair manner by the Respondent. The claim was denied by the Respondent.

A Conference, involving the parties, was conducted before the Commission in Bunbury on 28 July 1995, to consider the claim.

The Conference was adjourned to enable both parties to review their respective positions, in light of matters raised at the Conference.

A further Conference was listed for 15 August 1995, to enable a report back to occur.

Prior to this Conference, by letter dated 2 August 1995, the Applicant sought to withdraw her application.

NOW THEREFORE, I, the undersigned, pursuant to the powers conferred by the Industrial Relations Act, 1979, do hereby Order—

THAT the application be withdrawn by leave.

(Sgd.) R.H. GIFFORD,
[L.S] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mr G Roy

and

Western Power.

No. 447 of 1995.

COMMISSIONER P.E. SCOTT.

12 September 1995.

Reasons for Decision.

THE COMMISSIONER: This is an application pursuant to section 29(1)(b)(ii). The Applicant claims that he has not been allowed by his employer a benefit to which he is entitled under his contract of employment, in this case the use of a motor vehicle supplied by the Respondent for commuting purposes from home to work and return. The Respondent says that the use of the vehicle by the Applicant was for a particular purpose and was provided at its discretion. It says that it can withdraw the vehicle also at its discretion as it does not constitute a contractual entitlement. The Applicant was given notice that his commuting use of the vehicle would cease.

The first issue raised by the Respondent in this matter and to be dealt with as a preliminary point is the Commission's jurisdiction. The Respondent says that the Commission lacks jurisdiction for a number of reasons:

1. That the Applicant's employment is covered by a paid rates award of the Australian Industrial Relations Commission ("Australian Commission") and that this Commission has no jurisdiction to deal with matters in or in connection with that paid rates award and which are properly the subject of an application to vary the award;
2. That the award covers the field in relation to entitlements associated with motor vehicles;
3. That the matter is the subject of a dispute before the Australian Commission;
4. That the provisions of the awards which bind the parties together with the Industrial Relations Act 1988 ("Federal Act") set out conditions of employment for the Applicant and cover the field in relation to dispute settlement arrangements between the parties.

The Applicant says the Commission has jurisdiction to deal with the application. Mr Kane for the Applicant says that:

1. Paid rates awards do not need to cover all actual rates of pay and conditions of employment;
2. There is no inconsistency or potential conflict between this application and the order sought and any matter under the Australian Industrial Relations Act 1988 or the awards concerned;
3. The Australian Commission has no jurisdiction to deal with enforcement of contractual entitlements, and therefore this is the appropriate jurisdiction;
4. The awards concerned do not cover the field in relation to disputes and dispute settlement procedures as the relevant dispute settlement procedure is contained in the Enterprise Bargaining Agreement which recognises this Commission's role.

BACKGROUND

The Awards

The Applicant's employment is covered by the terms of the Western Power Interim Award 1995 (Exhibit 1) ("the award"). The award was approved by the Australian Commission at a hearing on 24 May 1995 before Senior Deputy President Polites. It replaces the SECWA Salaried Officers Award 1989 ("the superseded award") and also the SECWA Wages and Conditions Award of 1988. The parties agree that the award is a paid rates award. The Commission was also advised that in the drawing up of the award, a document headed Memorandum of Commitment (Exhibit 8) was prepared. This Memorandum notes "the interim awards will each cover both salaried and wages employees, through separate parts, to reflect employees' current conditions as provided by the SECWA Salaried Officers Award 1989 and the SECWA Wages and Conditions Award 1988, No. 1 of 1989". The transcript of the hearing indicates that the intention of the parties in respect of the interim awards has been to exactly reflect the existing conditions as they apply to the employees concerned.

At pages 10 and 11 of the transcript of that hearing, His Honour noted that he was dealing with two awards, one being for the Respondent in this matter and the other for Alinta Gas. These awards are intended to cover the employees of the two new organisations which arose from the former State Energy Commission of Western Australia. His Honour noted that "I am satisfied that the making of the Awards will be consistent with the statement of principles and they will be issued in due course... Accordingly the awards will issue together with these reasons for decision in due course."

It is clear then that the award has been approved by the Australian Commission, although at the time of hearing of this matter no order had issued.

The award contains Clause 35.—Disputes Procedure which reads:

> "To facilitate the remedying or the settlement of any dispute that cannot be satisfactorily resolved by the parties to this award, the matter or matters in dispute shall be referred to the Australian Industrial Relations Commission for determination".

(Page 31—Exhibit 1)

The superseded award was also a paid rates award and contained at Clause 35 a disputes procedure in the same terms as the award.

The award provides for the payment of an allowance for employees using their own motor vehicles and this was specified at Clause 27.—Payment of Hire For Use of Officer's Own Vehicle and it reads as follows:

(a) An officer authorised by Western Power to use his/her motor vehicle on official business shall be paid hire for such vehicle to cover all expenses in connection therewith in accordance with the rates as set out in the third schedule to this award.

(b) Western Power may authorise a commuted amount for the hire of motor vehicles or any other conveyance belonging to an officer.

(c) Where an officer in the course of a journey travels through 2 or more of the separate areas, payment of hire at the rates prescribed by subclause (a) shall be made at the appropriate rate applicable to each of the separate areas transversed.

(d) The rates prescribed in this clause may be increased in any case in which Western Power is satisfied that they are inadequate."

The superseded award contains a clause in identical terms except for reference to the name of the employer. (Page 3046—Exhibit 2).

The fact that the superseded award contains the same provisions as the award is relevant only for the purpose of confirming that the conditions applicable to the Applicant's employment are the same regardless of whether or not the award has formally issued.

Enterprise Agreement

It is also noted that the Respondent and the Association of Professional Engineers, Scientists and Managers, Australia ("APESMA"), along with two other unions, are parties to an agreement entitled "State Energy Commission of Western Australia—Electricity Supply Division, Enterprise Bargaining Agreement 1994" (Exhibit 4). This agreement provides in Appendix 1—Dispute Settlement Procedure Agreement, at Part 3, point 5:

> "The parties hereto recognise that the provisions of the Australian Industrial Relations Act 1988 and of the Western Australian Industrial Relations Act, 1979 establish procedures by which disputes can be settled and acknowledge that those procedures are available to assist in the settlement of any dispute."

This agreement was apparently registered by the Australian Commission and an agreement in like terms has been registered by this Commission [74 WAIG 2129].

Logs of Claims

The evidence of Mr Bibby was that over a number of years there have been various logs of claims served on SECWA by Unions including predecessors of APESMA and that the award was in settlement of three of those logs of claims being:

1. A log filed by the Association of Professional Engineers, Australia against the Electricity Trust of South Australia and another (C No. 31429 of 1990). Deputy President Hancock found that a dispute existed on 23 May 1990. The log of claims which resulted in that dispute finding included Clause 43.—Transport and Motor Vehicle which stated in Paragraph (b):

   "(b) Each Professional Engineer shall be provided with a fully maintained vehicle by the Employer. Such vehicle shall be of a standard equivalent to:

   (1) 6 cylinder

   (2) Air Conditioned

   Such vehicle shall be replaced with a new vehicle every twenty-four months."

   (Page 14—Exhibit 5)

2. A log of claims by the Association of Professional Engineers and Scientists Australia against the State Energy Commission of Western Australia and another (C No. 3320 of 1993). On 10 January 1994 Deputy President Polites found that a dispute existed. This log of claims contained Clause 45.—Transport and Motor Vehicle, which included paragraph (b) in the same terms as the log of claims noted above.

3. A further log of claims by the Australian Municipal, Administrative, Clerical and Services Union against the Hydro-electric Commission of Tasmania and Others (including SECWA) (C No. 30020 of 1994). On 14 June 1994, Commissioner Blair found that a dispute existed. The log of claims contained at Clause 42.—Vehicles in paragraph (a) that "all employees shall be supplied with a fully maintained, air conditioned motor vehicle, with all running costs borne by the Respondent".

Attempts at Dispute Settlement

This Commission heard in evidence that there had been a meeting between APESMA and the Respondent in respect the Applicant's use of the vehicle, however it did not resolve the issue.

On 8 February 1995, APESMA notified the Australian Commission of the existence of an alleged industrial dispute between itself and Western Power. The Form R3 (C No. 60064/1995) notes that the alleged industrial dispute was "concerning the decision by Mr John Colins (Manager Regional Power) to alter the agreed conditions of employment of Mr Graeme Roy by cancelling Mr Roy's use of a Western Power motor vehicle for travel to and from his home." The Association sought a hearing before the Australian Commission to settle the matter.

The evidence was that Commissioner Laing convened a conference on 23 March 1995 attended by a representative of APESMA, the Applicant in this matter, and the Respondent. The conference did not resolve the matter.

Commissioner Laing indicated that he would not close the file, that he would keep it open to either party to contact him should either need assistance in the resolution of the matter. There has been no further conference, reference of the matter for arbitration or hearing.

Exhibit B is a letter from APESMA to Commissioner Laing dated 7 July 1995 the essential part of which states:

> "C 60064 of 1995 APESMA *v.* Western Power
>
> The Association is writing to let you know despite your assistance in the conciliation conference of 23 March 1995 the parties are unable to reach any agreement in the above dispute. In recognising the Australian Industrial Relations Commission's lack of jurisdiction to arbitrate on the enforcement of contracts of employment, the matter has been referred to the Western Australian Industrial Relations Commission for arbitration under section 29(1)(b)(ii) of the State Act."

CONCLUSIONS

As noted at the outset, this is an application pursuant to s29(1)(b)(ii) of the Industrial Relations Act 1979 ("the State Act"). The relevant parts of section 29 provide:

> 29. (1) An industrial matter may be referred to the Commission—
>
> (a) ...
>
> (b) in the case of a claim by an employee—
>
> (i) ...
>
> (ii) that he has not been allowed by his employer a benefit, not being a benefit under an award or order, to which he is entitled under his contract of service,
>
> by the employee."

It is important to note that this application seeks to have this Commission determine whether or not the Applicant has, as a part of his contract of employment, an entitlement to a certain benefit. That is a question of fact. It requires the Commission to exercise its judicial powers.

The claim does not seek to create a new entitlement. It does not seek to amend the award or to affect the award provisions.

Those are matters which this Commission clearly could not deal with as the Applicant's employment is covered by a federal award.

Section 152 of the Federal Act states that:

"152. Where State law, or an order, award, decision or determination of a State industrial authority, is inconsistent with, or deals with a matter dealt with in, an award, the latter prevails and the former, to the extent of the inconsistency or in relation to the matter dealt with, is invalid."

In respect of the inconsistency test which arises as a result of section 109 of the Constitution and section 152 of the Federal Act, that requires a conflict to exist or be potential.

The Commission was referred to the decision of the High Court in *ex parte* McLean (1930) 43 CLR 472 and in particular to the judgement of Dixon J at page 483 in which it is said:

> "The inconsistency does not lie in the mere coexistence of two laws which are susceptible of simultaneous obedience. It depends upon the intention of the paramount Legislature to express by its enactment, completely, exhaustively, or exclusively, what shall be the law governing the particular conduct or matter to which its attention is directed."

Mr Lucev argues that the award creates a code of employment terms and conditions and referred to the decision of the Industrial Appeal Court in Gersdorf's case [Metropolitan (Perth) Passenger Transport Trust and Erhard Gersdorf (1981) 61 WAIG 611] and to other decisions which deal with this issue.

Gersdorf's case (supra) related to a claim of unfair dismissal where the employment was covered by a federal award. This award set out a detailed process for the termination of employment and review by the Chairman of the board of the employer of decisions of an officer dealing with a complaint against an employee.

The Industrial Appeal Court found that those award provisions constituted a complete code regarding termination of employment and thus excluded this Commission from dealing with a matter relating to termination of employment.

The decision of Wallace J in Gersdorf's case also deals in detail with the question of the inconsistency test and says:

> "The inconsistency test relied upon by the Full Bench is that enunciated by Dixon J. in O'Sullivan *v.* Noalunga Meat Ltd., 95 CLR 177, at pp. 185-186, the relevant portion of which reads as follows:
>
> > If it appeared that the Federal law was intended to be supplementary to or cumulative upon State law, then no inconsistency would be exhibited in imposing the same duties or in inflicting different penalties. The inconsistency does not lie in the mere coexistence of two laws which are susceptible of simultaneous obedience. It depends upon the intention of the paramount legislature to express by its enactment completely, exhaustively, or exclusively, what shall be the law governing the particular conduct or matter to which its attention is directed.
> >
> > In my opinion, what his Honour was therein referring to was the "covering the field test" and indeed he so described it in the preceding sentence to the paragraph quoted above.
>
> The inconsistency test is best described by the same learned Judge in Victoria *v.* The Commonwealth, 58 CLR 618, at p.630, wherein he said "I attempted in *Ex Parte* McLean (1930) 43 CLR at p.483, to explain my conception of the principle (the test of inconsistency under s.109) upon which the decisions had proceeded, particularly those given upon the Commonwealth Conciliation and Arbitration Act, and there will be found all that is required for the purpose now in hand. Substantially, it amounts to this. When a State law, if valid, would alter, impair or detract from the operation of a law of the Commonwealth parliament then to that extent it is invalid". A proper reading of Clause 7 and 10 of the parties' Federal award provides the appellant with a right of dismissal and the possible effect of s.29(2)(a) is to cut down that right thereby altering, impairing or detracting from its operation and to that extent provides a direct inconsistency having the effect of rendering the Act provision inoperative by virtue of s.109 of the Constitution.
>
> The mere existence of joint power of review of a decision dismissing an employee may clearly lead to the possibility of conflicting determinations as adverted to Bray C.J. in The Queen *v.* The Industrial Court of South Australia; *Ex parte*, General Motors Holdens Pty. Ltd., 10 SASR 582, at p.590:
>
> > Is, then, a power to direct re-employment by the former employer of a former employee, whose employment has been terminated in accordance with the provisions of the award, consistent with that award? I do not think it is. If re-employment is directed under s.15(1)(e), it can only be re-employment in terms of the award. The award gives the employer the right to terminate on a week's notice. Assume a case where a week's notice has been given. The Industrial Court declares the dismissal to have been harsh, unjust or unreasonable and directs re-employment. The employer gives, under the terms of the award, another week's notice. There could be an interminable series of week's notice, direction to re-employ, another week's notice, and another direction to re-employ. It seems to me that this would be to qualify gravely, and indeed to destroy, the right to determine on a week's notice given to the employer by the award. I do not think it consistent with the award for State legislation to attach to that right a potential condition of defeasance, to adopt the language of Walters J. and Wells J."

There was no contention before me that the Federal Commission has jurisdiction to determine a contractual dispute relating to existing rights. As the High Court stated in Ranger Uranium Mines Proprietary Limited and Others *ex parte* Federated Miscellaneous Workers' Union of Australia (1987) 163 CLR at 656:

> "It is clear that reinstatement may be claimed as a legal right or as a remedy for breach of a legal obligation. Section 5 of the Act is illustrative of the situations in which reinstatement is a crucial remedy for the breach of a legal obligation. A dispute as to the existence or enforcement of a legal right to reinstatement or as to the breach of a legal obligation properly remedied by an order for reinstatement is a dispute which necessarily involves the exercise of judicial power. In conformity with section 71 of the Constitution (which reposes the judicial power of the Commonwealth in CH III, Courts), the Commission is not endowed with judicial power, and hence has no jurisdiction to entertain disputes as to the existence or enforcement of legal rights or obligations: see Re Cramm: ex parte Newcastle Wallsend Coal Co Pty Ltd."

The federal statute in this particular case is directed to the Australian Commission's powers to conciliate and to arbitrate on industrial disputes, however the State's jurisdiction in this particular matter relates to the enforcement of existing contractual entitlements, through the exercise of judicial power, a power not available to the Australian Commission.

A number of decisions of this Commission have previously dealt with the issue of this Commission's jurisdiction to deal with contractual entitlements claims by employees whose employment was subject to a federal award.

In Penco and D'Arcy MacManus and Masius and Gill Pty Ltd at 65 WAIG 529 at 530 Fielding C noted that the employee concerned, Mr Penco, was employed pursuant to a federal award being the Commercial and Industrial Artists Award of 1983. He said:

> "So far as the claim purports to seek redress for the dismissal which is said to be unfair, this Commission is without jurisdiction. There is little, if anything, to distinguish the Award which reference has been made in these proceedings and the Award considered by the Industrial Appeal Court in Metropolitan (Perth) Transport Trust v Gersdorf (*supra*). Gersdorf's case is binding upon me and I am bound to follow it, and of course I do so. I therefore hold that the Commission is without jurisdiction to entertain that part of the Applicant's claim which relates to an allegation of unfair dismissal.

> In my view, some parts of the claim made by the Applicant could well be said to relate to overaward payments and thus there was no need to rely on the Award, Federal or otherwise, and to that extent the Commission is not completely without jurisdiction. [CF: True v Amalgamated Collieries of WA Ltd (1940) 62 CLR 451 and Steele v Tardini (1946) 72 CLR 386]."

After the Commissioner announced this conclusion, the parties met and resolved the matter between them.

In Murray Andrew Lang and Telecom Australia (70 WAIG 186) Fielding C dealt with an application pursuant to section 29B(2), as it then was, relating to contractual benefits for an employee whose terms and conditions of employment were governed by the Australian Telecommunication Commission Telecommunications Technical and Trades Staff (Salaries and Specific Conditions of Employment) Award 1975, an award of the former Australian Conciliation and Arbitration Commission.

It was argued that there was a potential conflict between the decision of the Commission and the federal legislation and Fielding C said that he found no inconsistency between the provisions of the Industrial Relations Act in respect of applications pursuant to section 29B(2) and the Award concerned due to the particular conditions contained within it. He notes at page 187:

> "Section 29B(2) of the Industrial Relations Act only authorises State Industrial Relations Commission to entertain a claim in respect of a contractual benefit. Such a claim is, as Kennedy J observed in Robe River Iron Associates v Association of Drafting, Supervisory and Technical Employees Western Australia (1987) 68 WAIG 11 at page 17 "restricted to the employee's contractual rights"."

At page 188 he goes on to note that:

> "the issue in these provisions indeed for all proceedings instituted pursuant to section 29(b)(ii) of the Industrial Relations Act, does not involve a consideration, as in "Dao v Australian Postal Commission (1987) 162 CLR 317" of what the terms of employment should be, but instead involve the consideration of whether in fact the terms of employment as settled by the Respondent have been satisfied."

The Commissioner in that matter then went on to deal with aspects of the case which related to the nature of the Respondent and the Commonwealth legislation which deals with it. It was the latter matters which have prevented the Commission from having jurisdiction to deal with the matter rather than the question of the conflict between the Federal Award and the State Act.

Gersdorf's case can be distinguished from the present case due to the fact that this claim is for contractual entitlements, and that no provision exists within the award or the federal Act which would enable the Australian Commission to determine this issue. Whilst the award may provide a code in respect of an allowance for hire of a motor vehicle, and it provides a dispute settlement procedure which might also be a complete code as far as the powers of the Australian Commission permit, it cannot constitute a complete code to deal with matters which go beyond the Australian Commission's powers.

The Australian Commission may be asked by the Applicant's Union to create an entitlement for him however it could not ask the Australian Commission to enforce an existing contractual benefit and that is what is sought in this matter. Whilst the Australian Commission may be able to determine that the Applicant should or should not have such an entitlement, that is a different matter and not a conflicting one from whether or not the Applicant already has such an entitlement as a matter of his contractual arrangements. They are not potentially conflicting determinations.

Any decision made in this case would not have the effect of altering, impairing or detracting from the operation of the Federal Act.

The Respondent says in respect of paid rates awards that should the Commission find that the Applicant has a contractual entitlement that such contractual entitlement would jeopardise the paid rates status of the award. He referred to Macken, McCarry and Sappideen "The Law of Employment" (3rd edition) that "it is at least doubtful whether (a paid rates award) permits a contract for a wage at a rate in excess of the award" (Page 501).

Section 4—Interpretation of the Federal Act defines "paid rates award" as "an award specifying actual entitlements, rather than minimum entitlements, in respect of wages and conditions of employment".

Mr Lucev referred the Commission to the decision of the Full Bench of the Australian Commission in Re Aluminium Industry (Comalco Bell Bay Companies) Award 1983 reported in 56 IR 403 at 434 where the decision notes:

> "The ordinary meaning of "paid rates awards" means an award where the intention of its maker is to specify the entitlements actually received by an employee by comparison with a "minimum rates" award which is intended only to specify an entitlement below which the employee cannot be paid in respect of either wages or conditions of employment. In our view there is no need to construe the definition in the Act more narrowly as is contended for by Dr Jessop. In particular we do not think there is any basis for construing the definition as applying only to awards which prescribe by reason of their express provisions all of the actual terms and conditions of employment to be received by an employee.
>
> We note that this was not the approach taken to the definition of paid rates awards in the review of wage fixing principles case. Moreover, we consider that one cannot look at the insertion into the act of a definition of paid rates awards in isolation from the fact that the term has a long history in the industrial jurisprudence of this country ... Finally, we add that it has never been the case that a paid rates award either in the public sector or in the private sector has sought to cover every specific term and condition of employment. This was recognised by the Commission in the review of Wage Fixing Principles decision in which the Commission stated that—
>
> (a) "Paid rates award does not need to embrace *all* actual entitlements in respect to wages and conditions of employment". It is sufficient that paid rates awards generally cover all important aspects of the employment relationship considered appropriate for award regulation."
>
> (My emphasis)

It is clear then that the intention of the Australian Commission is that all actual entitlements do not need to be embraced in a paid rates award however, generally, all provisions which are important for award specification should be encompassed.

The fact that the award is a paid rates award does not preclude the possibility that other conditions of employment are or have been, as a matter of fact, contracted between the parties.

The issue which would need to be determined by the Commission should this matter proceed beyond the matter of jurisdiction is whether or not provision of a motor vehicle for commuting purposes constitutes a term of a contract of employment of the Applicant which can be enforced or is it something granted by managerial discretion and for a given time or project or purpose. If it is a contractual benefit and if it is an important issue for award coverage then the paid rates principle may have been compromised by the parties: i.e. the parties themselves, by their contract, may have compromised the paid rates award principle. If the parties, by their actions have reached an agreement which constitutes a contractual benefit, then it is the actions of the parties in their agreement which might compromise the paid rates award status, not any finding of the Commission that they have so contracted. Whether or not they have done so is a matter of fact which can only be tested through the evidence.

It is for the Australian Commission pursuant to section 170UD—Party Acting Inconsistently With Award's Status As a Paid Rates Award to consider. This section allows the Australian Commission to consider whether "a party has acted in a way that is so inconsistent with the Award as to make it inappropriate for the Award to continue as a paid rates award." This does not make the contracting to establish an entitlement unlawful or void but merely allows the Australian Commis-

sion to consider what action it should take should it be found that the parties have acted inconsistently with the award's paid rate status.

This is unlike the situation in Steele and Tardini and Others (1946 72 CLR 386) where the High Court of Australia dealt with a matter involving a claim of a contractual entitlement to certain monies. At page 407 Latham CJ deals with the fact that there was in existence the National Security (Economic Organisation) Regulations which set down rates not to be exceeded and that there was an objection that the rate being sought to be enforced exceeded that prescribed by the Award and that therefore the contract was unlawful and void under Regulation 15 of those Regulations.

It is not the case that agreements for contractual benefits above the paid rates award conditions become unlawful and void. Rather, it is for the Australian Commission pursuant to section 170UD to consider what action it will take in respect of the award's paid rates status.

Therefore, there is no conflict in respect of this Commission's jurisdiction to deal with a question of contractual entitlement which is in excess of the paid rates award entitlements and the issue of maintaining the integrity of the paid rates award.

As this is a claim to enforce an existing contractual entitlement, it is not properly the subject of an application to vary the award. The Applicant is not seeking the creation of a new entitlement or to have the entitlement set out in the award, but is seeking the enforcement of an existing entitlement.

A Live Dispute Before the Australian Commission

Section 103—Completion of Conciliation Proceedings of the Federal Act provides at subsection 1:

> "A conciliation proceeding before a member of the Commission shall be regarded as completed when:
>
> (a) ...
>
> (b) Whether or not the parties have reached agreement for the settlement of part of the industrial dispute;
>
> (i) the member of the Commission is satisfied that there is no likelihood that within a reasonable period, conciliation or further conciliation will result in agreement, or further agreement, by the parties on the terms for the settlement of the industrial dispute or any matter in dispute;
>
> or
>
> (ii) the parties to the industrial dispute have informed the member that there is no likelihood of agreement, or further agreement, on the matters in dispute and the member does not have a substantial reason to refuse to regard the conciliation proceedings as completed."

The Respondent says that the Federal Act requires that the parties advise the Commission that the matter is not to be proceeded with. Only one such party has done so. The Respondent says that on this basis the matter is still extant before the Australian Commission.

Whilst the Federal Act says that a matter is finalised when the parties (not just one of them) have notified as such, it should not be the case that by refusing to confirm that the matter is finalised the Respondent can prevent this Commission from dealing with the matter in good conscience and considering the equity of the matter. This Commission should not abstain from hearing this matter simply on the basis that the employer has not acknowledged that the Applicant in that matter is no longer pursuing its claim before the Australian Commission when clearly the Applicant in that matter has advised the Australian Commission that it is referring the matter to this Commission for determination.

Further, as noted earlier there is no potential conflict between the two jurisdictions even if the matter were live before the Australian Commission. Therefore, I find that the technical existence of C No. 60664/95 does not constitute good grounds for this Commission to refrain from dealing with this matter on the basis of excluding this Commission's jurisdiction.

Dispute Settlement Procedure

In respect of the issue that the Australian Commission could be requested in accordance with the dispute settlement procedures of the award to determine this matter, and that the Federal Act, awards and enterprise agreement cover the field in respect of dispute settlement, the award cannot give to the Australian Commission jurisdiction to determine or arbitrate on the enforcement of a contractual right. The award cannot give the Australian Commission power that it does not have under the Act which establishes its powers.

As Mr Lucev noted, the enterprise agreement is a subordinate instrument to the federal Act, and it cannot override or be inconsistent with that Act. The Act must always override the award and the enterprise agreement which flows from it.

The enterprise agreement does not prohibit this Commission from dealing with a claim for contractual entitlements. It cannot be said to cover the field in that the parties, in recognising, as they do at Clause 5, "that the provisions of the Australian Industrial Relations Act 1988 and of the Western Australian Industrial Relations Act, 1979 establish procedures by which disputes can be settled," acknowledge that those procedures are available to assist in the settlement of any dispute.

Bearing in mind the inability of the Australian Commission to deal with contractual entitlements and the fact that the parties are in dispute and unable to resolve their dispute over a contractual entitlements matter then there is nothing prohibiting this Commission from dealing with it. Whether it is arguable, as a matter of merit, that the Commission should not deal with on the basis that the parties should pursue resolution through the dispute settlement procedures, is not a question which needs to be considered at this stage. Rather the question is whether the existence of those dispute settlement procedures means that the award and agreements and the Australian Industrial Relations Act in those respects cover the field.

As the Australian Commission does not have the power to deal with a contractual entitlements claim the field is not and cannot be covered by those instruments of the Australian Commission which set out dispute settlement procedures.

On these bases, there is no impediment to the Commission proceeding to deal with the merit of this application.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

Mr G Roy
and
Western Power.
No. 447 of 1995.

COMMISSIONER P.E. SCOTT.

14 December 1995.

Reasons for Decision.

THE COMMISSIONER: This is a claim by Mr G. Roy that he has been denied a non award benefit arising from and forming part of his contract of employment with Western Power (formerly SECWA), being the use of a motor vehicle for commuting purposes.

The respondent denies that the use of the motor vehicle formed part of his contract of employment and says that such use was granted at its discretion and that it was entitled to withdraw such use also at its discretion.

The Commission has previously dealt with the issue of jurisdiction, and has now heard submissions and evidence from the parties as to the facts of this case.

Mr Roy joined SECWA in 1974, and had commuting use of a vehicle supplied by his employer from 1980 until 1991. There was no operational or work related requirement for such use. The issue before the Commission does not appear to relate to this period and there was no dispute between the parties as to

whether this usage was provided at the employer's discretion or by contractual arrangement. It is the arrangement for the use of the vehicle which arose in 1991 which is in dispute.

There is conflict in the evidence as to the purpose for Mr Roy moving to the Remote Area Branch ("RAB") (now the Regional Power Division), and in the matter of the entitlement or otherwise to computing use of the vehicle which arose at that time, this latter matter being the issue at the heart of this dispute.

Mr Roy says that in September 1991 he was an unattached officer whose position had been abolished when he was invited by Mr Collins to assist in the reorganisation of the RAB, and was eventually formally seconded, and later formally appointed, to the position of Generation Services Engineer. He says that the use of the vehicle was negotiated with Mr Collins and became a contractual entitlement for the time he was to work in the RAB. It was not for any work related purpose that he was allocated use of the vehicle, but because he made it a condition of his acceptance of the offer to work at RAB.

Mr Collins, on the other hand, says that he invited Mr Roy to join the RAB, certainly to assist in the reorganisation of the branch, but that the position of Generation Services Engineer to which Mr Roy was formally seconded in November 1991, and later appointed to, was "the position conceptually that (Mr Collins) asked him to come and take on ..." (Transcript page 77). He says that he had neither the authority nor the intention to allocate to Mr Roy the commuting use of a vehicle either contractually or in perpetuity, but that he was able, in accordance with the discretion he had in his position, to make allocations of vehicles for commuting use, and did so. According to him, use of the vehicle was able to be removed at any time, and was allocated while Mr Roy was Generation Services Engineer.

From September 1993, Mr Roy took on a project on a full time basis being the oversight and management of a training programme, and the duties of his substantive position of Generation Services Engineer were taken on by another. Mr Roy also took responsibility for co-ordinating the Ord River Diversion Dam Hydro Power Station Project.

In around November 1993, Mr Roy's Performance Review was undertaken at which time Mr Collins advised him that he intended to withdraw Mr Roy's commuting use of the vehicle, Mr Roy responded:

> "while I have no problem with your perceptions and comments regarding performance, it is of concern that you signalled that you wish to break the verbal agreement regarding use of motor vehicle. I came to Welshpool not to do a particular job but to assist in review of Welshpool and the change of role should not affect this agreement".
>
> (Exhibit K4).

Mr Collins responded saying:

> "the organisation is changing and of necessity your role and conditions must be revised and changed with planning and discussion.
>
> Your continued use of a SECWA vehicle to and from work will continue for the period of the PS Training Programme Development and Implementation (1 July 1994). We should review your role and conditions again at that time."
>
> (Exhibit K5)

Following this, Mr Roy made comment to Mr Collins one morning, saying that he did not accept the situation. Mr Collins responded "I can understand how you feel but that's the position".

In June 1994, Mr Roy received a letter advising of his transfer to the Engineering Services Branch, Regional Power of the new electricity business which was later to be known as Western Power, effective 1 July 1994. This letter included the statement "your terms, condition of employment and supervisor are unchanged". (Exhibit K6). This was a standard letter sent to a great number of employees. In the circumstances, such a letter could not be taken as confirming a discretionary allocation, but of conditions of employment.

A review of structures and functional responsibilities of the organisation was undertaken, and in October 1994, Mr Roy received a letter saying that as a result of the review, his current position would be no longer required and he was advised of his options regarding employment ie. redeployment, retraining or redundancy. (Exhibit K7). By letter dated 29 November 1994, confirming a discussion of the 23rd November, Mr Roy was advised that as he had been unsuccessful in securing a permanent position and he was eligible for either redeployment or redundancy and unless another position arose, he would only be offered temporary work, being the two projects he had been undertaking—one to end in April 1995 and the other anticipated to run to the end of 1995. This letter set out two conditions for the temporary work to be undertaken and they included that the use of the vehicle for commuting purposes would cease, and this letter sought a response from Mr Roy by the 9th December 1994. (Exhibit K8). By letter dated the 8th December 1994, Mr Roy advised that he would be unable to accept the conditions set out in the letter of the 29th November 1995, relating to his classification and to the use of the motor vehicle. He said:

> "you will recall in 1991, I joined the then Remote Area branch, on your invitation, with the primary task of assisting you in the restructuring of the branch. At that time I was an unattached level 9 officer. It was agreed between us that I would continue to be classified and paid as a level 9 employee. A clear understanding was also reached between us, that it was a condition of my employment that I have the use of a SECWA motor vehicle and commuting rights to and from home".
>
> (Exhibit K9).

Mr Collins responded that:

> "You correctly state that you were seconded to assist in the restructure of the branch with your then existing employment conditions assured at that time. Since then you were appointed as Generation Services Engineer in April 1992, seconded to Special Project in September 1993 and formally advised that the Generation Services Engineer's position had been abolished in October 1994. During this time I personally discussed with you in December 1993 the need to review your continued commuting use of the SECWA vehicle, and redeployment/redundancy opportunities in June 1994. ... You may continue to use the SECWA vehicle to commute to and from your home until 17 January 1995 when you go on annual leave, but not when you resume work after that period of leave".

He was offered the opportunity to undertake temporary work on the two projects subject to certain conditions. He declined those conditions. Notwithstanding his objection and lack of acceptance of the conditions, he returned the motor vehicle in February 1995 and has agreed to continue to undertake work on the projects. Mr Roy continued to work on the Ord Hydro Project but the development training project, which was originally intended to be completed by 1 July 1994, but still not complete, was removed from his control in February 1995. Mr Roy, through his union, then sought to have the appropriate dispute settlement procedures instituted regarding the vehicle. He returned the vehicle to the pool in February 1995. At the time of the hearing Mr Roy was continuing the special project work and was not allocated to a permanent position.

Due to a need to ensure that the business was making the best use of its resources, in this case its vehicle fleet, and reducing unnecessary usage, reductions in discretionary usage were introduced, over a period of time and following reviews. Progressively, a number of officers had their commuting use removed. This caused some industrial disputation which was dealt with by the dispute settlement procedure. It seems that only Mr Roy continued to maintain, as he has consistently since the issue of removal was first raised, that he has a contractual right to the usage of the vehicle.

If Mr Roy had the use of the vehicle for commuting purposes as a contractual entitlement, no policy reviewed by his employer could unilaterally remove that contractual entitlement, no matter how meritorious that new policy may be, how much notice is given or how "fairly" the change is implemented. However, if the vehicle's use was provided at the employer's discretion, as a matter of contractual law the em-

ployer is entitled to remove the vehicle also at its discretion. The fairness of such removal is not a matter which can be dealt with in an application such as this. The question is, did Mr Roy have a contractual entitlement to the commuting use of the vehicle? There was no unequivocal evidence before the Commission to either verify or contradict Mr Roy's claim. Nothing was recorded as to the basis of the vehicle's allocation.

I find that, having observed the witnesses, and noted the correspondence between them over the period, that where the evidence of Mr Roy conflicts with that of Mr Collins, the evidence of Mr Collins is to be preferred. I found Mr Collins to be forthright, consistent and open in his evidence. In this respect I accept that when Mr Roy was invited by Mr Collins to work at the RAB to assist in the reorganisation of the branch, he was effectively performing the function of the Generation Services Engineer, plus other duties as allocated by Mr Collins from September 1991. In November 1991, he was formally seconded to the position of Generation Services Engineer, Generation Services and confirmed in that position and classified as a level 9 position in April 1992.

On the face of it, the basis of Mr Roy's joining the RAB may appear irrelevant, however he contends that he was allocated use of the vehicle while he worked in that area, not related to any particular job, role or position, and he asserted his right to the vehicle's use on this basis throughout his correspondence and discussions with the respondent from November 1993, when Mr Collins first raised the issue of withdrawal of the use of the vehicle. However, in 1992, during a review of vehicle allocation, Mr Roy wrote a Memorandum to Mr Collins (Exhibit L-1). In this, he deals with use of vehicles in Generation Services, and notes "3. Myself—motor vehicle issued with position". Furthermore, as noted earlier, Mr Collins has a different view of the basis of Mr Roy moving to the RAB, and it being, in concept, to fill the position of Generation Services Engineer which was eventually formally allocated to Mr Roy.

Mr Collins was aware of his ability to allocate vehicles for commuting use where no operational requirement for such use existed. As Mr Gillies explained, SECWA (and now Western Power) policy regarding the provision of motor vehicles on a contractual basis is that it is to a very limited number of senior personnel, in positions at higher levels than that held by Mr Roy. Other employees had commuting use of vehicles at the employer's discretion.

I find that Mr Collins did not enter into a contractual arrangement which went beyond SECWA and Western Power policy regarding the allocation of vehicles. When Mr Roy was first approached by Mr Collins to join the RAB, Mr Roy declined unless he was provided with a vehicle for commuting use. When Mr Collins later indicated that such use was to be available, there was not a contractual arrangement entered into for that purpose. Mr Collins had no authority to do so, but was simply, within his discretion, allocating a vehicle for commuting use. This was an arrangement at the employer's convenience which the employer chose to terminate, upon a review of its usage of vehicles generally, as a means of ensuring better utilisation of its resources. While not required to negotiate the removal of a non-contractual arrangement, Mr Collins sought Mr Roy's agreement to this, on the basis that it would be better to arrive at an agreed solution than to have to impose one. In light of Mr Roy's refusal, Mr Collins had no alternative but to exercise the right to withdraw the vehicle's usage.

On this basis, the application will be dismissed.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

Mr G Roy
and
Western Power.
No. 447 of 1995.

COMMISSIONER P.E. SCOTT.
14 December 1995.

Order.

HAVING heard Mr M Kane on behalf of the Applicant and Mr T Lucev (of Counsel) and with him Ms M Foley (of Counsel) on behalf of the Respondent, now therefore the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT this application be and is hereby dismissed.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

Desmond Allan Sheahan
and
Honourable Minister for Education, Employment and Training.
No. 1123 of 1995.

COMMISSIONER R.H. GIFFORD.
22 December 1995.

Reasons for Decision.

THE COMMISSIONER : By this application, Desmond Allan Sheahan, an employee of the Western Australian Department of Training ("WADOT"), and formally engaged in a position known as a 'Senior Counsellor', alleged that, in relation to the process of recruitment and appointment of public service officers to certain new positions in the Department, the Department had not fairly and properly applied the Public Sector Management (Redeployment and Redundancy) Regulations 1994 ("the Regulations") in respect of himself.

The application is made in accordance with the terms of s.95(3) and (4) of the Public Sector Management Act 1994 ("the PSM Act"). Both subsections collectively enable an employee who is aggrieved by a decision made under the Regulations to refer to the Industrial Relations Commission, as if it were a matter under s.29(b)(sic) of the Industrial Relations Act, 1979, the question of whether or not the Regulations had been 'fairly and properly' applied to the employee.

The focus of this application is upon the three Level 6 positions which WADOT had newly created and which were advertised on 4 October 1995 (Exhibit S10). The former positions of 'Senior Counsellor' and 'Counsellor' within WADOT had been abolished on 22 August 1995. Applications for two of the new Level 6 positions, namely 'Manager Client Services' at Midland and 'Client Services Manager' at Joondalup were invited from the four former 'Senior Counsellors' and from the 33 former 'Counsellors'. These positions required the applicants to be registered with the Psychologists' Board of Western Australia. In the case of the remaining position, of 'Customer Services Manager' at Perth, applications were invited from the same former Senior Counsellors and Counsellors and also from other employees in the Department whose position had been abolished.

Mr Sheahan contends that WADOT, in making these positions available to the Counsellors, as well as the Senior Counsellors, have not acted fairly and properly, by virtue of the Counsellors not being eligible for these Level 6 positions. As a consequence, he claims he has been denied a 'like-to-like' transfer entitlement and maintains he faces the prospect of being disadvantaged, in the event of being unsuccessful.

He seeks that an Order issue out of these proceedings restricting appointment to the three positions from only the former 'Senior Counsellors'. It is to be noted in this respect that an appointment has already been made to the Midland position, namely of a former Senior Counsellor who had filed a similar application to the instant one, but who, upon his appointment, withdrew the application. For practical purposes therefore, the Order sought by Mr Sheahan could only extend to the Joondalup and Perth positions, noting that the Perth position is open to applicants other than Counsellors.

Background

The issue the subject of these proceedings had its genesis in a letter dated 22 August 1995 to all Counsellors and Senior Counsellors (Exhibit C1, Part 1) from the Chief Executive of WADOT, Mr Ian Hill. A similar letter was sent to the Secretary of the Federally registered Australian Education Union, WA Branch ("the union") on the same date (Exhibit C1, Part 2).

The essence of the advice was that WADOT was intending to restructure the present provision of counselling services into a section providing 'Information and Career Advice Services'. It was predicated upon the "substantial demand from students ... for course information and career options". This necessitated the abolition of all Counsellor (and Senior Counsellor) positions, covered by the terms of the Federal Teachers (Public Sector Technical and Further Education) Western Australia Interim Award 1993 and their replacement by public service officer positions. Included amongst these positions were the Level 6 positions, which are in contention in these proceedings. All positions were to be advertised and filled on a basis not actually referred to.

It was stated that the initial intent would be to attempt to transfer the Counsellors (and Senior Counsellors) to another position at the same or equivalent level of classification; although the primary aim would be to transfer employees into lecturing positions in their subject area, upon conditions of employment relating to such position. Hope was expressed that all Counsellors would be able to be transferred within the current colleges. In the event of transfer not being possible, WADOT intended to register the employees for redeployment. Voluntary severance would be considered only as a last resort.

In the letter to the union, hope was expressed that there was to be ongoing dialogue with them, to minimise any adverse effect of the restructure. It was also confirmed that instructions had been given to management to promptly consider any suggestions from staff which would facilitate a smooth transition.

The letters provoked a response from the Counsellors (including the Senior Counsellors) and the union and a Dispute Notification was filed with the Australian Industrial Relations Commission. This led to Conference proceedings before Commissioner Frawley on 28 August 1995. At the Conference the union sought a stay upon the recruitment process for the positions. This was refused, but the parties were requested to hold further discussions and report back to him on 12 September 1995. In the interim period some three meetings of the parties were conducted. The further Conference was held but without a resolution being forthcoming. The Commissioner requested that further meetings of the parties occur. By 27 September 1995, a further four meetings of the parties had been conducted.

On 28 September 1995, WADOT sent a letter to the union setting out a synopsis of the outcomes agreed upon by the parties arising from the meetings (Exhibit C1, Part 3), with respect to Counsellors. The synopsis refers to the following 'options' being considered:

> "• "quarantined" competitive selection for Counsellors for positions which have, as an essential selection criteria, "registration with the Psychologists Board of Western Australia";
> • "quarantined" competitive selection for <u>all</u> Department redeployees for positions established to provide information and career advice to students;
> • redeployment into other areas of the Department or the public sector generally;
> • a return to lecturing; or
> • voluntary severance."

Terms then agreed concerning aspects of classification levels and other matters were set out.

This synopsis was not, however, the end of the matter. On 3 October 1995, Mr Sheahan, the applicant in these proceedings, forwarded a memorandum to the Director of Industrial Relations of WADOT, Mr Danny Cloghan (Exhibit C1, Part 10), referring to an "anomaly" with respect to the quarantining, namely that if Counsellors (as distinct from Senior Counsellors) were able to "move on this basis to Level 6 positions", it would be contrary to the Redeployment and Redundancy Regulations. This was based on the belief that the maximum salary for the Level 6 positions was more than 10% greater than the maximum rate applicable to Counsellors, and in that sense the Counsellors were not eligible to apply for the Level 6 positions. He accordingly requested that the Level 6 positions, requiring registration as a Psychologist with the Psychologists' Board of Western Australia, be quarantined only to the Senior Counsellors.

The same day, the union wrote to Mr Cloghan indicating that 'after due consideration', they were of the clear view that the Regulations excluded Counsellors from consideration for 'transfer to Level 6'. They believed eligible applicants for the Level 6 (Psychologist) positions, ought be restricted to the present Senior Counsellors.

WADOT responded to this letter the following day, on 4 October 1995, confirming their disagreement with the union's interpretation (Exhibit C1, Part 12).

On the same day, WADOT wrote to all former Counsellors and Senior Counsellors advising them that as a result of discussions with the union that WADOT was to:

> "..... quarantine to TAFE Counsellors (including Senior Counsellors) only the available Level 5 and Level 6 positions which require as an essential criteria "registration with the Psychologists Board of Western Australia". The Level 6 position which does not require registration with the Psychologists Board of Western Australia will be available to both TAFE Counsellors and all other registered redeployees 'at level' within the Department of Training." (Exhibit C1, Part 13)

A Special Human Resources Bulletin, setting out the key responsibilities and selection criteria for each of the positions was attached. The Counsellors, including the Senior Counsellors, were invited to apply for the positions. An indication was then given that where staff had been unsuccessful in obtaining a position, or made no application, that the following options would be considered:

> "• transfer to a lecturing position
> • redeployment within the Department of Training or the public sector generally
> • voluntary severance."

Upon receipt of this advice, Mr Sheahan sought to challenge the process, and filed the instant application on 10 October 1995.

The Arguments

The applicant, Mr Sheahan, presented his argument on his own behalf. He submitted that WADOT, in inviting applications for the new positions from both Counsellors and Senior Counsellors had not acted fairly and properly, in its application of Parts 1, 2 and 4 of the Redundancy and Redeployment Regulations.

His grievance was that in making the Level 6 positions in question available to all of the 33 Counsellors, it did not represent a fair and proper application of the Regulations, and denied a 'like-to-like' transfer entitlement. Further, a Senior Counsellor would be required to compete with those who were not 'eligible' for the positions and would be accordingly disadvantaged.

It was submitted that Counsellors ought not be eligible for transfer to the new positions, in accordance with Regulation 5 of the Regulations, due to the fact that a requirement of the transfer process is that such transfer occur at the "same or equivalent level of classification". Nor ought Counsellors be eligible for redeployment, as the difference between their

maximum salary level, and the maximum level of the new positions, was greater than the 110% limit, specified in Regulation 3(2)(b)(ii) of the Regulations.

It followed that only Senior Counsellors were eligible for transfer or redeployment.

In respect of Regulation 5 concerning transfer, it was noted that the term was not defined. In an attempt to give meaning to the term, reliance was placed upon Administrative Instruction 302, under the superseded Public Service Act, but which was considered to be still in force, as part of the transitional arrangements under the PSM Act. The term "transfer" under that Instruction denoted:

> "..... substantive movement from one office to another office on a permanent basis. It does not include a movement to another office which has a salary package and conditions of employment which, when viewed as a whole, would place the officer in a more favourable position to that which he or she was previously experiencing."

Such a definition was considered to have application to the process which applied with the new positions in question.

As indicated, Mr Sheahan sought an Order from the Commission restricting appointments to the new positions in question from only the former 'Senior Counsellors'.

Mr Cloghan, on behalf of the respondent, submitted that the filling of the positions in question, by the process of advertising and choosing the incumbent on merit, is now, by virtue of exemption obtained from the promotional appeals process, a discretionary matter for the employer. As a consequence, the Redeployment and Redundancy Regulations have no effect.

Reference was then made to the Redeployment and Redundancy Regulations. With respect to Regulation 5, the word 'may' was referred to, and it was submitted that the application of the transfer process, was discretionary. Regulation 11, it was said, deals with the situation of an employee who cannot be transferred, who may then be able to be registered with a view to being redeployed. Such a process requires the employee to be offered "suitable employment" as defined. It is only at this point that reference is made to the 110% limit (Regulation 3(2)(b)(ii)).

It was submitted that this limit ought not be used to exclude employees from the application of Regulation 5.

Under Regulation 5, transfer is to be effected only "at the same or equivalent level of classification", and it can be argued that the Level 6 structure, because it involves four levels, is not equivalent for these purposes. Even if it were equivalent it is still a case of the employer choosing to exercise his discretion to invoke a transfer or not.

With respect to the alternate process of advertising the position and filling it on the basis of competitive selection, there is nothing unfair about this process; indeed, it is a process which is fair and equitable to all employees.

Finally, it was argued that the onus was upon Mr Sheahan to demonstrate that the Regulations were unfairly applied. It was put that WADOT was required to institute a process that was fair to all employees yet took account of the interests of the employer. In the end, Mr Sheahan's application was motivated by a desire to gain a benefit for himself.

An Order of the kind sought by Mr Sheahan was opposed.

Analysis and Conclusion

In these proceedings, it is clear that it is for the applicant Mr Sheahan, to demonstrate that WADOT had not been applying the Regulations fairly and properly, in enabling the former Counsellors to be eligible to apply for the new Level 6 positions in question. At the outset, it is accordingly necessary to determine that the Regulations actually had application to the recruitment process itself.

The Regulations, according to Regulation 4, 'Application', apply to all (public sector) employees employed in departments or organisations other than those expressly excluded in the case of certain benefits, which are not relevant to the present circumstances. The Regulations, by their title, apply to 'Redeployment and Redundancy', but more specifically they apply to the processes of transfer, voluntary severance, privatization and contracting out, redeployment and retraining.

The transfer process (Regulation 5) applies where an employee's position has been abolished and the employee is transferred to a new position in the same department or organisation, which is at the same or equivalent level of classification. Such transfer occurs however at the discretion of the department, in the sense of not being mandatory.

Redeployment (Regulation 13), on the other hand, can only apply where an employee's position has been abolished and where a transfer within the relevant department cannot occur. Then, there is an intervening step, namely that the department apply to the Minister for the registration of the employee. Again, the department has the discretion to make the application. The Minister, faced with an application, is obliged to register the employee, subject to the employee's circumstances fitting the Regulations. An offer of employment will then occur and redeployment will be effected. Where there is a refusal by the employee to accept the offer, or by the department to make the offer, the Minister can direct that the offer be accepted or made, as the case may be. What is deemed to be 'suitable' employment, is defined by the Act. This constitutes the most suitable actually available, where the maximum pay applicable is as close to that of the former position as reasonably practicable and in any case is within the range of 80% to 110% of the employee's maximum pay of that employee's former position.

These were the only processes relied upon by the applicant in these proceedings, and it is accordingly unnecessary to consider the Regulations relating to the other processes referred to above.

The question to be now asked is whether there are there any other relevant processes which concern recruitment.

In this respect, it is appropriate to consider the originating legislation itself, the PSM Act. S.36 of the Act provides a department or organisation with the authority to "determine organisational structures and arrangements" and to "create, transfer or abolish officers". S.64 deals with the appointment of public service officers (other than executive officers). It allows a department or organisation the discretion to appoint public service officers, subject to certain conditions, and to fill a vacancy in a position, provided it has first been advertised. Significantly, there are no express exclusions to the operation of that section. S.65 concerns the transfer of public service officers to positions within and between departments. The department is able to exercise its discretion to transfer to positions on the basis that is "in the interests" of the department to do so, and that the officer's classification is at the same level. The Regulations, as they relate to transfer, are consistent with this section.

There is no question that the positions of Counsellor and Senior Counsellor, were abolished. This is a matter of common ground. If one were to refer solely to the Regulations, one is led to the apparent conclusion that the only options open to WADOT, arising out of the decision to abolish positions, would have been to transfer or redeploy the employees effected. However, in referring beyond the Regulations, to the PSM Act itself, it can be seen that another option is available, namely the recruitment and appointment process confirmed by S.64. By virtue of there being no express exclusions to the clause, it appears open for a department or organisation to recruit and appoint an employee from within the department whose former position has been abolished, and who may or may not have been in an equivalent classification to that applicable to the new position. This is notwithstanding the fact that S.65, dealing with transfers, exists. The inference is, however, that because its application is discretionary, it is not an option that is required to be followed.

What actually was the nature of this discretion exercised by WADOT, by its initial advice to Counsellors and Senior Counsellors? The letter of 22 August 1995 from the Chief Executive to Counsellors (and Senior Counsellors) (Exhibit C1, Part 1) refers to the creation of new position(s) within the new Information and Career Advice Service, and the fact that it will commence after the positions "..... have been advertised and filled." Such a statement does not imply transfer, as provided by the Regulations, or the PSM Act.

Yet the statement is then made that: "In the first instance, an attempt will be made to transfer Counsellors to another position within the Department at the same or equivalent level of

classification. Primarily, the Department will be seeking to transfer employees into lecturing positions in their subject area ....." At first glance such a statement seems to conflict with the statement above concerning advertising and filling; but this is not the case, because it refers to "another position"; that is, a position other than one of the new positions, which would more than likely be a lecturing position.

With respect to the letter dated 28 September 1995 from the Chief Executive to the union (Exhibit C1, Part 13) setting out a synopsis of the meetings, the reference made to the options open did not include any reference to transfer as such, although it was implied in the reference to a return to lecturing. On the other hand, the reference to the agreement concerning quarantining, was in the context of a "competitive selection" process, which does not imply a transfer process.

With respect to the follow up letter of 4 October 1995, from the Chief Executive to Counsellors and Senior Counsellors (Exhibit C1, Part 13), in which reference is made to the agreement concerning quarantining, the only reference to transfer related to the circumstance of a staff member being unsuccessful in obtaining an "advertised (ie. new) position" or not applying for the position, with one of the options of "transfer to a lecturing position", being considered.

From a consideration of this correspondence, in the context of the Act and Regulations, the Commission is satisfied that the Chief Executive, in creating the new positions in question, consistent with S.64 of the Act, was not intending, by virtue of his advice to Counsellors (and Senior Counsellors), to transfer these former employees or any others to such new positions. Transfer was only intended to apply, in respect of Counsellors and Senior Counsellors, to existing positions in WADOT, especially to lecturing positions.

Whilst so deciding the Commission observes that the Chief Executive did not make the position as clear as it could have been made. The question of his disinclination to transfer employees to the new positions had to be implied from the letters. One would have thought that a matter of such consequence, to both WADOT itself and the Counsellors and Senior Counsellors concerned, would have been communicated in terms which laid out the process, unequivocally.

It is thus not altogether surprising that a Senior Counsellor, such as the applicant, Mr Sheahan, with all of his experience within WADOT, was not deflected at any point from his belief that a transfer to the new positions was what was intended to, and did, occur.

It follows though, that the condition precedent to Mr Sheahan's argument causes that whole argument to fall away. It commenced from the standpoint that the Senior Counsellor positions, having been classified as Level 6, were the "same or equivalent level of classification" as the new positions, at Level 6. Because of this equivalent level of classification the notion of transfer from one to the other was assumed as being the process. Granted that in Mr Sheahan's mind it was the logical process; but in the end of course, it was what the Chief Executive determined the process to be, that mattered. The Chief Executive possessed the discretion to so determine.

His agreement to quarantine the Level 6 positions in question to Counsellors, was an agreement reached in the context of his discretion to recruit and appoint employees to the positions. It was not in the context of transfer. His letter to the union, of 28 September 1995, makes that point clear, by the reference to "'quarantined' competitive selection". Accordingly, quarantining as such, is not a matter that arises out of the application of the Regulations. To so decide is not to deny the application of jurisdiction where such exists, in the manner determined by the Full Bench in The State School Teachers' Union of Western Australia (Inc.) *v.* The Minister for Education (75 WAIG 2689), but rather giving recognition to the fact that action in accordance with one provision of the PSM Act supplanted the operation of another provision of the Regulations made under that Act. That provision in the Act (S.64) does not allow for any challenge by aggrieved employees, in the manner in which the Regulations do.

It is not open, therefore, to argue that Counsellors are ineligible for the Level 6 positions in question.

It accordingly follows that it is not open for the Commission to find that the Transfer Regulation was not applied fairly and properly, in the case of Mr Sheahan.

The Commission observes in passing that whilst it may be said that the quarantining agreement reached, reflected an acknowledgment by WADOT that they would find an appropriate candidate for the new positions from within the Counsellors, there was also the implication that the Senior Counsellors were not necessarily adequate, in terms of meeting the new requirements of the new positions. Whether Mr Sheahan, in the event of he not being successful in his application for the remaining new positions, is to be left guessing as to this being the case, is a matter for WADOT, and not a matter upon which the Commission ought to be giving advice.

With respect to the process of Redeployment, it can be seen that such process is only applied under the Regulations, where it is determined that no further transfers within the Department can occur. It would seem that such would not be known about until all the new positions had been filled. Then, application for the registration of the employee has to be made, and this is a discretionary matter.

It follows therefore, that no reliance can be placed upon the need to meet the limits of the 80% to 110% maximum pay rule. So, for present purposes, it matters not that a Counsellor's existing maximum pay applicable to his classification may not be within the range of 80% to 110% of the maximum rate applicable to the new position.

There is accordingly no finding that can be made as to whether the Redeployment Regulation was applied fairly and properly, in Mr Sheahan's case.

The Commission is therefore left to conclude that the claim alleging that the Regulations were not applied fairly and properly, in accordance with s.95(3) and (4) of the PSM Act, has not been made out. As such, there is no scope for the Commission to require in effect that the Level 6 positions in question be quarantined to Senior Counsellors, as applicants. There will therefore be no interference from the Commission concerning the recruitment process finally put in place by the Chief Executive of WADOT by his letter of 4 October 1995 (Exhibit C1, Part 13). That process has been placed in suspension relating to two of the Level 6 positions in question, pending the outcome of these proceedings. It is now open for the process to proceed to conclusion.

The application by Mr Sheahan is thus dismissed. An Order in those terms will now issue.

In so acting, the Commission is not to be seen as insensitive to the underlying essence of Mr Sheahan's application, namely a concern that the recruitment, selection and appointment process was inequitable because it provided an opportunity for Counsellors who did not possess the same management experience and expertise as Senior Counsellors possessed, implying that they were therefore less suitable for the positions in question. Although this is not a question upon which the Commission is required to decide, the Commission would nevertheless observe that whilst the positions in question involve management skills, the possibility cannot be ruled out that one or some of the former Counsellors may have gained management experience elsewhere than within WADOT, yet had never held such a position in WADOT. Alternatively, there is also the prospect that although one or some of these Counsellors may have had no prior management experience, they may nevertheless, by demonstrated capacity and perhaps academic training in management, have provided sufficient indication to WADOT that they had the potential to manage in the manner required. It is to be noted that within the selection criteria for the positions, there is no reference to prior management experience as being essential.

Appearances: Mr D. Sheahan appeared on his own behalf.

Mr D. Cloghan appeared on behalf of the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Desmond Allan Sheahan

and

Honourable Minister for Education, Employment and Training.

No. 1123 of 1995.

COMMISSIONER R.H. GIFFORD.

22 December 1995.

Order.

HAVING heard Mr D. Sheahan on his own behalf and Mr D. Cloghan on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby Orders—

THAT the application be, and is hereby dismissed.

(Sgd.) R.H. GIFFORD,
[L.S] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Christopher Robert Wadley

and

Toska Pty Ltd trading as BP Southlake.

No. 545 of 1995.

COMMISSIONER A.R. BEECH.

22 December 1995.

Order.

WHEREAS a conference was convened in the Commission;

AND WHEREAS the matter was listed for hearing and determination;

AND WHEREAS the applicant subsequently advised that he wished to discontinue his application;

AND HAVING heard Ms K Lightman (of counsel) and later Ms L Black (of counsel) on behalf of the Applicant and Ms C Brown on behalf of the Respondent;

NOW THEREFORE I, the undersigned, Commissioner of the Western Australian Industrial Relations Commission, pursuant to the powers conferred on me under the Industrial Relations Act, 1979, hereby order:

THAT the application be discontinued.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Judith Maree Willox

and

Leeming Medical Centre
(Dr. Judy Craig).

No. 579 of 1995.

COMMISSIONER R.H. GIFFORD.

8 December 1995.

Order.

BY this application, the Applicant claimed that she was dismissed in a harsh, oppressive or unfair manner by the Respondent. The claim was denied by the Respondent.

A Conference, involving the parties, was conducted before the Commission on 29 June 1995, to consider the claim.

The Conference was then adjourned to enable the Applicant to consider the terms of settlement which had been proposed by the Respondent.

A further Conference was conducted before the Commission on 13 July 1995, to enable a report back to occur. In the course of the Conference, both parties indicated that they were prepared to accept a Recommendation from the Commission as the basis for the settlement of the claim. A Recommendation was accordingly made by the Commission, and the matter deemed settled.

A Notice of Discontinuance was filed by the Applicant with the Commission on 11 August 1995.

NOW THEREFORE, I, the undersigned, pursuant to the powers conferred by the Industrial Relations Act, 1979, do hereby Order—

THAT the application be discontinued.

(Sgd.) R.H. GIFFORD,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mathew Windle

and

Supreme Clean Window Cleaning Service.

No. 720 of 1995.

COMMISSIONER R.H. GIFFORD.

8 December 1995.

Order.

BY this application, the Applicant claimed that he was dismissed in a harsh, oppressive or unfair manner by the Respondent company. The claim was denied by the company.

A Conference, involving the parties, was conducted before the Commission on 26 July 1995.

A settlement of the claim was reached at the Conference.

A Notice of Discontinuance was filed by the Applicant with the Commission on 31 July 1995.

NOW THEREFORE, I, the undersigned, pursuant to the powers conferred by the Industrial Relations Act, 1979, do hereby Order—

THAT the application be discontinued.

(Sgd.) R.H. GIFFORD,
[L.S.] Commissioner.

CONCILIATION ORDERS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and Another

and

The Readymix Group.

No. 690 of 1995.

Metal and Electrical Trades Quarrying Industry Order No. 1963 of 1990.

COMMISSIONER P.E. SCOTT.

29 December 1995.

Order.

WHEREAS this application to replace an order was filed on the 16th day of June 1995 in accordance with the Industrial Relations Act, 1979; and

WHEREAS the Applicant requested that the listing of the matter be postponed; and

WHEREAS the Commission attempted to establish the progress of the application by way of letters dated the 19th day of October 1995 and the 4th day of December 1995 to which no replies were received;

NOW THEREFORE the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT this matter be dismissed for want of prosecution.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Hon. Minister for Police

and

Western Australian Police Union of Workers.

No. 1389 of 1995.

Police Award
No. 2 of 1966.

CHIEF COMMISSIONER W.S. COLEMAN.

14 December 1995.

Order.

HAVING heard Mr J. Kelly on behalf of the Applicant and Mr J. Bannan on behalf of the Respondent and by consent, the Commission, pursuant to Section 23 of the Industrial Relations Act, 1979, hereby orders:

(1) Notwithstanding the provisions contained in Clause 17.—Hours of Duty of the Police Award No. 2 of 1966 as amended and consolidated, where the Commissioner and the majority of employees in the Police Communications Branch genuinely agree in accordance with the requirements of Clause 36.—Award Modernisation of that award, the variation in shift arrangements allowed in subclause (9) of Clause 17.—Hours of Duty of that award may be further varied to allow shifts of twelve (12) hours and in excess of forty (40) hours per week to be worked in the Police Communications Branch.

(2) The terms and conditions of this arrangement as agreed by management and the majority of employees in the Police Communications Branch shall have a term of twelve (12) months from the 1st day of January, 1996, subject to a review of this Order by the parties following a period of six (6) months operation.

(3) This Order shall apply to all members of the Western Australian Police Force who from time to time are stationed in the Police Communications Branch.

(Sgd.) W.S. COLEMAN,
[L.S] Chief Commissioner.

CONFERENCES—
Matters arising out of—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

St John of God Hospital

and

The Australian Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch.

No. C 326 of 1995.

COMMISSIONER C.B. PARKS.

22 December 1995.

Reasons for Decision.

THE COMMISSIONER: On 1 November 1995 the Commission, pursuant to s.44(6)(ba) of the Industrial Relations Act 1979, issued an interlocutory order which commands The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch and its members to cease and not re-engaged in, industrial action against the St John of God Hospital Murdoch until the dispute between them has been resolved by conciliation or arbitration. A term of the order is that it remain in force until cancelled by the Commission. Now before the Commission is an application for such cancellation by the aforenamed union.

The terms and conditions of employment for the employees subject to the interlocutory order are presently regulated by an industrial agreement made between the parties to this proceeding and registered by this Commission pursuant to s.41 of the Industrial Relations Act 1979 (the St John of God Hospital Murdoch Caregiver Agreement 1994). Currently the terms and conditions of employment for such employees are being renegotiated and in concert with that the employees took industrial action in an effort to obtain an early resolution, in terms which best suit them.

It has been declared to the hospital that the end result sought on behalf of the employees is agreed terms and conditions of employment that are given effect in the form of a certified agreement pursuant to the Industrial Relations Act 1988. The union submits that it was denied the opportunity to fully address the relevance of that situation prior to the Commission making the interlocutory order.

Previous advice to the Commission that industrial action at the hospital ceased upon the issuance of the interlocutory order, and has not been recommenced, has been confirmed in the present proceedings. Notwithstanding the cessation of action following upon the making of the interlocutory order, that conduct, according to the respondent union, is to be viewed as a display of courtesy toward the Commission (and I imply, not a submissive response to the commands of the order) because the order has "no practical effect". The absence of practical effect is said to exist by reason of the Australian Industrial Relations Commission having found an industrial dispute to exist between The Australian Liquor, Hospitality and Miscellaneous Workers Union and the St John of God Hospital Murdoch (C No. 20000 of 1994).

Hereinafter The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch will be referred to as the "State union" and the Australian Liquor, Hospitality and Miscellaneous Workers Union as the "Federal organisation".

Exhibited to the Commission (exhibit K2) is a Notice of Initiation of Bargaining Period—form R8F, said to have been filed in the Australian Industrial Relations Commission, by the Federal organisation, with the intention of pursuing an agreement and the certification thereof, under Division 2 of Part VIB of the Industrial Relations Act 1988. A notice of this type directed at the hospital, subject to the satisfaction of several precedent conditions, such as the requirement that the Federal organisation give 72 hours written notice of an intention that employee members will take industrial action, attracts statutory authorisation for industrial action to be taken on a protected basis as part of the bargaining process. Accordingly any future industrial action which may occur in relation to the present dispute will be an act involving the Federal organisation and the employers as members hereof.

The State union asserts that the employees subject to the interlocutory order are also members of the Federal organisation and in that capacity they are therefore authorised to take protected action, that is, industrial action which by operation of the Industrial Relations Act 1988 is immune from the operation of State laws, including orders of this Commission.

Additionally, s.128 of the Industrial Relations Act 1988 provides an avenue for the Federal organisation to petition a Full Bench of the Australian Industrial Relations Commission to restrain this Commission from dealing with the dispute or matter. The State union implies that such restraint could reasonably be expected to be granted, given that a dispute has been formally found to exist within the jurisdiction of the Australian Industrial Relations Commission and the Federal organisation has acted within its rights to pursue a resolution to that dispute which involves the use of authorised, and therefore protected, action.

Thus, says the State union, the interlocutory order directed at it and the hospital's employees should, notwithstanding the employees have dual membership be viewed as being without practical effect and that is justifiable reason for it to be cancelled. Further it is contended that the interlocutory order has been wrongly made and hence that is additional reason to cancel the order, it is said.

Firstly, it is submitted that the nature of an order which may be made pursuant to s.44 of the Industrial Relations Act, 1979 is well settled to be one that is interim and relates to an industrial dispute or matter which remains to be resolved by conciliation or arbitration. It is asserted by the State union that for there to be a valid exercise of the power, whatever remains to be resolved must be such that the pursuit of the resolution, and ultimately the resolution itself, remain subject to the jurisdiction of this Commission. That circumstance, it is said does not exist in relation to the present matter because there is no dispute of a state character but one that involves the Federal organisation and is being pursued within the jurisdiction of the Australian Industrial Relations Commission.

Secondly the Commission justified the making of the interlocutory order on the stated basis that cessation of the industrial action would avert a situation which had "the potential to be detrimental to the health and will being of the patients under treatment of the (hospital)" and that such was "necessary to prevent a deterioration of industrial relations between the parties".

It is argued by the State union that the Commission, according to the express terms of s.44(6)(ba) of the Industrial Relations Act 1979, may only make such an interlocutory order for the second of the two reasons stated and not in consequence of any public interest consideration such as the welfare of patients. Thus again, because there is no dispute between the State union, its members, and the hospital, there is no industrial matter which remains to be resolved, nor is there any associated industrial action involving the State union and its members that could cause a deterioration of relations and, in any event, there are no presently active relations to be so effected.

Finally, the interlocutory order restraining industrial action was made in response to a petition by the hospital and in so acting the hospital has departed from a principle expressed in the St John of God Hospital Murdoch Caregiver Agreement 1994. Therein the hospital agreed that employees have the right to engage in "collective actions". Actions which the union asserts may include industrial action ie the collective withdrawal of the employees' services, per principle 7, contained within the section of the agreement titled Principles for Employment Relationships Based on Fidelity To Our Heritage. That, "collective action" should be so interpreted, follows in light of the religious ethos of the hospital and the pronouncement by the Vatican Council II (at p974) that "the strike remains even in the circumstances of today a necessary (although an ultimate) means for the defence of workers' rights and the satisfaction of their lawful aspirations".

The essential elements of the State union's arguments were not addressed by the advocate for the hospital but, in effect, it was pleaded that it would be less than equitable were the interlocutory order to be cancelled. It was said that, although a desire to obtain an agreement certified pursuant to the Industrial Relations Act 1988 has been conveyed to the hospital on behalf of the relevant employees, such is of recent origin and generally the tenor of negotiations had been that the state registered agreement was simply being renegotiated and what resulted would therefore retain its state character.

It appeared to the Commission during proceedings that, notwithstanding the hospital had been notified that a certified agreement was now being sought, correspondence lodged with the Commission shows that communications with the hospital throughout the period of renegotiation where generated and received in the name of the state union. That therefore was taken by the Commission to suggest the State union had had a direct part in negotiations and thus it was reasonable for the hospital to believe that the industrial dispute should not be viewed as being one solely with the Federal organisation and its members. In the alternative, the Commission thought there may have been misleading conduct by the State union.

The entity which has represented the employees throughout, appears to be that of the State union, according to the title printed upon the letterhead of the aforementioned correspondence. However, perusal of the Federal organisation's registered rules reveal that the Western Australian divisional branch of the Federal organisation, for a transitional period that is still current, carries the State union title.

Hence I conclude that the hospital has wrongly assumed, as the Commission did during proceedings, that the State union had a part in the negotiations separate to the Federal organisation. Equally the correspondence is not evidence of any misleading conduct by the State union.

For the reasons which follow I do not find it necessary to canvass all the arguments put to the Commission. I agree with the advocate for the State union that s.44 of the Industrial Relations Act, 1979 does not empower the commission to make an interlocutory order for a reason which involves public interest alone. However the nature of a public interest matter may be such that, in the opinion of the Commission, is likely to influence the attitude and/or conduct of one party to the dispute and therefore adversely affect the industrial relations. In the present matter the industrial action restrained by the Commission was commenced with little warning. The complaint made by the hospital focussed upon the absence of that warning and therefore an inability to make alternative arrangements to address the welfare of patients. The Commission concluded that management of the hospital regarded the consequences likely to flow from industrial action commenced at short notice to be a dereliction of their duty of care. Therefore, the Commission reached the opinion that industrial relations may suffer, and would certainly do so if a patient were to suffer injury as a consequence, and accordingly an order to end the action was justified.

There has been no argument put, in relation to the present application for cancellation of the interlocutory order, that industrial action, taken with adequate notice, would be injurious to patients. I believe that the emotions generated at the time of industrial action will have subsided. Further the Commission is told that negotiations have been resumed and, absent any suggestion to the contrary, I therefore assume they have been amicable.

The divisional branch of the Federal organisation is pursuing an agreement with the hospital and that it is entitled to do. Such an organisation is also entitled to exercise any statutory right it may have and that applies equally to the members thereof. Taking industrial action is one such right which flowed

to them upon the filing of form R8F (exhibit K2), subject to the satisfaction of procedural requirements being met.

Although form R8F does not exhibit any registration mark identifiable as that of the Australian Industrial Relations Commission, the assertion that it has been submitted to that Commission has gone unchallenged and therefore I accept that such has occurred. Consequently, protected industrial action may be taken by the employees and upon my reading of s.170PM(3) of the Industrial Relations Act 1988, no action lies on this jurisdiction in respect of the industrial action unless, so far as could be relevant here, personal injury is involved or likely to be involved. It has not been shown that personal injury to a patient or patients is likely to occur in the future and therefore any protected action is immune to state law ie orders of this Commission. The interlocutory order will therefore be cancelled.

Appearances: Mr A. Smetana appeared on behalf of the applicant.

Mr D. Kelly appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

St John of God Hospital

and

The Australian Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch.

No. C 326 of 1995.

COMMISSIONER C.B. PARKS.

22 December 1995.

Order.

HAVING heard Mr A. Smetana on behalf of the Applicant and Mr D. Kelly on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the interlocutory order of the Commission, No. C 326 of 1995, dated 1 November 1995, be and is hereby cancelled from the date of this order.

(Sgd.) C.B. PARKS,
[L.S] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

C H Day and Co Pty Ltd trading as Geo A Esslemont.

No. C 316 of 1995.

COMMISSIONER P.E. SCOTT.

16 November 1995.

Reasons for Decision.

THE Commission convened a conference to deal with an application by the Union regarding a site allowance to be paid for work being undertaken at the clubhouse construction site at the Burswood Golf Complex. At the time of the conference the parties had agreed that a site allowance be paid but were unable to agree on the appropriate amount. They subsequently agreed to the amount of $1.40 per hour worked and sought the Commission's endorsement of this by way of an order pursuant to section 44 to ratify their agreement.

The Commission was advised that the clubhouse construction is valued at $3.2 million, it is a single storey development of brick work with a tiled roof and significant underground services. The disabilities which the parties are agreed warrant the payment of a site allowance of $1.40 per hour worked are that it is a large but narrow site with a fair distance from the work areas to amenities, it is a sandy site very close to the water's edge and therefore attracts insects and mosquitos making work unpleasant and difficult.

The Commission undertook inspections of the site on Thursday 16 November 1995 to satisfy itself that these disabilities are in fact experienced and that the site is one which would warrant the payment of an allowance. Having seen the site, I am satisfied that a site allowance in the amount agreed between the parties is warranted. Accordingly, an order recording the agreement of the parties shall issue.

Appearances: Mr G Giffard—The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers.

Mr P Day—C H Day and Co Pty Ltd trading as Geo A Esslemont.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

C H Day and Co Pty Ltd trading as Geo A Esslemont.

No. C 316 of 1995.

COMMISSIONER P.E. SCOTT.

28 November 1995.

Order.

WHEREAS the parties were in dispute as to a payment of a site allowance for the clubhouse construction site at the Burswood Golf Complex; and

WHEREAS the Commission convened a conference pursuant to section 44 of the Industrial Relations Act, 1979 and agreement was reached between the parties as to a site allowance to be paid; and

WHEREAS the Commission undertook inspections of the site and is satisfied that the site allowance agreed between the parties is appropriate;

NOW THEREFORE the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT the Respondent pay to employees eligible to be members of the Applicant Union a site allowance of $1.40 per hour worked in lieu of all disabilities provided in Clause 9.—Special Rates and Provisions of the Building Trades (Construction) Award 1987, No. R 14 of 1978. This Order shall apply on and from the 13th day of November 1995.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Australian Municipal, Administrative, Clerical and Services Union of Employees, WA Clerical and Administrative Branch

and

Cranston & Sons Pty Ltd trading as Challenge Pumps.

No. C348 of 1995.

COMMISSIONER P.E. SCOTT.

29 November 1995.

Order.

WHEREAS this is a claim of unfair dismissal made pursuant to section 44 of the Industrial Relations Act, 1979; and

WHEREAS the Applicant sought leave to discontinue the application by way of letter dated the 27th day of November 1995;

NOW THEREFORE the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT this application be, and is hereby discontinued.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

CONFERENCES—
Matters referred—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Amalgamated Metal Workers and Shipwrights Union of Western Australia and the Australian Electrical, Electronics, Foundry and Engineering Union (Western Australian Branch)

and

Australian Agricultural Machinery Pty Ltd.

No. CR 432 of 1991.

COMMISSIONER R.N. GEORGE.

3 January 1996.

Reasons for Decision.

THE COMMISSIONER: By this application the Applicant unions seek an Order pursuant to subclause (8) of Clause 33A.—Redundancy, of the Metals Trades (General) Award 1966, No. 13 of 1965 (hereinafter referred to as "the award"), to the effect that any entitlement of named employees of the Respondent to redundancy pay pursuant to subclause (3) of that Clause shall not be off-set by the amount of superannuation benefit received by the employee which is attributable to employer contributions.

The matter for determination is set out in Schedule A to the Memorandum Of Matters For Hearing And Determination in the following terms:

> "The Applicant unions' claim that Clause 33A.—Redundancy of the Metal Trades (General) Award 1966 (No. 13 of 1965) ("the award") applies to the persons listed in the attached Schedule B under column 1 ("the Persons") whose services were terminated by the Respondent on the date shown in column 2.
>
> Accordingly, the Applicant unions seek an order from the Industrial Relations Commission pursuant to paragraph (a) of subclause (8) of Clause 33A.—Redundancy of the award that any entitlement to severance pay specified in Clause 33A.—Redundancy of the award not be off-set by any amount of superannuation benefit which the Persons receive including those attributable to the Respondent's contributions."

In the course of proceedings, Schedule B to the application was amended by leave of the Commission to delete three (3) of the names listed therein so that the application now applies only in respect of the following persons:

Ivor Bridges
Derek Oxley
Vangelis Rapos
Ken Wolfenden
John McGrath
Stan Rybicki
Jim Wetherbee

Subclause (8) Superannuation Benefits, of Clause 33A.—Redundancy, of the award is in the following terms.

"(8) Superannuation Benefits

(a) Subject to further order of the Commission where an employee, who is terminated receives a benefit from a superannuation scheme, the employee shall only receive under subclause (3) of this clause the difference between the severance pay specified in that subclause and the amount of the superannuation benefit the employee receives which is attributable to employer contributions only.

(b) If the superannuation benefit is greater than the amount due under subclause (3) of this clause then the employee shall receive no payment under that subclause."

[66 WAIG 580 at 599]

The effect of what is claimed by the Applicant unions is that an Order issue to permit a departure from the prima facie position under the award which limits the entitlement of an employee to severance pay pursuant to subclause (3) of Clause 33A of the award to the difference between the severance pay specified and any amount received by the employee by way of a superannuation benefit which is attributable to employer contributions.

At the outset of proceedings Mr Lilburne, for the Respondent, argued that the Commission ought refrain from hearing and determining the application on grounds which may be summarised as follows.

(1) That the respondent is not bound by the award and further that the question of Respondency was a matter before the Industrial Magistrate in relation to a number of complaints and that in those circumstances the Commission should adjourn the application pending the outcome of those proceedings.

(2) That the Commission is without jurisdiction to determine whether—

(a) the Respondent is bound by the award;

(b) the persons named in Schedule B to the Memorandum Of Matters For Hearing And Determination did in fact work in classifications covered by the award; or

(c) the circumstances surrounding the terminations constitute redundancy for the purposes of the award.

The crux of Mr Lilburne's argument was that before the Commission considered whether an Order of the type contemplated under subclause (8) of Clause 33A of the award should issue, it would be necessary to make a declaration "of an existing right and obligation" (transcript page 12), that declaration being that the Respondent is bound by the award—a fact which is denied by the Respondent. Mr Lilburne drew support for this submission by reference to the Full Bench of the Commission in Crewe and Sons Pty Ltd and Amalgamated Metal Workers and Shipwrights Union (69 WAIG 2623) where at 2627 the Full Bench cited a number of Federal authorities including re Cram and Others: ex parté Newcastle Wallsend Coal Company Pty Ltd (163 CLR 140), as authority for the principle that a declaration as to an existing right involves the exercise of judicial power and as such an Order of that type can not be made by the Commission. The Full Bench in Crewe and Sons Pty Ltd extracted from the joint majority judgement of Mason CJ, Dean, Dawson and Toohey JJ in Re Cram and Others (Supra) a number of principles relating to the issue which include the following.

"(6) The making of a binding declaration of right is an instance of the exercise of judicial power.

It stands outside the arbitral function.

But there is no substance in the suggestion that an industrial tribunal cannot interpret laws, awards and other legal instruments. A tribunal could not discharge its arbitral functions if it were unable to form an opinion on a matter of interpretation. The formation of views and opinions on matters of interpretation in arbitral proceedings does not of itself amount to a usurpation of judicial power (see Cessnock Collieries Case (op cit.) and Australian Coal and Shale Employees' Federation Case (op cit.) at page 174 and R. v. Gough; ex parte Key Meats Pty Ltd (1982) 148 CLR 582 at 596-597) (our underlining). [Put in the context of the Industrial Relations Act (W.A.) it would not necessarily amount to an intrusion on the section 46 power].

(7) Indeed, a tribunal may find it necessary to form an opinion as to the existing legal rights of the parties as a step in arriving at the ultimate conclusions on which the tribunal bases the making of an award intended to regulate the future rights of the parties [see Aberdare Collieries Case (op cit.)]. Of course, the formation of such an opinion does not bind the parties and cannot operate as a binding declaration of rights."

[69 WAIG 2623 at 2627]

In this matter the Applicant unions seek an Order pursuant to the provisions of subclause (8) of Clause 33A of the award which requires the exercise of an arbitral function. The Commission should not embark on that course unless it first forms an opinion and makes a finding as to award coverage where that matter is in dispute. Such a finding in these circumstances is not, in my view, against the authority in Crewe and Son Pty Ltd (Supra).

As to the question of jurisdiction to determine whether the circumstances surrounding the termination of the employees subject to the application constitute redundancy for the purposes of the award, Mr Logan for the Applicant unions rightly pointed out that this question does not arise from the application before the Commission. The application seeks an Order that certain payments "may not be off-set against any entitlement to severance pay specified in Clause 33A.—Redundancy, of the award" (Schedule A to the Application) and does not go to the question of whether or not an entitlement to severance pay exists.

In considering whether the award applies to the Respondent in these proceedings the relevant principles to be applied are as set out in Federated Clerks' Union of Australia Industrial Union of Workers, WA Branch, Appellant and Hospital Salaried Officers Association of Western Australia (Union of Workers), First Respondent and Spastic Welfare Association of WA Incorporated, Second Respondent (59 WAIG 905). In that matter Brinsden J. referred to the following passage from the Judgement of Burt J., as he then was, in Western Australian Carpenters and Joiners Union v. Terry Glover Pty Ltd.

"Each and every award must relate to an industry and what the industry is, is in every case primarily a question of construction of the particular award. It may be that the question is not only primarily but finally a question of construction, and it may be that the award as a matter of construction fails to give the final answer and requires for that purpose that findings of fact be made.

An award if made in terms "to relate to the shipbuilding industry" would be of the first-mentioned kind. An award expressed to relate, as the one under construction here is expressed to relate, to "the industries carried on by the respondents set out in the schedule attached to this award" is of the other kind. In such a case the industry to which the award relates cannot be made known without definition of the industries carried on by the respondents. And this is necessarily a question of fact."

[50 WAIG 704 at 705](my emphasis)

Brinsden J. went on to describe the task to be undertaken by the Commission in the following terms.

"The enquiry therefore is to determine by means of construction of the award to what industry it relates. It may be as His Honour points out that that question cannot be answered unless findings of fact are made. An award by its scope clause may state succinctly and clearly to what industry it relates as in the example given by His Honour the "Ship-building industry". If it should do so it is then not necessary to enter into any fact finding exercise to determine to what industry that award relates. On the other hand, the scope clause may merely state that it relates to the industry carried on by the respondents set out in the schedule. In that case it is necessary to determine as a matter of fact what industries or industry is carried on by the respondents before it can be determined to what industry or industries that award relates."

[59 WAIG 905 at 908]

In the matter now before the Commission the award is of the first kind described and while the industries to which it relates are ascertainable by reference to the Scope clause of the Award, and to the Second Schedule, List of Respondents, where named respondents are grouped under subheadings descriptive of industries of which they are a representative, it only applies to employees employed in callings mentioned in the Award and that requires findings of fact.

Clause 3.—Area and Scope, of the Award reads as follows.

"This award relates to each industry mentioned in the Second Schedule to this award and applies to all employees employed in each such industry in any calling mentioned in Clause 32.—Wages (including the appendix thereto) of Part I—General or Clause 10.—Wages of Part II—Construction Work of this award but does not apply within the area occupied and controlled by the United States Navy at and in the vicinity of North-West Cape in relation to Increment 1 of the construction of the Communications Centre."

[68 WAIG 1974]

The Second Schedule, List of Respondents, sets out under industry headings such as Engineers—General; Foundries; Machinery Manufacturers; etc, various named respondents. The Respondent in this matter is not a respondent named in the Second Schedule. If, however, it is established that the Respondent is engaged in an industry identified in the Second Schedule and has employees engaged in a calling mentioned in Clause 32.—Wages, then the award applies in respect of those employees (See S.37 of the Act and the reference by the Industrial Appeal Court at 59 WAIG 907 to Donovan's Case).

The material before the Commission establishes that the principal activity of the Respondent is the manufacture/distribution of farm machinery and equipment (See for example Exhibits 1 and 2). Evidence called by the Applicant unions through employees of the Respondent who described their work, the work of others who worked with them (including those employees the subject of the claim now before the Commission), and the work of the Respondent, also confirmed that to be the case. The evidence also established that the work of the various divisions of the Respondent in which the employees concerned were employed fell within industries described in the Award, in particular Machinery Manufacturers, Engineers—General, Diemakers and Foundries. In addition, it was established that each of the employees named in the amended Schedule B to the Application were engaged in callings mentioned in the Award. No evidence was called on behalf of the Respondent to the contrary.

Mr Lilburne submitted that in considering whether the Respondent fell within an industry described in the award it was necessary to first establish the nature of the industry as at the date the award was made. This proposition is called into question by the Full Bench in Freshwest Corporation Pty Ltd v Transport Workers Union of Australia, WA Branch (70 WAIG 3963) where the view was expressed that the relevant industries should be determined as they currently are, rather than at the date of the award. Either way I am satisfied on the submissions and evidence that the undertakings of the Respondent are contemplated within the industries in the Schedule to the award identified above.

The Commission also dealt with the request for an adjournment of the hearing pending the outcome of proceedings before the Industrial Magistrate. It seemed from what was put to the Commission that the matter before the Industrial Magistrate concerned enforcement proceedings which raised the questions of respondency and of whether the circumstances surrounding the termination of certain employees by the Respondent invoked the redundancy provisions of the award. Having considered the arguments in relation to the request, the Commission concluded that the matters before it and the Industrial Magistrate raised different issues and there was no conflict or prejudice which would support the application for an adjournment.

For the reasons set out above both the preliminary argument as to jurisdiction and the application for an adjournment were dismissed.

The Commission was then asked by Mr Lilburne to consider whether the application before it sought to vary the award and if so whether there had been a failure to comply with the Industrial Relations Act, 1979 (hereinafter referred to as the

Act) and the State Wage Principles as enunciated by the Commission in Court Session.

As I understand the argument, it is that an Order to prevent the set-off by the Respondent of a superannuation benefit against an employee's entitlement to severance pay pursuant to subclause (3) of Clause 33A of the award would have the effect of varying the existing provisions of subclause (8) of Clause 33A which provides that right. As such, Mr Lilburne argued that the application could only be made pursuant to Section 40 of the Act and in compliance with associated provisions, including Regulation 12, which go to service and other matters. Further, it was said that any variation of the award would have to be dealt with in accordance with the State Wage Principles by way of a "Special Case" and that it had not been demonstrated how the present application complied with those Principles.

In reply, Mr Logan submitted that Mr Lilburne's argument misconstrued the application and the award provision under which it was made. Mr Logan submitted that:

> "The company already has a power to offset its redundancy payments against superannuation. If the superannuation benefits are employer contributions only, and within the deeds of adherence of that superannuation fund, it has specifically said the company could do that.
>
> Now, that was clearly made out in the TCR case and it was clearly made out in the supplementary decision of the TCR case. The wording which was put into the Federal Metal Industry Award and put into the Metal Trades (General) Award automatically allowed the company to have that capacity to offset. The wording of the Metal Trades (General) Award gives the employees, and in this case the union, the capacity to bring a case before the commission seeking an exemption from that power that the company has in respect to those particular employees, and the commission will only issue its order on the merit of the case put forward.
>
> Now, that doesn't vary the award."
>
> [Transcript Page 20]

Mr Lilburne referred in support of his submission to a matter before Deputy President Riordan of the Australian Industrial Relations Commission where an application concerning the off-set against severance payments of superannuation benefits resulting from employer contributions to a superannuation fund was dealt with as an application to vary the award (Symons case—Print H7844). I do not understand, however, how that matter could be said to assist Mr Lilburne's argument. The application in Symons case was in different terms to the one now before the Commission in that it concerned an employer application for a variation to the Clothing Trades Award 1982, to give legal effect to the off-set available against severance payments for superannuation benefits resulting from employer contributions to a superannuation fund in terms of Clause 51(c) and (h) of that award. On appeal to the Full Bench of the Australian Industrial Relations Commission, it was concluded that the application before the Deputy President at first instance was unnecessary as it was an application by the employer to effectively confirm an entitlement which otherwise independently existed under the terms of the award (Print J2116).

The Full Bench of the Australian Industrial Relations Commission in Symons case (Supra) explained the reason why the general rule expressed in the award then under consideration (which is in the same terms as the general rule set out in subclause (8)(a) of Clause 33A of the award the subject of these proceedings) was "subject to further order of the Commission" and said—

> "In the TCR decision of 14 December 1984 the employers claimed that a provision should be inserted in any award made to provide that:
>
> > "Where an employee who is terminated receives a benefit from a superannuation scheme, he/she shall only receive under clause 6 the difference between the severance pay specified in that clause and the amount of the superannuation benefit he/she receives which is attributable to employer contributions only. If this superannuation benefit is greater than the amount due under clause 6 then he/she shall receive no payment under that clause."
>
> In respect of that application the TCR Full Bench said, amongst other things:
>
> > "There is substantial merit in the employers' submission that where an employer had voluntarily introduced a superannuation scheme, and his/her contributions are paid to an employee on termination, it would be inequitable to make him/her pay severance pay in addition.
> >
> > However, as the ACTU has claimed, there may be cases where a different solution is warranted.
> >
> > In the circumstances, we consider that we should add to the clause suggested by the employer the expression 'subject to further order of the Commission'."
>
> In our view, the TCR case decided that the Commission would need to be satisfied that circumstances existed which would justify a departure from the prima facie position provided for in clause 51(h) of the award."
>
> [Print J2116 at page 3]

The Full Bench went on to examine the circumstances of the particular case and concluded that there was nothing in the material before it to warrant a departure of the prima facie position under the award. This is the same question that is now before the Commission in these proceedings (ie are there circumstances to warrant a departure of the prima facie position under the award). Nothing in the application seeks to or could result in a variation to the award as contended by Mr Lilburne and I find no substance in his submission in this regard.

I turn now to deal with the merit of the Application.

By detailed submissions and evidence relating to the history of the Respondent's conduct in the operation of its superannuation fund and the circumstances of the termination of the employees of the Respondent when it rationalised its operations due to financial difficulties, Mr Street, also appearing on behalf of the Applicant unions, sought to establish that the Respondent had acted unfairly and had operated its superannuation fund for its own benefit, rather than for the benefit of employee members and that the prima facie position under the award should not therefore apply. In particular Mr Street contended that—

1. the superannuation fund was in the nature of a compulsory fund;
2. Directors of the Respondent company had superior benefits under the superannuation fund to those of other categories of employees;
3. the Respondent received taxation benefits from the scheme;
4. superannuation funds were used for a loan to the Respondent of $170,000 and for a computer lease;
5. the employees subject to the application were paid up to a maximum of 77.5% of voluntary employer contributions in accordance with the vesting schedule whereas previously it had been the policy of the Respondent to pay 100%;
6. the Respondent ceased voluntary contributions to the superannuation fund on 1 November 1990; and
7. forgone benefits in the superannuation fund were used to meet the commitments of the Respondent.

Towards the close of his submissions Mr Street was referred by the Commission to the approach of the Full Bench of the Australian Industrial Relations Commission in Symons case (Supra) and to the summary of factors taken into account in deciding whether the prima facie position under the award in relation to the set-off of superannuation payments against redundancy entitlements should be departed from (Supra at p.4). Mr Street was requested to provide the Commission with a similar summary and that summary forms part of the record of proceedings (See Exhibit 7). The summary, which was elaborated upon by Mr Street, and the evidence on behalf of both the Applicant and the Respondent as to its content, has been taken into account in the determination of this Application.

Mr Lilburne for the Respondent in opposing the claim repeated (and in some areas expanded upon) the preliminary points ruled upon earlier in proceedings and then opened his argument by saying that if a further order was to be issued in accordance with subclause (8) of Clause 33A of the award then the first step was to interpret what is meant by the words "subject to further order" as used in that subclause. Mr Lilburne submitted that the only construction which could be placed on those words was that it would require a variation to the award which would apply to all Respondents. That argument was developed by comparing subclause (8) of Clause 33A of the award against subclauses (5), (11) and (12). In all cases these subclauses provide for a variation of the prima facie position under the award but in relation to subclauses (5), (11) and (12) reference is made to the variation being "in a particular redundancy case". In those circumstances, in Mr Lilburne's submission, the words "subject to further order"in subclause (8) can only mean in relation to varying the award in respect of all Respondents, rather than in a particular case. Mr Lilburne submitted that this matter was not addressed by the majority in Symons case (Supra) as "the set off was permitted by the majority so it was not needed to be addressed" (Transcript p.236). Mr Lilburne noted, however, that Munro J. in his dissenting decision had reviewed the authorities and formulated a number of propositions as to applicable principle to be followed in considering the set-off of superannuation benefits against severance payments. The first proposition was that:

> "• An element of the TCR test case decisions was the reservation to the Commission of a discretion to make an order in a particular case granting relief from exercise of the right given an employer to set off superannuation benefits;"
>
> [Print J2116](my emphasis)

In Mr Lilburne's submission that was an incorrect proposition given the differences in the wording referred to by him in subclauses (5), (8), (11) and (12) of Clause 33A. Mr Lilburne's argument in this regard cannot be sustained. It is clearly against the authority in Symons case (Supra) and what was said by the Full Bench of the Australian Industrial Relations Commission in the TCR test case (See 294 CAR 175 and 295 CAR 673).

It was also argued by Mr Lilburne that all the cases referred to in the Symons case (Supra) related to removing the ability to off-set superannuation benefits against severance payments in future applications, not to past applications, although he did not say what was the relevance of that particular submission.

The final point made by Mr Lilburne was that the Commission has no power to grant an Order in the terms sought as to do so would be to give the decision retrospective effect, contrary to the provisions of subsection (3) of Section 39 of the Act. Mr Lilburne argued that the Commission could grant retrospective operation to an Order only if there were special circumstances to justify that occurring and in his submission there were none. Further, Mr Lilburne said that to give the Order retrospective effect would expose the respondent to prosecution for actions which were legal when they were carried out. In this regard Mr Lilburne relied on the authority in the Maritime Industry Seagoing Remanning Award (1979) AILR 336. In that matter, however, the Full Bench of the Australian Industrial Relations Commission noted that the decision of the Commission at first instance which varied the award then under consideration placed the employers bound by that decision in a position where they were subject to an obligation impossible of fulfilment, yet for breach of which they were liable. That is simply not the case in the matter now before the Commission and I do not accept Mr Lilburne's argument in this regard.

Having dealt with the preliminary points Mr Lilburne submitted that if the Commission was to find against him on all of the points raised then the claim should be refused in any event as there is no merit in the argument that the prima facie position available to the Respondent ought be departed from.

Mr Lilburne informed the Commission that although subclause (8) of Clause 33A of the award enables an employer to set-off any of its superannuation contributions against redundancy payments, the commitment of the Respondent in this case was not to do that with the 3% award based superannuation contributions. The only question to be answered therefore is whether the superannuation payments received on termination by the employees the subject of this application were payments of the sort that should be off-set against redundancy payments to which they might otherwise be entitled. In consideration of this question Mr Lilburne urged that the Commission take into account the following matters.

1. The Respondent had been a generous and considerate employer and had provided superannuation for its employees since approximately 1973, well before it was a requirement through the award system.
2. From at least 1988, if not before, membership of the superannuation fund was not compulsory and employees who were not members still received the benefit of the 3% superannuation payments through the award system.
3. The Respondent in 1989 gave up its discretion in relation to the pay out of employer superannuation contributions in favour of automatic vesting.
4. Prior to the downturn in the economy and the onset of its financial difficulties, the Respondent adopted the practice of exercising its discretion in a way that allowed employees with 10 years or more service on termination to receive 100% of voluntary employer contributions.
5. Although economic difficulties forced the Respondent to sell its F & R Tough foundry division, it maintained employment for at least some of its employees in its other operations, despite the fact that the employees were not qualified to work in those areas.
6. The Respondent generally made overaward payments to its employees and provided excellent facilities, including an amenities building which included a dance floor, canteen and squash court.
7. The Respondent only ceased paying the voluntary employer contributions in November 1990 (approximately 9 months prior to the termination of the employees concerned) when it experienced financial difficulties. The 3% award based superannuation payments, however, continued. (see Exhibit Book 2 p.12 and clause 4.3 of the first schedule of the Trust Deed)
8. It was the Receiver/Manager and not the Respondent who decided to terminate the employment of the employees the subject of these proceedings and it was the Receiver/Manager not the Respondent who also determined that superannuation payments would be made strictly in accordance with the vesting arrangements under the Trust Deed. This was in accordance with the fiduciary duties of the Receiver. (see Exhibit Book 2 p.15) The foregone benefit in the fund was then used to meet interest and contribution commitments (see Exhibit 7B and transcript p.314) This was in accordance with advice from the Insurance and Superannuation Commission, as can be seen from the letter dated 10 December 1991 and attachments forming part of Exhibit 7B. It was also said to be in accordance with Clause 7.5.4 of the Trust Deed.
9. The Respondent gave away any control it had over the superannuation fund in 1988 when a new Trust Deed took effect.

Mr Lilburne pointed out that the Respondent was trading under a scheme of arrangement which required it to pay monies owing to creditors over a period of three years. If an Order was to be made in the terms sought it was argued that it would affect the amount of money available to the Respondent to satisfy creditors under the scheme of arrangement and could lead to the company being wound up. That submission was not, however, supported with any detail or evidence.

While it was argued on behalf of the Applicant unions that there was an expectation that employees would receive 100% of voluntary employer superannuation contributions on termination, it was submitted by Mr Lilburne that it was clear on the evidence that employees were well aware that such payments were discretionary and that the move away from the

practice of exercising that discretion to pay the 100% was also clear. This can be seen, in Mr Lilburne's submission, from Applicant Exhibit Book 2 p.7 and from member statements which issued annually and showed clearly what the vesting arrangements were.

Mr Lilburne acknowledged that the superannuation arrangement for the Directors of the Respondent company were superior to those of other categories of employers and that there were no direct contributions by them from salary. It was submitted, however, that this arrangement involved the operation of an accumulation fund from which payment on leaving the fund was limited to contributions actually made plus interest. This was said to be normal practice for Directors of companies and while contributions were made by the company on the Directors' behalf, this routinely involved some sort of salary sacrifice arrangement (Transcript p.253). These submissions were consistent with the evidence of Mr Masters (Transcript pp299/300).

As to benefits said to have been received by the employer in the form of tax benefits and foregone benefits under the superannuation fund, Mr Lilburne said firstly that tax benefits were derived from the fact that employer contributions are regarded as a cost like any other cost of running a business which was deductable against profit for the purposes of taxation and secondly that there was nothing unusual in foregone benefits from superannuation funds being utilised to offset employer contributions or interest payable to the superannuation fund.

Finally, Mr Lilburne referred to the Symons case (Supra) and submitted that when one analysed the factors which persuaded the majority of the Full Bench in that matter not to depart from the prima facie position under the award, it can be seen that those same factors are evident in the matter now under consideration and support a similar outcome.

On the material before the Commission it would seem that the Respondent voluntarily introduced superannuation for its employees from approximately 1973. There were a number of schemes introduced by the Respondent, although the principal scheme and the one relevant to these proceedings was known as the "Australian Agricultural Machinery Group Superannuation Fund", a summary of which was set out in a Memorandum said to be provided to all employees in the following terms.

"AUSTRALIAN AGRICULTURAL MACHINERY GROUP SUPERANNUATION FUND

This memorandum explains the superannuation plan in simple non-technical terms. The full details will be embodied in a Deed of Trust. The following benefits will now be available for all employees of the Australian Agricultural Machinery Group having one or more year's service.

1. How will the Fund operate?

   The greater proportion of the contributions made by you and by the Company will be invested on your behalf by the Trustees with the AMP Society. This money will accumulate in the Fund and be paid to you in accordance with this memorandum. It is referred to as your Member's Credit.

   The remainder of the contributions will be applied by the Fund to effect Group Life Assurance on your life at special low rates which will cover you against the risks of death and total and permanent disablement.

2. What do I contribute?

   Your minimum contribution is $2 per week, commencing after one year's service. You may contribute additional amounts if you wish, thus increasing your retirement and withdrawal benefits.

3. What does the Company contribute?

   In your second year of services, the Company will contribute $4 per week. In your third and fourth years of services the Company will contribute $5 per week.

   In your fifth and subsequent years of service, the Company will contribute $8 per week.

4. What are the Benefits?

   After allowance for costs of Group Life Assurance and AMP's management charges, the balance of your contributions and the contributions made by the Company on your behalf will grow with compound interest. This increasing balance is referred to as your Member's Credit.

   Your Member's Credit will be paid to you in full

   (i) on your retirement at any time after your 60th birthday (males) or your 55th birthday (females); or

   (ii) on leaving at any time after completing 10 years' service; or

   (iii) on leaving at any time because in the opinion of the Trustees the member is unable to carry on his job due to sickness; or

   (iv) on proof of total and permanent disablement; or

   (v) to your dependants on death.

   If you leave before completing 10 years' service and have not attained age 60 (males or 55 (females) then you will be paid a refund of your own contribution plus interest. Members who transferred from the previous plan will also receive their entitlement in that plan.

5. Is there a special Death Benefit?

   If you die whilst you are a member, there is an additional benefit payable, called the Group Life Assurance.

   The value of your Group Life Assurance is based on your age next birthday at date of entry to the Fund.

   All accepted members of the Fund will be covered for $40,000 Group Life Assurance to age 25 with this figure decreasing by an amount of $1,000 each subsequent year.

   The following table illustrates the amount of Group Life Assurance at selected ages.

Age Next Birthday	Value per Unit of Group Life Assurances
25	$40,000
35	$30,000
45	$20,000
55	$10,000

   Note that although the Group Life Assurance decreases with age, the member's Credit is also payable on death. The Member's Credit is of course an increasing amount.

6. What if I am totally disabled?

   If you are accepted as being toally and permanently disabled either through accident or illness, then the Group Life Assurance benefit (as in the previous paragraph) is payable, in addition to your Member's credit.

   If you are totally and temporarily disabled for a period beyond 6 months, then a small monthly benefit becomes payable if you are not entitled to workers' or other compensation.

   The benefit would be based on the monthly equivalent of one eighth of your Group Life Assurance.

7. May I vary my contributions?

   You may vary your contributions only on any annual review date (which is May 1 of each year).

   The Company will also vary its contributions due to service, only on a Review Date.

8. How do I join the Fund?

   Complete and sign the attached application form.

9. What if I don't join?

   The Company hopes and expects that every employee with at least one year's service will join the new Fund.

   Superannuation membership is a compulsory condition of employment for all male employees who have been employed by the Company for 12 months.

It is optional for female employees after completing 12 months service.

The special Group Life Assurance rates and terms are based on participation by 100% of employees in the future and 75% of the membership of the previous plan.

10. What evidence of health is required?

Very liberal health conditions will apply for Group Life Assurance assuming a substantial proportion of eligible employees join the new Fund.

Each member who is at work performing his normal occupation when he becomes eligible will be covered for Group Life Assurance.

* * * * * * * * * * *

Specimen benefits for new members

Age of entry to the Fund	Initial Death Cover **	Estimated Benefit at age 65 *
25	$40,000	$124,587
35	$30,000	$ 42,175
45	$20,000	$ 12,056
55	$10,000	$ 2,618

* Assuming a long term interest earning rate of 10%.

** Assuming acceptance as standard lives.

Prepared for the Trustees
by AMP Society."

[Applicant Exhibit Book 2 pp1-3]

The other schemes were either restricted to the executives of the firm or related to divisions within the Respondent's operations. Those in the latter category had largely become inoperative.

In 1988 a Mr G.A. Masters was engaged as a consultant to report on and advise the Respondent in relation to the various schemes operated by it.

On 20 July 1988 Mr Masters submitted a report and proposal to the Respondent (Exhibit 7A). In the course of that report Mr Masters invited the Respondent to transfer the trusteeship and administration of the existing superannuation schemes to a master trust operated by Charter Pacific Superannuation Ltd, the organisation for which he worked. An important consequence of the acceptance of that recommendation was that the trusteeship of the schemes passed from the Directors of the Respondent to an independent body. The new arrangements were governed by a Trust Deed known as the "Excelsior Managed Superannuation Plan" under which ANZ Executors and Trustee Company Limited were appointed as Trustee.

The benefits under the Excelsior Managed Superannuation Plan were summarised in a circular to employees at the time Excelsior assumed administrative responsibility (See Exhibit 7B). That circular identified the following important changes to an employee's entitlement to receive employer contributions on resignation/termination for reasons other than sickness or accident.

"OLD SCHEDULE:

1. Eligibility after 1 year's service.
2. Following 10 year's membership the trustee may distribute to the resigning employee all or part of the employer's contribution.
3. The employer is not required to distribute any of the employer's contributions except at retirement, death or disablement.
4. The employer may withhold all of the employer's contributions if it is deemed that the employee has committed an act to the company's detriment (eg wilful damage, embezzlement, stealing).

NEW SCHEDULE:

1. Eligibility after 1 year's service.
2. The company is free to reward any resigning employee to a level greater than the following schedule. The discretion to do this rests solely with the employer.
3. Rather than leave an employee's entitlement of the employer's contribution entirely to the discretion of the employer, it has been decided to give the employee a progressive legal right to the employer's contributions according to the following schedule.
4. Under no circumstances can the employer withhold that portion of the employer's contributions which are vested in the employee.

SCHEDULE:

After 5 years membership in the fund	10%
Each subsequent year for the next 9 years	7.5%

Although the company may distribute the remaining 22.5% (or any other amount it decides at any time) the legal right to the balance of 22.5% is at death, disability or retirement.

This "vesting" schedule is designed:

(1) To give all employees an eventual legal entitlement to contributions made by employees.

(2) To automatically reward those employees who work longest for the company, without depriving the company from doing more than it is legally required to do should it wish to make a greater benefit payment."

[Exhibit 7B]

These changes resulted in the Respondent relinquishing its absolute discretion in relation to the payout of employer contributions in favour of a legal entitlement for members through automatic vesting. This was said by Mr Masters to be unusual at the time and that most employers were not able to be persuaded to give up their discretion in favour of mandatary vesting provisions.

The new arrangement also allowed for additional employee contributions and for matching employer contributions to a specified limit and for all employee contributions to be made on a before tax salary sacrifice basis. While it would seem that some employees opted for the salary sacrifice arrangement there was no evidence before the Commission that any of the employees the subject of this present application had made such an election.

Mr Masters gave evidence that his enquiries had confirmed that the practice under the "old schedule" was for the Respondent to exercise its discretion to pay employees with ten years or more service 100% of employer contributions if they resigned or their services were terminated prior to retirement, except when termination was for the reason of misconduct or other adverse circumstances. It was also understood by Mr Masters that it was the intention of the Respondent to continue that practice under the "new schedule", even though the legal obligation was limited to a maximum of 77.5% under the vesting arrangements. This evidence was consistent with that called by the Applicant unions.

It is apparent from member statements submitted in evidence (see Applicant Exhibit Book 2 pp25-35) that the new scheme was in place and operational from April 1989 and that employer contributions accumulated under the old arrangements were carried forward into the new scheme.

The Respondent introduced productivity based employer contributions for its employees at a level of 1.5% from 1 January 1988, increasing to 3% from 1 January 1989, with the option for employees to match those contributions and participate in additional matching contributions of up to $8.00 per week or $11.00 per week, depending upon the category of employee (See Exhibit 7B). Award obligations on employers to make superannuation contributions of 3% were not introduced until November 1989 (69 WAIG 3509).

As of 1 November 1990, due to financial difficulties, the Respondent ceased the voluntary contributions it had been making since the 1970's. From that time it limited its commitment to the 3% award based contributions. Employees were notified of that change at the time it occurred and were given the opportunity to amend their own level of contributions. It was submitted by Mr Street for the Applicant unions that this raised the question of whether the "old scheme" had become dormant and as a consequence not a fund for the purposes of Clause 33A of the award. This question is answered, in my view, by the fact firstly that the "old scheme" had been absorbed into the new Trust Deed for the Excelsior Managed

Superannuation Plan which continued in operation and that secondly, and in any event, the payment of employer contributions accumulated in a superannuation fund was still involved.

According to Mr Masters the Trust Deeds covering the superannuation schemes operated by the Respondent both prior and subsequent to the introduction of the mandatory vesting arrangements in April 1989, were typical of small company plans for those periods. There was a difference between employers, however, in how such Deeds were applied. As an example the Commission was informed that prior to the Respondent experiencing financial difficulties it consistently exercised its discretionary powers in favour of the employee whereas in the majority of cases other employers did not. It was also said that up until at least 1989 when the company began to experience financial difficulties forgone benefits in the fund (ie monies contributed to the fund by way of employer contributions which are not paid out in full for a variety of legitimate reasons) were retained in the fund to the employees' benefit, when they could have been used to meet employer costs, inclduing employer contributions and interest on loans from the superannuation fund.

In short it was said by Mr Masters that the conduct of the Respondent was such that superannuation schemes introduced for its employees were operated to the benefit of the employees rather than to the benefit of the Respondent. This could be contrasted with a practice known as "cherry picking" adopted by many other employers under similar Trust Deeds. Under that practice employers did not exercise their discretion to the advantage of employee members and themselves benefited through both taxation deductions and the flow back of benefits through the superannuation fund which by discretionary decision could have been retained for the benefit of or passed to employees.

According to the submissions and evidence the financial difficulties which led to the decision of the Respondent to cease voluntary contributions to the fund from 1 November 1990 arose from a serious downturn in the economy, particularly in the rural sector. Those same circumstances led in about April or May 1991 to the appointment of a Mr G. Hulbert of Arthur Anderson and Co as Receiver/Manager for the Respondent. This was said by Mr Masters to have followed a period of difficulty for the Respondent during which it had found it necessary to lay off a number of employees. In this period Mr Masters confirmed that the practice was to pay out superannuation entitlements in accordance with the vesting schedule, unless there was a specific request by the Respondent to the Manager of the fund to pay in excess of the amounts specified. Such requests during this period were said by Mr Masters to be "occasional" (Transcript p295). This was consistent with evidence called on behalf of the Applicant unions to the effect that a number of employees who had been laid off had received a 100% pay out of employer contributions accumulated in the fund.

The primary responsibility of the Receiver/Manager on appointment was to maximise the return to all creditors of the Respondent and to return the company to profitability. Having analysed the Respondent's operations a meeting of Directors was called and decisions were taken to cease the Belmont operations of the Respondent and to consolidate activities by transferring assets and some staff, on the completion of work in progress, to Wongan Hills and Dubbo, where basically all the work previously done at Belmont was continued. Staff who were unable to transfer or who were not required had their services terminated, predominantly it would seem, by the giving of 25 days notice (Exhibit Book 1 p29/33). Some employees were retained at the Belmont works for a time to complete work in progress and assist also with the packing and removal of plant and equipment.

Soon after the appointment of the Receiver/Manager, the question of whether the Respondent was legally in a position to exercise any discretion relating to payment of superannuation entitlements was raised and after some time it was confirmed that Arthur Anderson and Co, as Official Receiver for the Respondent, stood in the place of the employer. In that circumstance the manager of the superannuation fund was to act only on the instructions of the Receiver/Manager and not on the instructions of the Directors of the Respondent company. (see Exhibit Book 2 p.15) The instructions of the Receiver/Manager to the manager of the superannuation fund included that payment of superannuation entitlements were to be strictly in accordance with the vesting schedules unless otherwise directed. From that point the only exception to the direction to pay strictly in accordance with the vesting schedules related to a group of three employees who had entered into an arrangement with the Respondent to increase their contributions by way of "salary sacrifice". This was because no records were able to be produced to identify the monies held in the superannuation fund under the salary sacrifice arrangement entered into and it was decided to resolve the matter by granting the employees concerned 100% payment of employer contributions. None of the employees the subject of these proceedings were identified by Mr Masters as falling into this category.

The issue which caused the role of the Receiver/Manager to be clarified concerned a memo put out to its employees in July 1991 seeking their written undertaking not to make any claim for redundancy in return for a 100% pay out of employer contributions to the superannuation fund. The cause of this action was said to have been a question raised about redundancy payments. The Directors of the Respondent had never to that point made redundancy payments because of the payment of voluntary employer superannuation contributions to employees on termination. It would seem from Mr Street's submissions that after July 1991 those employees with limited service received redundancy pay and those with longer service received the employer contributions to the superannuation fund vested to their benefit. This is not, however, inconsistent with the off-setting provisions of the award.

It is against this background that the Commission is required to determine whether the prima facie position under subclause (8) of Clause 33A of the award should be departed from. The starting point in this regard is the rationale of the decision which led to the making of the provision under consideration. From what was said by the Full Bench in the TCR test cases (Supra) and in Symons case (Supra) it is apparent that it is to avoid any inequity or unfairness by imposing on an employer a requirement to make severance payments to an employee on termination in addition to the payment of voluntary employer contributions to a superannuation fund.

The onus for establishing that the employers right under the award to set-off redundancy payments against superannuation payments ought be displaced rests with the Applicant.

Having examined all of the material before the Commission I have concluded, on balance, that it has not been established that the employers right under subclause (8) of Clause 33A of the Award ought be departed from in this particular case, or that to do so would not be unfair in the circumstances. My reasons for so finding can be summarised as follows.

1. The Respondent introduced superannuation for its employees in the early 1970's, well before there was any award or other obligation to do so.
2. While the fund had all the appearances of a compulsory fund it seems that was not always the case and a minimum contribution of $2.00 per week only was required of employee members.
3. Voluntary employer contributions commenced from the second year of service of the employee at the rate of $4.00 per week and increased to $5.00 per week for the third and fourth years and to $8.00 per week for the fifth year, and thereafter.
4. The Respondent introduced productivity based employer contributions for its employees at a level of 1.5% from 1 January 1988, increasing to 3% from 1 January 1989, with the option for employees to match those contributions and participate in additional matching contributions of up to $8.00 per week or $11.00 per week, depending upon the category of employee (See Exhibit 7B).
5. The conduct of the Respondent was such that it consistently operated the superannuation fund to the employees benefit.
6. In April 1989 the Respondent relinquished its control of the superannuation fund and placed it in the hands of a Fund Manager and independent Trustee.

The only changes arising from that in respect of benefits were

(a) the removal of the absolute discretion of the Respondent in respect of the pay out of employer contributions and the introduction of a legal entitlement of up to 77.5% of employer contributions through vesting provisions; and

(b) the option of entering into a salary sacrifice arrangement.

7. The 3% award based/productivity employer contributions were fully vested and not to be used as part of the off-setting exercise.

8. A loan of $170,000 to the Respondent and a computer lease funded from superannuation contributions had been approved by the Trustees. While this was submitted by the Applicant unions to be an example of the Respondent applying the superannuation fund to its own benefit, it was the case that—

(a) both arrangements were approved by the Trustees of the superannuation fund;

(b) both arrangements were in compliance with the Trust Deed, Insurance and Superannuation Commission requirements and Australian Taxation Office requirements; and

(c) the Respondent paid interest to the superannuation fund on the loan at the Taxation Office mandated rate of around 16.5% and on the lease at a rate of around 17%, which accumulated to the benefit of fund members (See Exhibit 7B and Applicant Exhibit Book 1 p.14).

9. While the superannuation arrangements for executives of the Respondent provided greater benefits than those enjoyed by employees in other categories it was differently structured and involved the use of an accumulation fund. Payments to the accumulation fund were said to normally involve salary sacrifice arrangements and on leaving the fund the member was paid only the contributions made plus interest. This did not affect or reduce the benefits available to employees in other categories.

10. Despite the financial difficulties faced by the Respondent, the policy of paying 100% of voluntary employer contributions on resignation or termination continued until about mid 1991 when the Receiver/Manager took over the management of the Respondent's operations.

11. Until at least 1989 forgone benefits in the superannuation fund were retained to the employee's benefit. From Exhibit 7B it is apparent that an amount of approximately $48,000 in forgone benefits had been utilised to fund future contributions and interest on employer loans. This only occurred, however, because of the financial difficulties experienced by the Respondent and was permitted under the Trust Deed. It was also consistent with the requirements of the Insurance and Superannuation Commission and the Australian Taxation Office.

12. Voluntary employer contributions formed a significant proportion of superannuation payments made on termination, even after the date on which the Receiver/Manager directed that payments be in accordance with the vesting schedule. This is demonstrated by reference to the following table

Name	Employer Contributions	Employee Contributions
D. Oxley	$ 7772.10	$10091.80
K. Wolfenden	$12894.94	$ 5748.98
V. Rapos	$12467.86	$ 5964.10
K.I. Bridges	$11475.92	$ 5639.18

Information was not provided to the Commission in relation to the other employees named in the application.

Taken overall, the above supports the evidence of Mr Masters that the superannuation plans introduced by the Respondent for its employees were operated to their benefit and not to the benefit of the employer and there is no evidence to support a contrary view. It is the case that prior to the appointment of the Receiver/Manager the Respondent generally exercised its discretion to pay to employees on termination 100% of voluntary employer contributions to the superannuation fund, subject to specified criteria. Redundancy payments were not made because of the payment of employer contributions from the superannuation fund. While the Receiver/Manager on taking control of the Respondent's affairs directed that the payment of employer contributions be strictly in accordance with the vesting schedule, the fact remains that the superannuation plan had been introduced and operated to the benefit of employees from the early 1970's and voluntary employer contributions to the superannuation fund were paid to employees on termination. In respect of those employees the subject of the present application for whom details of superannuation payments were provided, the majority of voluntary employer contributions were paid on termination and in each case, except for one employer, contributions were well in excess of employee contributions. Nothing in what had occurred reveals any basis for a departure from the prima facie position under the award and it has not been established that to depart from that position would not be inequitable to the employer.

For all of the reasons set out above the application before the Commission is to be determined by an Order of dismissal.

Appearances: Mr K. Street and with him Mr F. Logan and Mr S. O'Byrne on behalf of the Applicants.

Mr R. Lilburne (of Counsel) on behalf of the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Amalgamated Metal Workers and Shipwrights Union of Western Australia and the Australian Electrical, Electronics, Foundry and Engineering Union (Western Australian Branch)

and

Australian Agricultural Machinery Pty Ltd.

No. CR 432 of 1991.

COMMISSIONER R.N. GEORGE.

3 January 1996.

Order.

HAVING heard Mr K. Street and with him Mr F. Logan and Mr S. O'Byrne on behalf of the Applicants and Mr R. Lilburne (of Counsel) on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the application be and is hereby dismissed.

(Sgd.) R.N. GEORGE,
[L.S] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Australian Municipal, Administrative, Clerical and Services Union of Employees, WA Clerical and Administrative Branch

and

Southbrook Enterprises Pty Ltd trading as Specialised Placements.

No. CR 275 of 1995.

COMMISSIONER P.E. SCOTT.

28 November 1995.

Order.

WHEREAS this is a claim for re-employment and compensation made pursuant to section 44 of the Industrial Relations Act, 1979 and which was referred for hearing and determination on the 27th day of October 1995; and

WHEREAS the Applicant sought leave to discontinue the application by way of letter dated the 13th day of November 1995;

NOW THEREFORE the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT this application be and is hereby discontinued.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Transfield Construction Pty Ltd WA

and

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and Another.

No. CR 271 of 1995.

COMMISSIONER C.B. PARKS.

27 November 1995.

Reasons for Decision.

THE COMMISSIONER: The matter before the Commission is one which was unable to be resolved by conciliation in a conference called by the Commission pursuant to s.44 of the Industrial Relations Act, 1979 on 22 September 1995. At the conclusion of the conference there remained an unresolved claim by the respondent unions that employees of the applicant (Transfield) "engaged upon construction work associated with the Liquor Burning Project at Alcoa Wagerup be paid $3.50 per hour worked during the life of the project". That claim , which replaced a initial claim of $2.00 per hour worked, the Commission recorded in a Memorandum of Matters for Hearing and Determination, dated 29 September 1995, wherein the response of Transfield is stated to be that an allowance of $1.19 per hour worked, currently being paid pursuant to an order of the Commission No. 1027 of 1994, is adequate for the work associated with the Liquor Burning Project.

The aforementioned conference was held in the construction site office of Transfield situated within the Alcoa Alumina Refinery at Wagerup. On the day of the conference a Union representative conducted the Commission through an inspectionof the construction site and, with the assistance of members, explained and identified the disabilities which are said to give rise to the claim.

The construction site, if viewed as a rectangular area, is situated length wise on an approximate north and south axis. An embankment several metres high forms the western border of the site. Below the embankment is a lay-down area which runs virtually the full length of the western boundary and that area is bounded on the western side by a railway track which also lies on an approximate north and south axis. Approximately south-west of the south-west corner of the site, and west of the railway track, is a large mound like stockpile of alumina material that is covered to a very large degree by tarpaulins. Immediately east thereof, and situated along the southern boundary of the construction site, are structures that are interconnected by covered conveyor belt systems which transport material between those structures. Airborne dust may occur at transfer points on the conveyors.

The eastern boundary of the construction site lies alongside structures and vessels of the existing and operating refinery which extend to the north and the south beyond the limits of the construction site. Transfield's temporary site office is located in the north-western corner of the site and nearby are the amenities and ablution facilities provided for the construction workforce. No refinery process operations are in close proximity to the northern boundary of the construction site which abuts a small open area which appears to be used to some degree for storage but generally appears to serve as a light vehicle parking area and heavy vehicle access and manoeuvring area. This area, the accessways through the construction area, and the lay-down area, are surfaced with crushed limestone fill.

According to Transfield, the company has been engaged to undertake; construction involving structural steel erection and vessel and kiln installation, that will establish a liquor burning facility; and in addition thereto, the installation of piping and mechanical equipment associated with that facility. The contract value is said to represent approximately $5 million of an overall project cost totalling $63 million. When completed, and integrated into the existing refinery process, the liquor burning facility will receive a side stream quantity of liquor from the existing process. That liquor will be separately treated, blended, dried and then conveyed into a rotary kiln to incinerate unwanted matter leaving solid material that will again be dissolved into a liquor to be reinjected into the main stream refining process. Construction of the facility is said to have commenced in July 1995 and is scheduled for completion in January-February 1996. At the date of hearing before the Commission the construction workforce was said to number approximately 35 persons which is expected to expand and peak at 80 to 90 persons later in the construction period.

In the main the construction workforce is constituted of, and will remain constituted of, employees engaged in disciplines covered by the Metal Trades (General) Award 1966. Those employees, plus those in the other disciplines involved in, or to be involved in, the construction work are, in addition to their relevant award coverage, subject to the terms of an order of the Commission titled "Metal, Electrical and Building Trades (Wagerup Alumina Refinery and Willowdale Mine Site) Construction Order No. 1027 of 1994". This order prescribes that employees of the named respondents engaged upon "construction work at the Wagerup Alumina Refinery and the Willowdale Mine Site operated by Alcoa of Australia Ltd" are required to be paid an allowance of $1.19 per hour worked in addition to their award entitlements and this allowance is said to be "specifically prescribed to cover all disabilities associated with the construction work" at the refinery and mine site referred to.

All parties submitted to the Commission that the nature of the claim made, ie being one which seeks to increase a compensatory allowance for disabilities experienced on construction work, is such that the Commission is required to consider and determine it pursuant to the requirements of Clause 6.—Work Value Changes, of the State Wage Principles enunciated in January 1995 (75 WAIG 40). That is so it is said because Clause 5.—Adjustment of Allowances and Service Increments, of the aforementioned principles, prescribes—

> "....Adjustment of existing allowances which relate to work or conditions which have not changed and of service increments will be determined in each case in accordance with State Wage Decisions.
>
> 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 the Work Value Changes provision of this Statement of Principles."
>
> (emphasis added)

The foregoing extract from Clause 5. brings into operation Clause 6, the material parts of which are said to be—

"(1) Changes in work value may arise from changes in the nature of the work, skill and responsibility required or the conditions under which work is performed. Changes in work by themselves may not lead to a change in wage rates. The strict test for an alteration in wage rates is that the change in the nature of the work should constitute such a significant net addition to work requirements as to warrant the creation of a new classification or upgrading to a higher classification...."

"(6) The expression 'the conditions under which the work is performed' relates to the environment in which the work is done."

(emphasis added)

It is argued on behalf of the claimant unions that the construction related disabilities which the employees have experienced on site to date, and those which can be reasonably by expected to be experienced during the remainder of the construction period, are greater than those which have been previously considered and compensated by the Commission in the order that employees be paid $1.19 per hour worked. This greater level of disability reflects a change in the conditions under which work is performed, it is said.

Disabilities which are said to warrant an increase in the existing allowance are—

- Working in close proximity to the alumina refining process which, depending on the prevailing winds from either the east or south-west, carries across the construction site either caustic emissions or dust respectively.
- The possibility of contact with spillages of caustic solution, particularly when installing pipes into the pipe rack in the vicinity of building 45 and the confined space and extreme heat associated with existing pipes on that rack.
- The discomfort of wearing a safety helmet, and special mono-goggles, a long sleeved shirt and long legged trousers at all times as a protection against caustic emissions, all being a requirement which applies throughout the whole of the refinery.
- Congestion, and therefore the need for additional caution, exists because of the nearness of the pre-existing refinery vessels and structures to those which have been constructed to date which themselves fill much of the construction site, a situation which has been exacerbated by the pre-assembly of structural steel in the remaining limited open areas at ground level.
- The frequency with which wet weather has created either muddy conditions, particularly in areas of vehicular movement, or has caused surface water to accumulate, particularly over the lay-down area.
- Work on the tallest structure has, because of the absence of an elevator, required that tools and small materials and equipment to be physically carried up the integrated stairways. Additionally the occurrence of wet weather has, because of the exposed nature of the structure, resulted in discomfort for those working at the various levels whose clothes have become wet during the time it takes them to descend the stairways and take shelter.
- Background noise emanating from diesel driven welding units and crane engines is ever present.
- Working at heights on steel work wet from rain or dew.
- The inadequacy of the ablution facilities occasioned by their limited accessibility, and the resultant chaos that causes when at the finish of work the whole workforce attempts to use the four hand basins provided. A problem which will increase as the size of the workforce increases.

Mr John Delborrello, a Boilermaker-Welder who has worked for Transfield intermittently for approximately 10 years, and who has been employed on the present construction work for approximately 2½ months at the time of hearing, gave evidence on behalf of the claimant union. His testimony served to confirm that the disabilities which have been described by the union advocate do exist on the construction site, not surprisingly given the nature of questions put to him. It was however conceded by Mr Delborrello that his construction experience shows that it is not unusual for structures or buildings similar to that being constructed not to contain an elevator, and further, that it is normal practice on construction sites for the extent of ablution facilities to be adjusted during a period of construction to cater for increases in a construction workforce. According to this witness ear plugs are supplied for the use of the workforce to overcome noise on the site, but in his case he often did not use them.

Additionally, the unions point to the fact that the allowance prescribed by the current Metal, Electrical and Building Trades (Wagerup Alumina Refinery and Willowdale Mine Site) Construction Order was last reviewed in 1992 when it was increased from $1.16 to $1.19, per hour worked. That, together with the fact that since then an enterprise based 10.5% wage increase has been agreed and implemented by the respondent, is further justification to increase the current allowance to a sum in excess of $2.00 per hour worked. And, says the union, although the concept of comparative wage justice is no longer an allowable consideration, a review of allowances awarded elsewhere indicates that allowances exceeding $2.00 per hour are usual for construction work. The orders relevant to construction elsewhere, and exampled by the union, were—

	Title	Reference	Date	Allowances	
				Disabilities $	Boots $
(1)	Metal and Electrical Trades (Argyle Diamond Mine) Maintenance Order No. 509 of 1990 (R2)	71 WAIG 414	15/1/91	2.91	0.06
(2)	Metal, Electrical and Building Trades (Wagerup Unit II Expansion Project) Construction Order No. CR 347 of 1991	71 WAIG 3342	2/12/91	1.70 (1st period) 2.00 (2nd period)	— —
(3)	Metal and Electrical Trades (Clough Engineering—Varanus Island) Construction Order No. C 53 of 1992	72 WAIG 596	18/2/92	2.10	0.06
(4)	Metal and Electrical (BP MOS II Project) Construction Order No. C 117 of 1992	72 WAIG 871	12/3/92	2.00	0.06
(5)	Hismelt Construction Order No. CR 317 of 1992	72 WAIG 1865	27/7/92	2.00	0.06
(6)	Yarice Construction Order No. C 230 of 1993	73 WAIG 1871	10/6/93	2.09	0.06
(7)	re Kalgoorlie Nickel Smelter Shutdown—(No. C 280 of 1993—Untitled)	73 WAIG 2080	23/7/93	1.94	0.06
(8)	Marandoo Iron Ore Project Construction Order No. C 406 & C 414 of 1993	73 WAIG 2751	10/9/93	2.15	0.06

On behalf of Transfield it is submitted that to satisfy the Work Value Principle, a site allowance—"... must bear a direct relationship to the work environment and the disabilities

experienced on the site itself....it must be established that the disabilities encountered go beyond the general run of matters contemplated in the relevant award....the site conditions common to the locality in which a site is situated can not be a factor in the determination of the allowance", as has been stated by the Commission in the matter of AEEFEU(WA Branch) *v.* O'Donnell Griffin and Others (75 WAIG 170 @ 171). The construction related site disabilities addressed by the union, are implied to be overstated and, also said by the advocate for the respondent, to be essentially no different to those usually present in the construction industry.

There has been no demur from the fact that the construction workforce may experience caustic affected airborne emissions and process related airborne dust and, in addition, a minority may also come into direct contact with a spillage of caustic in solution outside of the area of construction to date. However, according to the respondent, experience on site indicates these occurrences are infrequent and their effect is alleviated through the wearing of prescribed mono-goggles and long sleeved and long legged apparel. These disabilities, together with all that arise from the refinery environment, are said to have prevailed when the existing allowance of $1.19 per hour worked was established to cover all disabilities associated with construction work at the refinery, with the consent of the unions, as is stipulated in the enacting Order, and continued in Order No. 1027 of 1994. Such disabilities have not been shown to have increased since, nor have they, asserts the respondent, and therefore there is no justification to increase the existing allowance on that account.

That construction employees will be affected by the vagaries of the weather is not peculiar to the particular work being undertaken but an incident of the geographic region and therefore common to any other construction similarly located. Thus it is argued, according to the views expressed in AEEFEU(WA Branch) *v.* O'Donnell Griffin and Others (op.cit) and in the matter of BTAU of WA(Association of Workers) *v.* Jaxon Construction Pty Ltd (69 WAIG 2579), such is not a relevant consideration when assessing the quantum of a disability allowance.

Finally the advocate for the respondent, put to the Commission that the observation made by the unions ie that the level of a site disability allowance is not to be established so as to provide a favourable comparison with allowances existing elsewhere, is correct and therefore those which have been exampled to the Commission ought be disregarded. Aside from that, all but one of the (1) to (8) listed (supra) ie (2) are allowances established by agreement between the relevant parties in relation to disabilities that are unknown. That which has been assessed by the Commission ie (2) is relevant to the Wagerup refinery site but can be differentiated from the present construction work. Although a number of the disabilities present on the liquor burning project are of the nature identified as having existed on the Unit II Expansion (71 WAIG @ 3339) and, in relation thereto, they influenced the Commission to decide an allowance of $1.70, to be later replaced by $2.00, the comparative degree of disability has not been proven to exist. Two elements which influenced the Commission regarding that earlier project which, on the evidence in the instant proceedings, do not currently exist and "the carrying out of major construction work" and the existence of was affected by "Airborne foam and froth blown at times from the top of tanks in area 35". According to the respondent, if any comparison is relevant, it is to be found in the Decision of the Commission in the matter of MEWU (WA Branch) *v.* Vulcan Engineering and Others (75 WAIG 2257) wherein a site disability allowance of $1.70 was determined to compensate for the disabilities on construction work at the Tiwest Kwinana Pigmant Plant, generated from the operations of that Plant.

Mr Trevor John Cheeseman, the Project Manager for Transfield, told the Commission that he has had 25 years of experience in the construction industry and that 15 years thereof involved construction in alumina refineries. Mr Cheeseman expressed the view that the current construction is a small project which is very compact and thus some congestion occurs, but it is manageable. The limited number of hand-basins he viewed as unsatisfactory but said that rectification of that situation was underway. Mr Cheeseman further conceded that some airborne dust may be encountered by the workforce from the uncovered portion of the refinery stockpile during a south-west wind but, in his view there is a minimal disability associated with that, and even less in relation to the infrequent occasions that dust may emanate from the conveyor system on the southern boundary of the construction site. It was denied by Mr Cheeseman that employees have, as a matter of course, been required to work at heights on damp or wet steelwork and says that the one occasion that such occurred, and was questioned by the union, was to follow construction safety practice and not leave steelwork as an unsecured load held in a position aloft by a crane.

Mr Cheeseman had no involvement with the construction associated with the Unit II Expansion Project at the refinery. Consequently, he was not able to compare the degree of disabilities found to exist on that project and those upon the liquor burning project. His overall opinion, based on his years of experience, is that the disabilities associated with the construction of the liquor burning facility are not unusual for construction work and are what is common in an operating alumina refinery.

During the course of proceedings the commission alerted the parties to a decision of the Commission in the matter of AEEFEU(WA Branch) *v.* ABB Installations and Services Pty Ltd (75 WAIG 2633) and the view expressed therein by the Chief Commissioner regarding the application of the State Wage Principles to the process of determining construction site allowances. The Chief Commissioner expressed the opinion that such a consideration, because it did not involve a process to vary an award, did not rightly fall to be decided according to the Work Value Principle.

The Chief Commissioner also stated that "....it may be a little late in the day to question the basis upon which site allowances can be addressed. That may more properly be considered in the next State Wage Case....the parties have come before the commission in good faith to have the matter determined within the scope of the existing application of the Principles to site allowance claims. It is on that understanding that the matter is determined". I concur with the opinion of the Chief Commissioner.

The situation which confronted him is again evident in relation to the matter presently before the Commission and therefore I am satisfied that it is appropriate to apply the Wage Principles in the same manner.

Having carefully considered that which has been submitted to the Commission together with my observations from an inspection of the construction site and lay-down area, I am satisfied that many of the disabilities identified as present on the Unit II Expansion are also present on the liquor burning project. Especially evident was the compactness of the worksite and the large degree of congestion associated with that. I agree with the view previously expressed by the Commission that a factor such as the nature of weather usual for a locality or region is not a relevant consideration however, the circumstances in which work is performed and the resulting effects of weather upon employees may reasonably be managed to some degree. The evidence indicates that employees working on the building-like structure have need to evacuate it to gain shelter from the rain, and because that has been achieved by open stairways, their clothing becomes excessively wet. That is a disability which, although arising from the local climate is able to be alleviated somewhat and is beyond the norm. Clearly the present construction is not major, if that be relevant, and is not subjected to to airborne foam and froth however, I am convinced that the overall degree of disabilities which exist on the liquor burning project are in excess of those compensated by the existing $1.19 allowance.

The allowances established to compensate for the disabilities present on other construction projects, evidenced (1) to (8) (supra), absent any direct evidence on the disabilities which existed and justification for the levels of allowances agreed, are therefore not appropriate considerations. Focus upon them serves only to fuel expectations of the construction industry workforce. However it is my view the current allowance ought be increased to $1.70 per hour worked. That sum will provide reasonable compensation for all of the disabilities on the liquor burning project and therefore I will order accordingly. It is customary for such allowances to operate over the whole of the construction period and that is what has been claimed however, given the argument of the respondent against that course,

the Commission is without power to follow the usual practice. The respondent has argued that any increased allowance which the Commission may grant should operate from the date of proceedings ie 4 October 1995. The claim for an increased site allowance first surfaced before the Commission as an issue associated with industrial action formally notified to the Commission, by the applicant, on 14 September 1995. That therefore is the earliest date from which the Commission is empowered to grant the increase without the consent of the parties. In view of the usual practice regarding such allowances, and the fact that an increased site disability allowance had been first claimed in August 1995 (exhibit S1), and amended September 1995 (exhibit L1), plus that the disabilities have occurred throughout the life of the project, I think it equitable that the new allowance be given retrospective operation to the earliest date the Commission is able to grant. Accordingly the new allowance will operate from 14 September 1995.

Appearances: Mr P. Stillman appeared on behalf of the applicant.

Mr F. Logan and Mr K. Ennor appeared on behalf of the Respondents/Claimants.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Transfield Construction Pty Ltd WA

and

The Automotive, Food, Metals Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and Another.

No. CR 271 of 1995.

COMMISSIONER C.B. PARKS.

20 December 1995.

Order.

HAVING heard Mr P. Stillman on behalf of the applicant and Mr F. Logan and Mr K. Ennor on behalf of the Respondents/Claimants, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby issues the following order—

(Sgd.) C.B. PARKS,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Order shall be known as the Liquor Burning Facility—Wagerup Construction Order.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Scope
4. Site Allowance
5. Date of Operation

3.—AREA AND SCOPE

This Order shall apply to those employees of Transfield Construction Pty Ltd WA, bound by either the Metal Trades (General) Award 1966 No. 13 of 1965, or the Engine Drivers' (Building and Steel Construction) Award No. 20 of 1973, who are employed on the construction of the liquor burning facility at the Wagerup Alumina Refinery, operated by Alcoa of Australia Ltd.

4.—SITE ALLOWANCE

Notwithstanding the Metal, Electrical and Building Trades (Wagerup Alumina Refinery and Willowdale Mine Site) Construction Order No. 1027 of 1994 supplements the awards named in Clause 3.—Area and Scope, hereof and is applicable to employment within the area and scope of this Order, Clause 6.—Site Allowance of the hereinnamed Order shall have no force and effect in relation to such employment and in lieu thereof the following provisions shall apply—

(1) An additional allowance of $1.70 per hour shall be paid for each hour worked.

(2) Such allowance is specifically prescribed to cover all disabilities associated with construction work that is within the Scope of this Order.

5.—DATE OF OPERATION

This Order shall operate on and from 14 September 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch

and

Fisheries Department of Western Australia.

No. CR 226 of 1995.

SENIOR COMMISSIONER G.G. HALLIWELL.

9 January 1996.

Reasons for Decision.

SENIOR COMMISSIONER: The matter referred to the Commission for hearing and determination pursuant to Section 44 of the Act is as follows:

"SCHEDULE

The Respondent claims that Order C 753 of 1987 be entirely cancelled.

The Applicant objects to and opposes the Respondent's claim."

(Schedule on file)

Order C 753 of 1987 is reproduced in full hereunder:

"WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Section 44.

Australasian Society of Engineers, Moulders and Foundry Workers Industrial Union of Workers, Western Australian Branch

and

WA Marine Research Laboratories.

No. C 753 of 1987.

ENGINEERING TRADES (GOVERNMENT) AWARD 1967
Nos. 29, 30 and 31 of 1961 and 3 of 1962.

Tradesmen Fisheries

SENIOR COMMISSIONER G.G. HALLIWELL.

11th day of November 1987.

Order

WHEREAS a conference was held in Perth on the 11th day of November 1987 pursuant to section 44 of the Industrial Relations Act 1979; whereas an agreement was reached between the abovementioned parties at the said conference; now therefore, I, the undersigned, being satisfied that the agreement conforms with the Principles enunciated by the Commission in Court Session in matter No. 1195 of 1986, and pursuant to the powers conferred under the said Act, do hereby order—

That, notwithstanding the provisions of the Engineering Trades (Government) Award 1967 Nos. 29, 30 and 31 of 1961 and 3 of 1962, as amended, employees of the Fisheries Department stationed at the

WA Marine Research Laboratory shall be paid a composite allowance as follows:

Resident Engineer—$28.60 per week

Assistant Engineer—$15.00 per week

This allowance is payable in recognition of the level of responsibility and multi-skilling required to perform the duties and in lieu of Clause 16.—Special Rates and Provisions, Leading Hand Allowance, Construction Allowance and Site Allowance.

The allowance shall be a flat rate per week and shall not be paid for all purposes of the Award, but will automatically increase on the same basis as all other allowances in the Award.

(Sgd.) G.G. HALLIWELL,
[L.S] Senior Commissioner."

(Order C 753 of 1987)

The Fisheries Department of WA seeks the cancellation of the Order on several bases:

1. The implementation of award restructuring into the Engineering Trades (Government) Award (73 WAIG @ 121);
2. The subsequent job skills analysis carried out by Mr W. Genders of the two maintenance positions occupied by Mr John Gilbody and Mr Ivan Lightbody at the Waterman's facility. This resulted in reclassification of the two positions from the C10 level to C8 and C7 respectively. These actions in the Department's view, have resulted in the proper recognition of all skills and responsibilities required of the two employees in the performance of their duties and thus Order C 753 of 1987 should now be cancelled by the Commission. Otherwise it is argued, the employees are being rewarded twice for the same skills and responsibilities. Set out hereunder extracted from Exhibit 4, is a comparison of the Order and the Reclassification:

"Existing		New Classification	
Ivan Lightbody		Ivan Lightbody	
C10	$452.00	C7	$517.40
Industry Allowance	$10.30	Industry Allowance	$10.30
Tool Allowance	$9.20	Tool Allowance	$9.20
Composite Allowance	$32.53		
	$504.03		$536.90
		Plus: Claims for Allowances under Clause 17 of Award.	
John Gilbody		John Gilbody	
C10	$452.00	C8	$495.60
Industry Allowance	$10.30	Industry Allowance	$10.30
Tool Allowance	$9.20	Tool Allowance	$9.20
Composite Allowance	$17.06		
	$488.56		$515.10
		Plus: Claims for Allowances under Clause 17 of Award.	
Gain in Wages			
Ivan Lightbody	$32.87 per week ($1709 per annum)↑		
John Gilbody	$26.54 per week ($1380.08 per annum)↑"		

(Exhibit 4)

The union accepts that the Genders report and recommendations (Exhibit 1) correctly classifies the two positions but strongly maintains that:

"The basis really for our argument today for keeping the composite allowance was that we felt that under the reclassification guidelines and recognising the three streams that certainly a great number of the tasks and multiskills were not covered by the reclassification guidelines and/or the award definitions.

It was clearly evident when we were investigating our case yesterday that the question was put: how did Mr Genders actually come to conclusions of classifying those tasks and skills whilst they fall outside the guidelines? So that would be our main area of disputation over the report.

...

It is my opinion, with my experience in the reclassifications in the private sector and also experience in the government through my days at the railways that I had that certainly using the reclassification guidelines other than the fibreglassing, the PVC welding, the PVC fabrication, the scuba diving, the level of engineering design, the gas fitting, the building, the construction and concrete work—taking those elements out of those tasks, in my opinion, the skills of the employees there with the remaining duties would probably get them the grade that they are on anyway.

THE SENIOR COMMISSIONER: So in a nutshell what you are saying, as I understand it, is that C7 and C8 as recommended are correct however the items that you have just enumerated warrant something else.

FIALA, MR: Correct, sir. That was our the basis of our argument for retaining the composite allowance."

(Transcript Page 14)

(Emphasis Added)

The Commission has carefully read the Genders report (Exhibit 1) and has tested it as far as is possible against the Metal Industry restructuring implementation manual (Exhibit A) and the classification details prescribed in the Engineering Trades (Government) Award at Clause 5(2) and in particular those for Wages Groups C8 and C7 therein.

Using this basis it becomes apparent that the Genders report did take into account: fibreglassing, PVC welding, PV fabrication and allotted these skills a ranking of C11, C9, C7, C5, C8 and C10 respectively. As is apparent from the Genders report, the amount of time spent on the higher level tasks as well as those tasks below the C7 and C8 levels recommended have been taken into consideration in Mr Gender's final overall recommendations.

Secondly, the award provides a series of allowances to compensate for disabilities as well as a leading hand allowance where supervision of others is required. Whilst the payment of individual allowances may be an "administrative nightmare" this could be overcome by agreement between the respective parties.

In the result the Commission has concluded that Order No. C 753 of 1987 has served its purpose and should now be cancelled.

Appearances: Mr C. Young appeared on behalf of the applicant.

Mr S. Majeks appeared on behalf of the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch

and

Fisheries Department of Western Australia.

No. CR 226 of 1995.

SENIOR COMMISSIONER G.G. HALLIWELL.

9 January 1996.

Order.

HAVING heard Mr C. Young on behalf of the Applicant and Mr S. Majeks on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT Order No. C 753 of 1987 is hereby cancelled.

(Sgd.) G.G. HALLIWELL,
[L.S] Senior Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch

and

Quality Bakers Australia Ltd trading as Buttercup Bakeries.

No. CR 122 (A) of 1995.

COMMISSIONER R.H. GIFFORD.

23 November 1995.

Reasons for Decision.

THE COMMISSIONER : Following Conference proceedings pursuant to s.44 of the Industrial Relations Act, 1979 ("the Act") held on 9 May 1995 and 14 August 1995, concerning a breakdown in enterprise bargaining negotiations between the parties, affecting 'breadroom' employees at the Buttercup Bakeries' Malaga bakery, it became clear that there was one matter which could not be reconciled between the parties.

Accordingly, the Commission, as presently constituted, issued a Memorandum of Matters for Hearing and Determination under Section 44, in the following terms:

> "The respondent company seeks to discontinue the payment of an overaward payment to certain employees engaged in the breadroom at the company's Malaga bakery, and employed under the Breadcarters' (Metropolitan) Award (No. 35 of 1963).
>
> The respondent company proposes to implement this by making a lump sum payment to the employees concerned, equivalent to 12 months' of overaward payments and then followed by the phasing out of the payment by deducting those monies, in equal monthly payments, over a 12 month period, from the employees.
>
> The applicant union objects to this proposal and opposes any reduction in overaward payments for such employees".

Submissions were put and evidence led, before the Commission, on 25 September 1995. Inspections by the Commission were later conducted of the Malaga bakery, principally of the area where the 'breadroom' employees were engaged.

Notwithstanding that the union was the applicant in these proceedings, the company presented its case first, on the pretext that it was they who were seeking to effect change, by the discontinuance of the payment.

Background

At present there are 59 employees engaged in the 'breadroom' at the Malaga bakery; 29 of whom are full-time, with 27 part-time and 3 who are in supervisory positions. The part-time workforce has been built up only since the present State Manager's commencement with the operation, at the end of 1988, as a response to he being unable to achieve a resolution of the overaward payment question from that time onwards.

There are three lines that run from the bakehouse area, namely the bread line, the soft roll line and the fancy line. Two shifts are worked on the bread line, over Sunday to Thursday. Two shifts are worked on the soft roll line, one over Sunday to Thursday; the other over Monday to Friday. One shift is worked over Sunday to Thursday, in the case of the fancy line. Roughly half of the breadroom employees, namely those described as operators, work on or in conjunction with the lines (slicing, wrapping, attending and the like). The remainder, namely those described as loaders, are involved in packing and/or distributing the various products to the van loading area or in picking orders, prior to delivery to that area.

The rostered hours of work in the breadroom vary considerably and are naturally contingent upon the time when the particular products are baked. Weekday rostered hours vary from 6½ hours (usually on a Tuesday) to 10½ hours (usually on a Thursday). Sunday rostered hours vary between 3½ hours and 7 hours.

The rostered commencement and finishing times also vary, not only day by day, but according to which line or area in the breadroom the employee is involved with. For instance, the main soft roll shift mostly commences anywhere between 11.30 am (Thursday) and 6.30 pm (Monday/Tuesday). The main bread shift mostly commences anywhere between 4.30 pm (Sunday) and 8.00 pm (Monday/Tuesday). The distribution and loading employees variously commence anywhere between 2.00 pm (Thursday) and 9.30 pm (Monday/Tuesday).

In terms of rostered finishing times, whilst there are instances of shifts completing prior to midnight (viz. main soft roll line, Wednesday/Thursday; and two instances in loading and distribution), these times are normally in the range of 1.00 am to 4.00 am.

These rostered hours have not always been the pattern of employment of breadroom employees. They have only been in place since the deregulation of baking hours, when the Bread Act was amended in December 1987, by the repealing of the provisions dealing with the setting of baking hours. Up to that time, bread could only be baked, in the metropolitan area, from just after midnight on Monday, Tuesday or Wednesday morning, until 6.00 pm; and from 10.00 pm Wednesday to 12 noon Saturday.

This had meant that breadroom employees commenced, normally, in the early hours of the morning on Monday, Tuesday and Wednesday and probably no earlier than midnight on the Thursday.

In such a circumstance, the penalty rate structure under the relevant award, the Breadcarters' (Metropolitan) Award (No. 35 of 1963) ("the Award") bore some consistency. Subclause (5) of Clause 6.—Wages of the Award provided for the following:

> "(a) Loaders who are required to commence working before 4.00 am on any day shall be paid for each day so worked, an extra 30 percent.
>
> (b) Loaders who are required to commence work between 4.01 am and 7.00 am on any day shall be paid an extra 15 percent for each day so worked."

The term 'Loader' within the award actually embraces all of the breadroom employees, on the basis of the definition of the term at Clause 13(5) of the Award, namely that it "shall mean and include a worker engaged in sorting, packing, wrapping, slicing and loading of bread".

These shift-type penalties had been set, no doubt, out of consideration of the personal and social disadvantages of commencing work in the early hours of the morning. Although the provisions do not actually refer to the commencement of rostered hours as occurring between midnight and 4.00 am or 4.01 am, as the case may be, the Commission considers such a meaning to be implied by the reference to 'on any day', which appears to confine the period to the conventional meaning of a day, being midnight to midnight.

Originally it was only the 15% penalty that was prescribed; it having been fixed by Commissioner Halliwell (as he then was) on 23 November 1977 (57 WAIG 1724 at 1726). The Award was then amended by agreement (so far as is relevant to these proceedings), with effect from 16 March 1984, by the introduction of a higher loading of 20% for a shift commencing before 4.00 am, with the loading projected to increase to 30% from 16 June 1984.

In the early part of the year in which baking hours were deregulated, namely in March 1987, the Commission introduced a new wage Principle, the 'Restructuring and Efficiency Principle', which implemented the then new notion of individual companies receiving a specified wage increase in return for the workforce, via the union, implementing and efficiency measures. This was the 4% Second Tier adjustment.

By this stage, it appears that all of the then 40 full time breadroom employees were receiving the 30% for each shift, including those working on a Sunday.

Although it is not clear from the evidence, to which reference will be made later in this decision, it appears that the negotiations between the parties concerning the 4% Second Tier adjustment, took into account the forthcoming deregulation of baking hours, as there were certainly projected changes to rostered hours for breadroom employees, agreed upon by the parties.

It seems that an agreement was ultimately reached, in November 1987, although it was not ratified by the Commission, so its precise terms are not clear. From a memorandum dated

25 November 1987, to all 'breadroom' personnel from the then Manager of the Malaga bakery, Mr Butler, it is clear that the company, in return for 'the possible forthcoming changes to shift times and varied requirements of Breadroom personnel', including the proposed introduction of a two shift system, with afternoon/evening shift commencements, agreed to the following:

> "1. Penalty loadings now applicable will continue to be paid regardless of shift times (day or night)."

It is this concession by the company that is now viewed by them as the overaward payment or benefit, which ought to be discontinued. It is so described by them, on the clear basis that the new shift arrangements that came to be implemented, namely with commencement times during the afternoon or evening, as they are today, do not attract the penalty payments, by way of legal application.

The discontinuation of a benefit is an event which has already occurred in relation to the bakers at Malaga. They had been in receipt of an income maintenance allowance under the award. That provision however was discontinued by agreement between the union representing the bakers and the company by means of the inclusion of an Appendix into the Bakers' (Metropolitan) Award No. 13 of 1987. That variation, ratified by the Commission on 29 September 1993, provided for the inclusion of the 'Buttercup Bakeries Malaga' Appendix which contained provisions allowing for the averaging of penalty payments. Coincident with this, the company made a one-off payment, equivalent to one year's income maintenance allowance to each of the employees effected in the same way as now proposed in the case of the breadroom employees, except that the payment was not phased-out.

The Arguments

Mr Uphill, on behalf of the company, submitted that the company sought in these proceedings, the approval by the Commission of their proposal to discontinue the overaward payment to breadroom employees, in the manner set out in the Memorandum. This was a proposal put to the union and employees on 2 May 1995 (Exhibit U1). He explained how this was sought to be achieved by means of the enterprise bargaining process and as to how this was unsuccessful. This was notwithstanding the company's willingness to put an alternative proposal, namely that put to the union on 12 June 1995 (Exhibit U1).

The impact of the proposal, which effects a total of 21 full-time employees in terms of its scope, actually constitutes—

- the discontinuance of the 30% penalty, applicable to all rostered hours;
- the discontinuance of the 30% penalty applicable to annual leave; such that the loading for leave will reduce to 17½%;
- reduction of two Grade 2 Loaders to the Grade 1 Loader classification, whose work conforms with the duties of the lower classification; and
- the discontinuance of a Supervisory allowance applicable to 2 employees who carry out no supervision; and the reduction of another with lesser supervisory responsibilities.

It was argued that it would have been open for the company to discontinue the payments merely by providing the employees with reasonable notice of their intention to do so. The company however, had chosen not to follow that course of action but rather, by means of the present proposal, so as to minimise the impact of the discontinuance of the payments. It was recognised that the reduction in gross income was substantial, namely an average of $105 per employee, per week.

Mr Uphill submitted that the proposal was a fair and orderly one, and was entirely justified by virtue of:

- consistent treatment needing to be afforded to all employees in the breadroom, who work alongside each other; some of whom (the part-time employees and 8 of the full-time employees) receive no penalty payment, with the remaining 21 (full-time) receiving the 30% penalty payment;
- with the bakers having had their income maintenance allowance dealt with, and a payout made to them, the group in the breadroom constitute the only remaining group with such a benefit;
- the engagement of breadroom employees, since 1988 on a part-time basis, is not necessarily the proper form of engagement, in that full-time employment for some would be more appropriate; and
- the minimising of the impact upon the lifestyle of the employees.

Ms Ponnuthurai (of Counsel), on behalf of the union, argued that the status quo, in terms of the overaward payment, should be maintained.

She outlined the historical development of the penalty payment in the Award and the overaward payment itself. She argued that the Commission should not view the penalty payment in isolation, but rather as part and parcel of an overall agreement.

It was not therefore an overaward payment which was gratuitously made, but rather as the outcome of the negotiation process.

She argued that the Commission needs to consider the common law principles as they apply to the validity of an agreement, namely that one party to a contract can, by notice, withdraw one of its terms, provided it is not a fundamental term. When applied to the circumstances of this case, in particular to the proposal to discontinue to the 30% penalty payment, it would be a fundamental part of the contract that would be sought to be removed. As such, the contract as a whole would be nullified.

It was then argued that it was inappropriate for the overaward penalty payment issue to be separated out from the enterprise bargaining process, because it would act as a disadvantage to the union by constricting their flexibility to negotiate an outcome. This is particularly the case, it was put, when regard is had to the fact that the Award does not specify any penalty relating to shifts commencing in the afternoon/evening. If there is a need for these shift times to be compensated, then to determine the overaward penalty payment issue in isolation, would be a severe disadvantage.

Whatever the event, there was still an onus upon the company to demonstrate the need for change, in terms of their proposal relating to the overaward penalty payment. In this respect consideration needed to be given to the financial impact that the discontinuance of the penalty would have upon the breadroom employees concerned.

Analysis and Conclusions

The starting point in the analysis is at the penalty payment of 30% itself. There seems to be no doubt that when it was introduced at that level in 1984, all breadroom employees, by virtue of the impact of legislated baking hours, worked on various shifts in the early hours of the morning, certainly in the case of the Monday, Tuesday and Wednesday shifts. There was a logic to the application of the penalty; namely as compensation for the personal and social disadvantages involved in the working of a kind of late night shift or early morning shift.

The deregulation of baking hours changed all that. Following amendment to the Breadcarters' (Metropolitan) Award No. 35 of 1963 and the consequential Award variations, baking took place much earlier in the day, certainly on Monday, Tuesday and Wednesday. Consequently, the breadroom activities also took place earlier than was previously the case. In effect, the shift pattern became that which is now in operation, which is essentially a variety of afternoon/evening shifts.

The essence of the problem was that with this change, the 30% penalty provision in the Award no longer became applicable. Such statement presupposes that the meaning to be attributed to "on any day" in the Wages clause is to be taken as meaning that the clause only has application to a day, midnight to midnight, and the term 'before 4.00 am', relates to the period midnight to 4.00 am. There is no provision in the Award that addresses the afternoon or night period prior to midnight.

Thus, the Commission understands the context of the negotiations at the bakery in 1987, concerning the application of the 4% Second Tier adjustment, namely the need for the workforce to preserve a penalty payment for working shift

work hours, albeit different hours. It is the outcome of those negotiations that remains unclear. Although the Commission had the benefit of the evidence of the then Manager responsible for the negotiations with the union in 1987, Mr R. Butler, (he no longer being with the company), his recollection of events was in many respects unclear.

He was uncertain as to whether the concessions gained concerning shift changes constituted the 'trade-offs' conceded in return for the 4% Second Tier adjustment. He indicated though that the company sought flexibility in employees' starting times to adjust to changing production times and at the same time ensuring that appropriately experienced employees were engaged on the relevant shifts.

The documents that were tendered (Exhibit P1) purporting to relate to the Second Tier negotiations, cannot in the Commission's view be taken as definitive, when one of the signatories, Mr Butler, in respect of the Memorandum of 25 November 1987, could not recall with any certainty whether it related to those negotiations or not. There is no opportunity to independently check that, when it is recognised that there was no ratification by the Commission of the 4% Second Tier adjustment applicable at the Malaga bakery.

All in all, the circumstances giving rise to the concession made by the company to continue applying a 30% penalty payment to all breadroom employees, on 25 November 1987, are imprecise. One critical factor is whether or not the 30% penalty payment of that time constituted the granting of an overaward payment, on the understanding that the Award itself did not provide an entitlement to that penalty. In the Commission's view, this factor is not imprecise, in that it clearly did. It is also a factor which the Commission has the authority to countenance; it being an industrial matter.

There is still doubt in the Commission's mind however, as to whether the conceding of the overaward payment was part and parcel of the 4% Second Tier Agreement. It does seem curious that the company would have been prepared to concede both the 4% itself and the overaward payment in return for co-operation in the working of afternoon/evening shifts rather than early morning shifts, together with other shift changes. Indeed, if this were the case, the co-operation by the breadroom employees was well rewarded.

Does all this make the agreement that was reached, immutable though? Ms Ponnuthurai certainly gave emphasis to the appropriateness of recognising the overaward payment as part of a negotiated resolution and implied that as such it should not be interfered with by the Commission. This is a valid submission to put. After all, it was the Commission itself that, by its creation of the Restructuring and Efficiency Principle, encouraged individual enterprises to enter into negotiations with relevant unions and reach agreements providing for productivity and efficiency trade-offs in return for the 4%. It was really the Commission's first step into enterprise bargaining, emphasising the desirability of negotiated outcomes, not necessarily requiring the assistance or intervention of the Commission.

Such a process as this implies that a negotiated outcome meeting the requirements of the then Restructuring and Efficiency Principle, ought on its face, to stand. That having been said, it is important, however, to ask whether the negotiated outcome, in the instance of Buttercup's Malaga bakery, did meet the requirements of the Principle, and then whether the context in which it was reached, has changed.

With respect to the Principles, it is unfortunately not possible to ascertain whether this was the case or not. There was no ratification by the Commission of the 4% Second Tier adjustment. Perhaps, had this occurred, there would not have been the lack of clarity between the respective recollections of the parties as to what constituted the terms of the negotiated outcome.

Next, to the question as to whether the context has changed, that is, between the circumstances of the 1987 negotiated agreement and the circumstances of the present. Mr Uphill identified one such circumstance as the fact that the 21 full-time employees receiving the overaward payment were working alongside another 8 full-time and a total of 27 part-time employees, within the breadroom who were not receiving the payment. He then referred to the fact that two of the latter group of full-time employees actually elected to accept the company's 'buy out' of the overaward payment, when it was formally put to all of the full-time employees concerned on 2 May 1995. Reference was then made to the fact that already, at that stage, some three others of this group of 8 full-time employees had been engaged since the present State Manager's arrival, on the clear understanding that the overaward payment would not apply to them.

In this respect, it is recognised that not all these employees are rostered to work at the same time. The bread line and the soft roll line have two shifts, and others commence at a variety of times, depending upon the order of baking in the bakehouse. In that sense they are not therefore all physically working side by side in the breadroom. On the other hand, the Commission observed, during the inspection, that there is no separation of the roles of the breadroom employees, depending upon their full-time or part-time status. There appears to be an intermingling of the two.

If ever there was a circumstance that had the potential to create practical employee relations difficulties, in the Commission's view, the application of an overaward payment for some members of a discrete group of employees and not to others, whose circumstances of employment are not different in any significant way, such would be the case here. What in essence is being maintained by the 21 full-time employees in question is that the shift arrangements upon which they are being engaged warrant a 30% penalty to compensate for the personal and social disadvantages incurred by them, whereas the other breadroom employees, who work similar shift arrangements, do not warrant any compensation for those disadvantages. It is really as blunt as that.

The Commission believes that such a circumstance has the capacity to interfere with co-operation and teamwork, which, as the Commission observed during the inspections, appeared to be so important in ensuring that the various products reach the van drivers, who are waiting to transport the product to customers. Whilst there was no evidence or no indication of such absence of co-operation or teamwork, matters of this nature, sometimes work in subtle ways to interfere with the attainment of a particular goal.

The Commission therefore considers this to be a critical factor, in the assessment of the question as to whether the context has changed and as to whether grounds exist justifying discontinuance of the penalty.

The situation of the inequity is further highlighted by the other circumstance identified by Mr Uphill, namely the fact that the bakers had foregone their income maintenance allowance, in 1993. Whilst the Commission is not privy to the circumstances that lead to the agreement between the parties at Malaga, the fact is that it happened, and notwithstanding that bakers lost income as a result, it was accepted presumably because its impact was cushioned by the 'buy out' arrangement, and has, further, stood the test of time.

Of even more significance however is that as a result of the overaward payment continuing for the breadroom employees, many of these employees, especially those securing a Sunday penalty as well, are earning incomes virtually equivalent to the bakers.

A distinction can be made between the bakers and the breadroom employees of course, in that they do not necessarily work alongside each other, in that the bakehouse constitutes a separate although interconnected section of the bakery. Whilst there is not a great deal of interchange between the bakehouse and the breadroom, other than at Foreman level, it is still very much part and parcel of the one process, and the elements of co-operation and teamwork referred to above, are equally as relevant.

This factor provides further ground as to whether the context has changed and there is justification for the discontinuance of the overaward payment for the breadroom employees, especially where account is taken of the equivalence of earnings between certain breadroom employees and bakers. This latter scenario provides a ready ingredient for discontent, and understandably so, when account is taken of the trade training and trade skills exercised by the bakers.

One further line of defense, put by Ms Ponnuthurai, was that if a discontinuation of the overaward payment for

breadroom employees, was sought to be instituted by the company unilaterally, it would have the effect, because it constituted such a fundamental term of the contract of employment, of nullifying the contract. Whilst on the face of it, this position is legally sustainable, in the end, it matters not what the common law position is. This Commission, exercising its proper discretion, has the capacity, in arbitration proceedings, to intercede in the contractual process and order an outcome that may well effect a fundamental term of the contract, but which does not upset the contract as such. Such a course should not be followed capriciously but only where it is abundantly clear that the parties themselves are unable to bring about a resolution. Significantly, this matter does not come to the Commission by the employer seeking, in isolation, to unilaterally impose a change to a fundamental term of the contract; rather, it is on the basis of a proposed package of measures, formulated in the expectation of minimising the impact of the proposed changes, which package was not ultimately acceptable to the other party.

Further, the Commission is mindful of the submission from Ms Ponnuthurai that the matter should not be separated from the enterprise bargaining process, for to do otherwise would seriously disadvantage the employees concerned. There is a need, she argued, for there to be some recognition of the disadvantages inherent in the present afternoon/evening shift arrangements; and then by implication, because there is no recognition for this in the Award, there ought to be some alternate recognition.

In one sense, the company acknowledge this, but in the context of the resolution of the matter by agreement between the parties. The Commission refers here to the company's proposal to the union of 12 June 1995, following upon the initial s.44 Conference held before the Commission. That proposal, put very clearly on a without prejudice basis, in essence provided for the 'buy out' of the overaward payment, by a lump sum payment equivalent to one year's such payment, together with the introduction of a loading of 15% on ordinary hours worked between 7.00 pm and 7.00 am. Such a proposal, whilst put in the context of an enterprise bargaining agreement and not in any other form, by implication acknowledges some disadvantage suffered by employees being required to work the various afternoon/evening shifts, but certainly at a lesser level than that applicable under the Award, to the early morning shift (commencing prior to 4.00 am).

It needs to be plainly stated though, that the company could not be held to this in any determination of the matter by the Commission. Indeed, it is not open for this Commission to determine that question, as it was not formally a matter in dispute between the parties, and not argued by the parties before the Commission. It would not be appropriate therefore for the Commission to make an observation about the appropriateness of this part of the proposal, short of observing the obvious, namely that the loading proposed is equivalent to that applicable, under the Award, to shifts which commence between 4.01 am and 7.00 am, although it is distinguishable on the basis that it applies only to the hours actually worked beyond the nominated time.

In terms of the overall proposal put on 12 June 1995, it was an attempt to provide a more attractive proposal than that originally put, namely on 2 May 1995. The original proposal provided for the 'buy out' of the allowance by the payment of monies equivalent to one year's such payment, followed by the phasing out of the allowance over a year. This phase-out arrangement was not part of the 12 June 1995 proposal, but instead the 15% loading was proposed.

The Commission has not been asked, in terms of the present referred matter, to resolve the enterprise bargaining impasse between the parties but nevertheless observes that the 12 June 1995 proposal, whilst having the capacity to provide a compensating benefit which will be ongoing, also has the capacity to apply that benefit to other breadroom employees as well, or at least those whose shifts cause them to work beyond 7.00 pm, but nevertheless ensuring an equivalent benefit for all concerned.

A deal was made of the fact that the discontinuance of the overaward payment would mean that the average breadroom employee would suffer a loss in gross income in the order of $105 per week. The Commission in fact heard evidence from two employees who were receiving the overaward payment. The impact on one was in keeping with the average figure, and with the other it was to the extent of $128 per week. Both were concerned of the impact it would have upon their personal financial circumstances and were of the belief that, in the event of the penalty being discontinued, they would need to re-negotiate their personal mortgage commitments. When it is considered that their net incomes are respectively $368.00 per week and $423.00 per week, it is in one sense understandable that a discontinuance of the overaward payment could have the effect that they propose. Against this however, is the fact that they have been receiving this overaward payment since late 1987, and thus had the benefit of it for 8 years, and by the 12 June 1995 proposal put by the company, there would be the equivalent benefit for a further year.

Further, in the event of the shift loading of 15%, reflected in the 12 June 1995 proposal, being applied to the two employees who gave evidence (but not by these proceedings), it can be seen that in one case it would apply to 38 of the 40½ rostered hours, and in the other case to 29½ of the 40½ rostered hours. In such circumstances the impact of the loss of the 30% penalty would be significantly mitigated by the implementation of the 15% loading.

The other factor is that of notice. On 24 January this year the company put to the union the terms of its proposed enterprise agreement which included the proposal to 'buy out' the overaward payment. The breadroom employees concerned would have been aware of this proposal at least as early as this. Then, an initial proposal concerning the 'buy out' of the overaward payment was put to the union and to each employee concerned on 2 May 1995; so even if there was some doubt that all employees concerned were aware of the company's intentions in January 1995, there was certainly no doubt in May 1995. It thus follows that there had been a significant period of notice of the company's intention to discontinue the overaward payment.

In the end, by the company's 12 June 1995 proposal, it seems that the breadroom employees affected, if required to forego the overaward payment, are likely to have a significant proportion of it restored, at least to the extent of between a third and a half. Whilst it still would represent an overall loss to these employees, such loss would have to be viewed in the whole context : the period of the overaward payment being in place; the extent to which part-time (and some full-time) breadroom employees have been engaged without the payment and the fact that they work alongside the full-time breadroom employees; the fact that the bakers agreed to discontinue the payment in 1993; the notice the employees concerned have had of the company's intention to discontinue the payment; and the fact that the company has been prepared to put an alternative proposal, after the first was rejected. All of these factors, collectively in the Commission's view, outweigh the loss which would be experienced by the full-time breadroom employees concerned. Whether there is any scope for that to be further cushioned, such as by introducing a phasing-out period, albeit shorter than the initial proposal, is not a matter for the Commission to determine.

Taking all of the factors into account, the Commission, on balance is satisfied that this application, which concerns solely the question as to whether the overaward payment should be discontinued or not, but which additionally embodies a phasing-out of the payment over a 12 month period, (rather than the implementation of a shift loading) is one where the case has been made out. In other words, the circumstances that have arisen since the overaward payment was first agreed at the end of 1987, now, in the Commission's view, necessitate the discontinuance of the allowance. Indeed, the Commission is concerned that if it were to continue, it's influence would become counterproductive to the necessary co-operation and teamwork which is required to operate within the breadroom at the Malaga bakery.

The Commission is therefore prepared to issue an Order to give effect to the decision, that is, to Order that the overaward payment be discontinued and that, in conjunction, a lump sum payment, equivalent to one years' overaward payment, be made to the employees concerned, followed by the phasing-out of the payment by deducting from the employees those monies, in equal monthly deductions.

Having so decided, the Commission believes that as a means of further minimising the financial impact of such a measure upon the employees concerned, it not commence to be implemented until 15 January 1996.

The Order does not address the subsidiary issues outlined above in Mr Uphill's submissions. The matter concerning the application of the 30% penalty to annual leave, is a matter which is consequential upon the determination already made.

The other matters concern matters of over-classification and the desire to restore the position to that conforming with the Award. In this respect, the Commission has heard no evidence that would prevent these changes being implemented consistent with the changes arising from the issuance of this Order.

The above notwithstanding, the Commission is very conscious of the fact that the parties sought to resolve this matter amongst themselves, in the process of enterprise bargaining, over the first half of the year. They clearly saw this process as the preferred course; there being an expectation that a resolution would be forthcoming. Recourse to the Commission only occurred when it was abundantly clear that an impasse had occurred over the 'buy out' proposal. Then, in these proceedings, the company was quite open in explaining the merits of the second proposal which they had put to the union on 12 June 1995, in the earnest hope that its more beneficial terms would lead to a negotiated outcome. Later in the proceedings, the union made it plain that the determination of the referred matter in isolation could disadvantage the union by effectively preventing them from negotiating over the totality of issues involved.

The Commission has been influenced by these considerations, and accordingly will Direct that, during the interim period, that is between the date of the Order to issue and 15 January 1996, the parties enter into further discussions, in the form of enterprise bargaining, in an endeavour to explore, whether, in the light of this determination, an agreement can be reached. In the event that it can, and that such agreement is executed by the parties by 15 January 1996, with a view to the matter being registered in accordance with s.41 of the Act, then the Order will not come into effect. If that is not possible, the Order will come into effect from that date.

Minutes of the Proposed Order are accordingly issued.

Appearances: Ms V. Ponnuthurai (of Counsel) on behalf of the Applicant.

Mr J. Uphill on behalf of the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch

and

Quality Bakers Australia Ltd trading as Buttercup Bakeries.

No. CR 122 (A) of 1995.

COMMISSIONER R.H. GIFFORD.

7 December 1995.

Order.

HAVING heard Ms V. Ponnuthurai (of Counsel) on behalf of the Applicant and Mr J. Uphill on behalf of the Respondent, the Commission pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby

ORDERS— 1. THAT subject to Order 3, the overaward payment, in the form of a 30% penalty payment, made to full-time employees engaged in the breadroom of the respondent company's bakery at Malaga, by virtue of the agreement entered into on 25 November 1987, be discontinued, with effect from the beginning of the first pay period commencing on or after 15 January 1996;

2. THAT coinciding with the operation of Order 1, the company shall pay to each of the employees so affected, a sum equivalent to one year's overaward payment and shall thereafter, on a month by month basis, for the next ensuing year, reduce by one-twelfth the amount of the overaward payment payable, so as to dispense with the payment by the end of that period; and

3. THAT in the event of the following Direction leading to a resolution of the matter, Order 1, and in turn Order 2, will lapse.

DIRECTS— THAT the parties enter into discussions, in light of the determination made in these proceedings, in an endeavour to determine whether an enterprise agreement can be reached and executed, with a view to being registered pursuant to s.41 of the Industrial Relations Act, 1979, by 15 January 1996.

(Sgd.) R.H. GIFFORD,
[L.S] Commissioner.

UNIONS—
Application for alteration of rules—

WESTERN AUSTRALIA
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s62

In the matter of an application by the Hospital Salaried Officers Association of Western Australia (Union of Workers).for alteration of registered rules.

1309 of 1995.

ROBIN COLBERT LOVEGROVE
DEPUTY REGISTRAR.

13 December 1995.

Decision.

HAVING read the application, there being no person desiring to be heard in opposition thereto, after consulting with the President, and upon being satisfied that the requirements made thereunder have been complied with, I have this day registered an alteration to rule 19 of the registered rules of the applicant union in the terms of the application as filed on 22 November 1995.

R.C. LOVEGROVE,
Deputy Registrar.

CORRECTIONS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Australian Electrical, Electronics, Foundry and Engineering Union (Western Australian Branch)

and

Hills Industries Ltd and Others.

No. 275 of 1995.

Radio and Television Employees' Award
No. R 3 of 1980.

SENIOR COMMISSIONER G.G. HALLIWELL.

14 December 1995.

Correction Order.

WHEREAS an error occurred in Order No. 275 of 1995 dated 30 August 1995 (75 WAIG 2596), the following correction is made:

Clause 13.—Car Allowance: Delete subclause (3) of this clause and insert in lieu thereof the following:

(3) A year for the purpose of this clause shall commence on 1 July and end on 30 June next following.

RATES OF HIRE FOR USE OF EMPLOYEE'S OWN VEHICLE ON EMPLOYER'S BUSINESS

MOTOR CAR

AREA AND DETAILS	ENGINE DISPLACEMENT (IN CUBIC CENTIMETRES)		
	OVER 2600cc	OVER 1600cc -2600cc	1600cc
RATE PER KILOMETRE (CENTS)			
Metropolitan Area	55.0	49.1	42.7
South West Land Division	56.2	50.3	43.8
North of 23.5° South Latitude	61.6	55.5	48.3
Rest of the State	57.9	52.0	45.1
MOTOR CYCLE (IN ALL AREAS)	18.8 cents per kilometre		

(Sgd.) G.G. HALLIWELL,
[L.S] Senior Commissioner.

PROCEDURAL DIRECTIONS AND ORDERS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Workers' Union, West Australian Branch, Industrial Union of Workers

and

Ampol Petroleum Ltd and Others.

No. 1005 of 1995.

COMMISSIONER C.B. PARKS.

21 December 1995.

Order.

HAVING heard Mr M.J. Lourey on behalf of the Applicant, Mr A. Cameron on behalf of the Shell Oil Company of Australia, Mr J. J. Johnstone on behalf of Allpike's Honda and Peugeot and Ms C. Brown on behalf of Cherana Pty Ltd, Trona Pty Ltd, Asterian Pty Ltd and Jayking Pty Ltd and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT Application No. 1005 of 1995, made for the purpose of amending the Motor Vehicle (Service Station, Sales Establishments, Rust Prevention and Paint Protection) Industry Award No. 29 of 1980, be and is hereby divided into the following two separate parts—

1005A of 1995 which is to be concluded by a further order of the Commission that amends the aforenamed award, to the extent agreed between the parties in relation to Clause 21.—Wages and Schedule A.—Respondents; and

1005B of 1995 which shall be constituted of the disputed claims to delete the names Shell Oil Company of Australia, and Ampol Petroleum Ltd, from the list of respondents named in Schedule A.—Respondents of the aforenamed award; and

THAT proceedings to hear and determine matter No. 1005B of 1995 be and are hereby adjourned to a date to be fixed.

(Sgd.) C.B. PARKS,
[L.S] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Richard Morris Stuart Watsford

and

Simcoa Operations Pty Ltd.

No. 1195 of 1995.

COMMISSIONER A.R. BEECH.

18 December 1995.

Order.

WHEREAS an application for an extension of time in matter no. 1188 of 1995 was lodged in the Commission;

AND WHEREAS the parties subsequently advised that matter no. 1188 of 1995 had been settled and that they did not wish to proceed with application no. 1195 of 1995;

AND HAVING heard Mr R Lilburne (of counsel) on behalf of the Applicant and Mr S Kenner (of counsel) on behalf of the Respondent;

NOW THEREFORE I, the undersigned, Commissioner of the Western Australian Industrial Relations Commission, pursuant to the powers conferred on me under the Industrial Relations Act, 1979, hereby order:

THAT the application be discontinued.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

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

BRICK MANUFACTURING AWARD, 1979
No. R 19 of 1979.

NOTICE

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

TAKE NOTICE that the Commission acting pursuant to Section 47 of the Industrial Relations Act, 1979, intends, by order, to strike out the following party to the Brick Manufacturing Award, 1979, namely—

Clackline Refactories Ltd, 239 Planet Street, Welshpool WA.

on the grounds that the respondent is no longer operating in the industry or employing persons in the industry to which the award applies.

Any person who has a sufficient interest in the matter may, within 30 days of the date of the publication of this notice, object to the Commission making such order.

Please quote File No. 76/80 Part 110 on all correspondence.

Dated this 3rd day of January, 1996.

J.G. CARRIGG,
Registrar.

CLERKS (COMMERCIAL, SOCIAL AND PROFESSIONAL SERVICES) AWARD No. 14 of 1972.

NOTICE

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

TAKE NOTICE that the Commission acting pursuant to Section 47 of the Industrial Relations Act, 1979, intends, by order, to strike out the following party to the Clerks (Commercial, Social and Professional Services) Award No. 14 of 1972, namely—

Ansett Transport Industries (Operations) Pty Ltd trading as Ansett Pioneer.

on the grounds that the respondents are no longer operating in the industry or employing persons in the industry to which the award applies.

Any person who has a sufficient interest in the matter may, within 30 days of the date of the publication of this notice, object to the Commission making such order.

Please quote File No. 76/80 Part 18 on all correspondence.

Dated this 28th day of December, 1995.

J.G. CARRIGG,
Registrar.

HOSPITAL WORKERS' (GOVERNMENT) AWARD No. 21 of 1966.

NOTICE

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

TAKE NOTICE that the Commission acting pursuant to Section 47 of the Industrial Relations Act, 1979, intends, by order, to strike out the following parties to the Hospital Workers' (Government) Award No. 21 of 1966, namely—

Aston Recovery Hospital

and

Ord Street Hospital

on the grounds that the respondents are no longer operating in the industry or employing persons in the industry to which the award applies.

Any person who has a sufficient interest in the matter may, within 30 days of the date of the publication of this notice, object to the Commission making such order.

Please quote File No. 76/80 Part 157 on all correspondence.

Dated this 7th day of December, 1995.

J.G. CARRIGG,
Registrar.

AWARDS/AGREEMENTS—Consolidation by Registrar—

BUILDING MATERIALS MANUFACTURE (CSR LIMITED WELSHPOOL WORKS) AWARD, 1982 No. A 10 of 1982.

PURSUANT to section 93(6) of the Industrial Relations Act 1979 the following award has been consolidated and is published hereunder for general information.

Dated at Perth this 2nd day of January, 1996

J. CARRIGG,
Registrar.

"Building Materials Manufacture (CSR Limited—Welshpool Works) Award, 1982"
No. A 10 of 1982.

1.—TITLE

This award shall be known as the Building Materials Manufacture (CSR Limited—Welshpool Works) Award, 1982 and shall be in substitution for Award No. 26 of 1981.

1A.—STATEMENT OF PRINCIPLES DECEMBER 1994

It is a condition of this Award/Industrial Agreement that any variation to its terms on or from the 30th day of December 1994, including the $8.00 per week Arbitrated Safety Net Adjustments, shall not be made except in compliance with the Statement of Principles set down by the Commission in the Reasons for Decision in Matter No. 985 of 1994.

2.—ARRANGEMENT

1. Title
1A. Statement of Principles December 1994
2. Arrangement
2A. State Wage Principles—June 1991
2B. Award Modernisation
3. Scope
4. Time and Wages Record
5. Hours
5A. Operation of 38 Hour Week
6. Shift Work
7. Overtime
8. Meal Breaks
9. Wages
10. Mixed Functions
11. Contract of Employment
12. Holidays and Annual Leave
13. Sick Leave
14. Payment of Wages
15. Long Service Leave
16. General Conditions
17. Compassionate Leave
18. Right of Entry
19. Maternity Leave
20. Morning Tea
21. Jury Service
22. Attendance at Repatriation Centres
23. Settlement of Disputes
24. Term
25. Trade Union Training Leave
26. Part-Time Employment
27. Structural Efficiency

Schedule A—Parties to the Award
Schedule B—Respondent

2A.—STATE WAGE PRINCIPLES—JUNE 1991

It is a term of this award arising from the decision of the Western Australian Industrial Relations Commission in the State Wage Case of June 1991, (the terms of which are set out in Decision No. 704 of 1991) that the Union will not pursue, prior to 1st December 1991, any extra claims, award or overaward, except where consistent with the principles determined by the decision.

2B.—AWARD MODERNISATION

(1) The parties are committed to modernising the terms of this award.

(2) The Union will discuss all matters relating to increased flexibility that are raised by the employer. Any such discussion with the Unions shall be on the premise that:

(a) The majority of employees at the enterprise must genuinely agree.

(b) No employee will lose income as a result of the change.

(c) The Union must be party to the agreement, in particular, where enterprise level discussions are considering matters requiring any award variation, the Union shall be invited to participate.

(d) The Union shall not unreasonably oppose any agreement.

(e) Agreements are to be submitted for ratification by the Commission.

(f) The disputes procedure prescribed in Clause 23.—Settlement of Disputes shall apply if agreement cannot be reached in the implementation process on a particular issue.

(3) Should an agreement be reached pursuant to subclause (2) hereof and that agreement requires an award variation, no party will oppose that award variation.

(4) There shall be no limitation on any award matter being raised for discussion.

3.—SCOPE

This award shall apply to all callings of employees referred to in clause 9—Wages of this award, who are employed by the Building Materials Division of CSR Limited, in either the Bradford Insulation factory or the Gyprock factory, at 21 Sheffield Road, Welshpool, WA.

4.—TIME AND WAGES RECORD

(1) The employer shall keep a time and wages book showing the name and address of each employee, the nature of his work, the hours worked each day and the wages and allowances paid each week. Any system of automatic recording by means of machines shall be deemed to comply with this provision to the extent of the information recorded.

(2) The time and wages record shall be open for inspection by a duly accredited official of the union, during the usual office hours, at the employer's office or other convenient place and he shall be allowed to take extracts therefrom. The employer's works shall be deemed to be a convenient place for the purpose of this paragraph and if for any reason the record be not available at the works when the official calls to inspect it, it shall be made available for inspection within 12 hours either at the employer's office or at the works.

5.—HOURS

(1) Day Work:

(a) The ordinary hours of work shall be an average of 38 hours per week over a 4 week cycle, to be worked 8 hours per day, Monday to Friday inclusive, between the hours of 6.00am and 6.00pm each day or such times as may be agreed between the employer and the Union.

(b) Provided that work done prior to the spread of hours fixed in accordance with this subclause for which overtime rates are payable shall be deemed for the purpose of this subclause to be part of the ordinary hours of work.

(c) In any arrangement for ordinary hours where the ordinary working hours are to exceed eight on any day, the arrangement of hours shall be subject to agreement between the employer and the majority of employees in the plant or work section or sections concerned, and

(d) In any arrangement for ordinary hours where the ordinary working hours are to exceed ten on any day, the arrangement of hours shall be subject to agreement between the employer, the majority of employees in the work section or sections concerned, with advice to the union, provided that the ordinary hours shall not exceed twelve on any day.

(2) Shift Work

(a) The ordinary hours of employees on continuous and non-continuous shift work shall not exceed:

38 per week; or
76 per fortnight; or
114 in three weeks; or
152 in four weeks; or
228 in six weeks

to be worked in shifts of 8 hours inclusive of a crib time of 20 minutes which shall be counted as time worked.

(b) In any arrangement of ordinary hours where the ordinary working hours are to exceed eight on any day, the arrangement of hours shall be subject to agreement between the employer and the majority of employees in the plant or work section or sections concerned, and

(c) In any arrangement for ordinary hours where the ordinary working hours are to exceed ten on any day, the arrangement of hours shall be subject to agreement between the employer and the majority of employees in the plant or work section or sections concerned, with advice to the union, provided that the ordinary hours shall not exceed twelve on any day.

(3) Where the employer wishes to change the number of shifts being worked he/she will consult with employees and inform them of the appropriate award conditions covering weekly earnings, shift roster(s), RDO's and annual leave provisions.

The employer shall give employees four weeks' notice of any increase or decrease in the number of shifts.

Where a dispute arises between the employer and employees, the matter shall be settled in accordance with clause 23.—Settlement of Disputes of this award.

5A.—OPERATION OF A 38 HOUR WEEK

(1) Rostering

(i) As from July 1st, 1982 the ordinary hours of work shall be an average of thirty-eight per week as provided in clause 5, Hours, of this Award.

(ii) Circumstances may arise where roster cycles of varying lengths will apply to various groups or sections of employees within the plant.

(iii) Except as provided by subclause (iv) hereof, an employee shall be advised by the employer at least four weeks in advance of the week day he is to be rostered off duty.

(iv) The employer, with the agreement of the majority of employees concerned, may substitute the day an employee is to be rostered off duty for another day in the case of a break-down in machinery or a failure or shortage of electric power or to meet the requirements of the business in the event of rush orders or some other emergency situation.

(v) An individual employee, with the agreement of the employer, may substitute the day he is rostered off duty for another day.

(2) Payment of Rostered Day Off Duty

(i) For every ordinary hour paid for, payment to the employee of one twentieth (5%) of his hourly rate (weekly rate ¸ 38) will be withheld by the employer and then paid in the pay week in which the employee's rostered day off is taken.

(ii) For all ordinary hours worked, where any allowance or penalty prescribed by this award is expressed as a percentage or multiple of the ordinary rate, the ordinary rate for an eight hour day or shift shall equal weekly rate ¸ 5.

(3) Work on Rostered Day Off Duty

Any employee required to work on his rostered day off shall be paid in accordance with the overtime entitlements for work performed outside ordinary hours as prescribed by clause 7 of this Award.

(4) Annual Leave and Rostered Days Off Duty

Each employee is entitled to a total of thirteen rostered days off per year one of which is included in the four week annual leave entitlement as prescribed in clause 12 of this Award.

(5) Sick Leave, Bereavement Leave and Rostered Days Off Duty

Employees are not eligible for sick leave or bereavement leave as provided in clauses 13 and 17 respectively of this award in respect of absences on rostered days off as such absences are outside their usual hours of duty.

6.—SHIFT WORK

(1) After reasonable notice employees may be required to work shift work.

(2) Except as provided in subclause (5) of this clause, shift employees on afternoon shift shall be paid 17½ percent more than ordinary rates in respect to each shift worked Monday to Friday, whilst shift employees on night shift shall be paid 20 percent more than ordinary rates in respect to each shift worked Monday to Friday.

(3) "Afternoon shift" means a shift finishing after 6 p.m. and at or before midnight.

(4) "Night shift" means a shift finishing after midnight and at or before 8 a.m.

(5) Where a non-continuous shift roster provides that the first shift of the week commences not later than 8 a.m. Monday, ordinary time worked on shifts up to 8 a.m. on a Saturday or holiday shall be regarded as rostered ordinary time worked on the day preceding such Saturday or holiday, and the appropriate rates shall be paid as for the preceding day; provided that shift employees shall be paid 30% more than ordinary rates for the final rostered night shift of the week occurring up to 8 a.m. on a Saturday, in lieu of the allowance provided in subclause (2) of this clause.

(6) Provided that time worked by any shift employee between the usual starting time of the night shift and midnight on any Sunday or holiday shall not be deemed to be time worked on a Sunday or holiday. Provided further except as provided in subclause (5) hereof that where the major portion of the shift is worked on a Sunday or holiday, the whole of that shift shall be regarded as the Sunday or holiday as the case may be, and paid for as such.

(7) Continuous shift employees on a rostered shift, the major portion of which is performed on a Saturday shall be paid for at the rate of time and one-half.

(8) Continuous shift employees on a rostered shift, the major portion of which is performed on a Sunday or holiday shall be paid at the rate of double time for such Sunday and at the rate of double time and a half for such holiday.

(9) Such extra rates as are provided in subclauses (7) and (8) of this clause shall be in substitution for and not cumulative upon the shift allowance provided in subclause (2) of this clause.

7.—OVERTIME

(1) Day Employees:

(a) Overtime shall be deemed to mean all work done before the recognised time for starting and after the recognised time for ceasing the ordinary hours of work. Each day's overtime shall stand alone.

(b) All overtime worked on any day Monday to Friday inclusive shall be paid at the rate of time and one-half for the first 2 hours and double time thereafter.

(c) (i) All overtime worked on a Saturday, prior to 12 noon, shall be paid at the rate of time and one-half for the first 2 hours and double time thereafter.

(ii) All overtime worked on a Saturday, after 12 noon, shall be paid at the rate of double time.

(2) Shift Employees:

Shift employees for all time worked in excess of or outside the ordinary working hours prescribed by this award or on a shift other than a rostered shift shall:

(a) if employed on continuous work, be paid at the rate of double time; or

(b) if employed on other shift work be paid at the rate of time and one-half for the first 2 hours and double time thereafter,

except in each case when the time is worked:

(c) by arrangement between the employees themselves; or

(d) for the purpose of effecting the customary rotation of shifts; or

(e) on a shift to which an employee is transferred on short notice as an alternative to sending the employee off in circumstances which would entitle the employer to deduct payment for a day in accordance with subclause (3) of clause 11 of this award.

(3) Sunday Work:

Except as otherwise provided, all overtime worked on a Sunday shall be paid at the rate of double time.

(4) Holiday Work:

Except as otherwise provided all overtime worked on a holiday, prescribed in clause 12 hereof, shall be paid at the rate of double time and one-half.

(5) Minimum Payment on Sundays and Holidays:

An employee required to work on a Sunday or a holiday prescribed in clause 12 hereof, shall be paid a minimum of 4 hours at the appropriate overtime rate provided that such payment does not apply to work which is continuous with work performed on the previous or following day.

(6) Call Back:

An employee recalled to work, after having left the employer's business premises, shall be paid a minimum of 4 hours at the appropriate overtime rate. Time reasonably spent in getting to and from work shall be counted as time worked. Provided that this subclause shall not apply when the overtime is continuous with the completion or commencement of ordinary working hours.

(7) Rest Period after Overtime:

When overtime is necessary it shall, whenever reasonably practicable, be so arranged that employees have at least 8 consecutive hours work between the work of successive days.

An employee (other than a casual employee) who works so much overtime between the termination of his ordinary work on one day and the commencement of his ordinary work on the next day that he has not at least 8 consecutive hours off duty between those times shall, subject to this subclause, be released after completion of such overtime until he has had 8 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

If, on the instruction of his employer, such employee resumes or continues work without having had such 8 consecutive hours off duty, he shall be paid at double rates until he is released from duty for such period, and he shall be entitled to be absent until he has had 8 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(8) Crib Time:

An employee working overtime shall be allowed a crib time of 20 minutes without deduction of pay after each 4 hours of overtime worked if the employee continues work after such crib time.

Where the period of overtime is one and one-half hours or more an employee before starting overtime after working ordinary hours shall be allowed a meal break of 20 minutes which shall be paid for at appropriate overtime rates. The 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 shall not be required to make any payment in respect of any time allowed in excess of 20 minutes.

(9) Meal Money:

Where an employee has to work before the usual starting time or after the usual ceasing time for one and one-half hours or more, in either case, he/she shall be paid $5.35 for a meal. Any employee required to work a further four hours' overtime shall be paid a further $5.35.

If an employee pursuant to notice has provided a meal or meals and is not required to work overtime, he/she shall be paid $5.35 for each meal provided.

8.—MEAL BREAKS

(1) Day employees shall be allowed a break of not less than half an hour nor more than 1 hour for a meal on each day of the week Mondays to Friday inclusive.

(2) Any employee called upon to work during the recognised meal break shall be paid overtime rates for all such time worked; provided that in the case of emergency where it is necessary to work up to 1 hour after the usual ceasing time for lunch this provision shall not apply.

9.—WAGES

(1) (a) Employees (total wage per week)

Wage Group	$
1.	426.80
2.	417.80
3.	408.90
4.	404.20
5.	397.60
6.	395.00
7.	388.20
8.	384.30

(b) Provided that an employee qualified Senior Hand Gyprock or Warehouse appointed as Shift Boss shall be paid an all purpose allowance of $87.10 per week.

(c) Provided further that a Shift Boss may appoint on a day to day basis and subject to work requirements, a Deputy Shift Boss who shall be paid a flat allowance of $5.10 per shift.

(2) For the purposes of subclause (1) of this clause, each group shall be comprised of the following classifications:

Wage Group	Bradford Insulation Factory	Gyprock Factory
1	Senior Line Operator	Senior Hand, Warehouse; or Senior Hand, Gyprock
2		Senior Hand (Cornice Plant)
3	Pot Operator	Plaster Mill Operator
4		Forming Area Operator
5	Shift Tester Relief Pot Operator (controls input materials) Senior Conveyor Attendant	
6		Cornice Plant Operator Joint Cements/Special Plaster Mixer
7		Forklift Driver Grader (Forklift Duties) Unloader and Grader (Testing Duties)
8	Conveyor Attendant Product Handler Process Worker	Product Handler Process Worker Bagger

(3) Junior Employees:

Junior employees shall be paid the prescribed percentage of the adult wage per week for the class of work on which they are engaged.

	%
Under 18 years of age	80
18 years of age and over	100

(4) Casual Employment:

A casual employee is one engaged and paid as such. A casual employee for working ordinary time shall be paid per hour 1/38th of the weekly rate prescribed by this award for the work performed, plus 20 per cent.

(5) First Aid Allowance:

An employee qualified to act as a first aid attendant and appointed to act as a first aid attendant in association with other work under this award shall be paid an allowance of $10.85 per week.

(6) Extra Rates:

(a) Employees who are required to clean the forming machine drain and pit shall be paid a flat allowance of $2.55 for each day when this work needs to be performed.

(b) In addition to the rates set out in subclauses (1) and (2) of this clause, any Products Handler who is appointed a leading hand shall receive a weekly allowance as follows:

not more than 10 employees	$19.60
more than 10 employees	$29.30

10.—MIXED FUNCTIONS

An employee engaged for more than 2 hours on duties carrying a higher rate than his ordinary classification shall be paid the higher rate for such day or shift; if for less than 2 hours he shall be paid the higher rate for the time so worked. An employee who is required temporarily to perform work for which a lower rate is paid shall not suffer any reduction in his wages whilst so employed; provided that any work of less than 1 week's duration shall be deemed to be temporary.

11.—CONTRACT OF EMPLOYMENT

(1) (a) The contract of employment of all employees (other than those specified in paragraph (b) hereof) covered by this award shall be as follows:

(i) during the first three months of employment, 1 day; and

(ii) after the first three months of such employment, 1 week.

Provided that the contract of employment may be terminated by giving 1 day's (or 1 week's) notice on either side or by the payment or forfeiture, as the case may be, of 1 day's (or 1 week's) wages in lieu of such notice.

(b) The contract of employment of casual employees shall be by the hour. Provided that the contract of employment may be terminated by the giving of 1 hour's notice on either side or by the payment or forfeiture, as the case may be, of 1 hour's wages in lieu of such notice.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this subclause, the employer may dismiss any employee at any time for misconduct and shall be liable, in such cases, for payment of ordinary rates up to the time of dismissal only.

(2) (a) Where an employee leaves his employment:

(i) without giving the notice referred to in subclause (1) of this clause; or

(ii) having given such notice, before the notice expires;

he forfeits his entitlement to any moneys owing to him under this award except to the extent that those moneys exceed his ordinary wages for the period of notice which should have been given.

(b) In a case to which paragraph (a) of this subclause applies:

(i) the contract of service shall, for the purpose of this award, be deemed to have terminated at the time at which the employee was last ready, willing and available for work during ordinary hours under the contract; and

(ii) the provisions of subclause (1) of this clause, shall be deemed to have been complied with if the employee pays to the employer, whether by forfeiture or otherwise, an amount equivalent to the employee's ordinary wages for the period of notice which should have been given.

(3) Nothing in this clause shall affect the right of the employer to deduct payment for any day the employee cannot be usefully employed because of any strike or through any breakdown in machinery or any stoppage of work by any cause for which the employer cannot reasonably be held responsible.

(4) Upon request by an employee, the employer shall give an employee a signed statement of service upon termination. Such statement shall certify the period of commencing and ceasing employment and the class of work upon which the employee was employed.

12.—HOLIDAYS AND ANNUAL LEAVE

(1) (a) The following days, or the days observed in lieu shall, subject to clause 7 hereof, be allowed as holidays without deduction of pay, namely—New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day. Provided that another day may be taken as a holiday by arrangement between the parties, in lieu of any of the days named in this subclause.

(b) When any of the days mentioned in paragraph (a) of this subclause falls on a Saturday or a Sunday, such holiday shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday, such holiday shall be observed on the next succeeding Tuesday; in each such case the substituted day shall be deemed a holiday without deduction of pay in lieu of the day for which it is substituted.

(c) Except as provided in clause 6, Shift Work, all time worked on any day prescribed as a holiday in subclause (1) hereof shall be paid for at the rate of double time and one-half.

(2) On any public holiday not prescribed as a holiday under this award the employer's establishment or place of business may be closed, in which case an employee need not present himself for duty and payment may be deducted but if work be done ordinary rates of pay shall apply.

(3) When an employee is absent from his employment on the working day before or the working day after any of the holidays referred to in subclause (1) hereof without reasonable cause (proof whereof shall lie upon him) or the consent of his employer, the employee shall not be entitled to payment for the holiday which occurs on the day immediately following or immediately preceding such absence.

(4) In the event of an employee's rostered day off falling on a public holiday, the employer and the employee shall agree to an alternative day off duty as a substitution provided that in the absence of agreement, the substituted day shall be determined by the employer.

(5) Except as hereinafter provided a period of 4 consecutive weeks' leave with payment of ordinary wates as prescribed shall be allowed annually to an employee by his employer after a period of 12 months' continuous service with that employer. Provided that as from 1 July 1982 the 4 week leave period shall be inclusive of one rostered day off, as prescribed by subclause 4 of clause 5a of this award.

(6) In addition to the leave prescribed in subclause (5) of this clause a continuous shift employee shall be allowed 7 consecutive days' leave including non-working days. Where an employee with 12 months' continuous service is engaged for part of the 12 monthly period as a continuous shift employee he shall be entitled to have the 28 consecutive days' annual leave prescribed in subclause (5) of this clause increased by 3-1/3rd hours for each month prior to 1 July 1982 he is continually engaged as aforesaid and by 3-1/6th hours for each month after 1 July 1982.

(7) During a period of annual leave an employee shall be paid a loading of 20 percent. calculated on his ordinary wage as prescribed. Provided that where an employee would have received shift loadings prescribed by clause 6—Shift Work, had he not been on leave during the relevant period and such loadings would have entitled him to a greater amount than the loading of 20 percent., then the shift loading shall be added to his ordinary wage in lieu of the 20 percent. loading.

After completion of 12 months' continuous service an employee shall be entitled to receive the loading prescribed in this subclause on proportionate leave on termination.

(8) If any holiday prescribed herein falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day there shall be added to that period 1 day being an ordinary working day for each such holiday observed as aforesaid.

(9) If after 1 month's continuous service in any qualifying period an employee lawfully leaves his employment or his employment is terminated by his employer through no fault of the employee, the employee shall be paid 3.08 hours at his ordinary rate of wage in respect of each week of continuous service, and from 1 July 1982, 2.923 hours in respect of each completed week of continuous service, the service being service in respect of which leave has not been granted.

Provided that a continuous shift employee shall be paid at his ordinary rate of wage for 3.85 hours prior to 1 July 1982 in respect of each week of continuous service, and from 1 July 1982 at his ordinary wage rate for 3.65 hours in respect of each completed week of continuous service, the service being service in respect of which leave has not been granted.

(10) Any time in respect of which an employee is absent from work except time for which he is entitled to claim sick pay or time spent on holidays or annual leave as prescribed by this award shall not count for the purpose of determining his right to annual leave.

(11) In the event of an employee being employed by an employer for portion only of a year, he shall only be entitled subject to subclause (9) of this clause to such leave on full pay as is proportionate to his length of service during that period with such employer, and if such leave is not equal to the leave given to the other employees he shall not be entitled to work or pay whilst the other employees of such employer are on leave on full pay.

(12) In special circumstances and by mutual consent of the employer, the employee and the union concerned, annual leave may be taken in not more than 2 periods.

(13) Where the company closes down its plant or a section or sections thereof, for the purpose of allowing annual leave to all or the bulk of the employees in the plant or section or sections concerned, the following provisions shall apply:

(a) It may, by giving to the employees concerned not less than one month's notice of its intention so to do, stand off for the duration of the close down all employees in the plant or section or sections concerned, and allow those who are not qualified for four full weeks' leave pursuant to subclause (a) of this clause, paid leave on a proportionate basis of one-third of a week's leave for each completed month of continuous service.

(b) An employee who has then qualified for four full weeks' leave pursuant to subclause (a) of this clause and has completed a further month or more of continuous service, shall be allowed his leave and shall also be paid one third of a week's wages in respect of each completed month of continuous service performed since the close of his last 12 monthly qualifying period.

(c) The next 12 monthly qualifying period for each employee affected by such close down shall commence from the day on which the plant or section or sections concerned is re-opened for work. Provided that all time during which an employee is stood off without pay for the purpose of this subclause shall be deemed to be time of service in the next 12 monthly qualifying period.

(d) If, in the first year of his service with the company, an employee is allowed proportionate annual leave under paragraph (a) of this subclause, and subsequently within such a year leaves his employment or his employment is terminated by the company, he shall be entitled to the benefit of subclause (9) of this clause subject to adjustment for any proportionate leave which he may have been allowed as aforesaid.

(14) An employee who is justifiably dismissed for misconduct shall not be entitled to the benefit of the provisions of this clause except where the misconduct for which he was dismissed occurred after the completion of the qualifying period in which case the employee shall be granted payment for that annual leave which has accrued.

(15) The provisions of this clause shall not apply to casual employees.

13.—SICK LEAVE

(1) (a) An employee who is unable to attend or remain at his place of employment during the ordinary hours of work by reason of personal ill health or injury shall be entitled to payment during such absence in accordance with the following provisions.

(b) Entitlement to payment shall accrue at the rate of 1/6th of a week for each completed month of service with the employer.

(c) If in the first or successive years of service with the employer an employee is absent on the ground of personal ill health or injury for a period longer than his entitlement to paid sick 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 sick leave during that year of service.

(2) The unused portions of the entitlement to paid sick leave in any 1 year shall accumulate from year to year and subject to this clause may be claimed by the employee if the absence by reason of personal ill health or injury exceeds the period for which entitlement has accrued during the year at the time of the absence. Provided that an employee shall not be entitled to claim payment for any period exceeding 10 weeks in any 1 year of service.

(3) To be entitled to payment in accordance with this clause the employee shall as soon as reasonably practicable advise the employer of his inability to attend for work, the nature of his illness or injury and the estimated duration of the absence. Provided that such advice, other than in extraordinary circumstances shall be given to the employer within 24 hours of the commencement of the absence.

(4) The provisions of this clause do not apply to a worker who fails to produce a certificate from a medical practitioner dated at the time of the absence or who fails to supply such other proof of the illness or injury as the employer may reasonably require provided that the worker shall not be required to produce a certificate from a medical practitioner with respect to absences of two days or less unless after two such absences in any 12 months of service the employer requests in writing that the next and subsequent absences in that year if any, shall be accompanied by such certificate.

(5) (a) Subject to the provisions of this subclause, the provisions of this clause apply to an employee who suffers personal ill health or injury during the time when he is absent on annual leave and an employee may apply for and the employer shall grant paid sick leave in place of paid annual leave.

(b) Application for replacement shall be made within 7 days of resuming work and then only if the employee was confined to his place of residence or a hospital as a result of his personal ill health or injury for a period of 7 consecutive days or more and he produces a certificate from a registered medical practitioner that he was so confined. Provided that the provisions of this paragraph do not relieve the employee of the obligation to advise the employer in accordance with subclause (3) of this clause if he is unable to attend for work on the working day next following his annual leave.

(c) Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the employee was entitled at the time he proceeded on annual leave and shall not be made with respect to fractions of a day.

(d) Where paid sick leave has been granted by the employer in accordance with paragraphs (a), (b) and (c) of this subclause, that portion of the annual leave equivalent to the paid sick leave is hereby replaced by the paid sick leave and the replaced annual leave may be taken at another time mutually agreed to by the employer and the employee or, failing agreement, shall be added to the employee's next period of annual leave or, if termination occurs before then, be paid for in accordance with the provisions of clause 12—Holidays and Annual Leave.

(e) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in clause 12—Holidays and Annual Leave shall be deemed to have been paid with respect to the replaced annual leave.

(6) Where a business has been transmitted from one employer to another and the employee's service has been deemed continuous in accordance with subclause (3) of clause (2) of the long service leave provisions published in Volume 59 of the Western Australian Industrial Gazette at pages 1-6, the paid sick leave standing to the credit of the employee at the date of transmission from service with the transmittor shall stand to the credit of the employee at the commencement of service with the transmittee and may be claimed in accordance with the provisions of this clause.

(7) The provisions of this clause with respect to payment do not apply to employees who are entitled to payment under the Workers' Compensation Act nor to employees whose injury or illness is the result of the employee's own misconduct.

(8) The provisions of this clause do not apply to casual employees.

(9) Provided that employees are not eligible for sick leave in respect of absences on rostered days off as such absences are outside their usual hours of duty.

14.—PAYMENT OF WAGES

(1) (a) All wages and overtime shall be paid in cash or other mutually agreed method and be available for collection not later than Friday in each week, in the employer's time.

(2) (b) Provided that an employee commencing on or after 9 December 1987 shall be paid by direct funds transfer.

(c) Provided further that the costs associated with the transfer of funds from the employer's bank to any other bank or financial institution shall be paid by the employer.

(2) Where the employment is lawfully terminated before the regular pay time the employee shall be paid all moneys due as soon as reasonably possible thereafter.

(3) In the event that an employee is rostered off duty on a day which co-incides with pay day, such employee shall be paid no later than the working day immediately following pay day.

(4) (a) By the first pay period on or after 1 January, 1990 employees will receive their wages either through Electronic Funds transfer to a bank, building society or credit union of the employee's choice at no cost to the employee or, by cheque.

(b) Monies from payment of wages will be able to be secured by an individual employee on the normal pay day.

15.—LONG SERVICE LEAVE

(1) Subject to this clause the long service leave provisions published in Volume 65 of the Western Australian Industrial Gazette at pages 1-4 inclusive will apply to all employees covered in this Award. Provided that in paragraph 3(2)(a) of those long service leave provisions, an employee shall accrue leave at the rate of 13 weeks per 10 years' service for all service from 1 March 1983.

(2) Provided further that long service leave as prescribed by subclause (1) of this clause is exclusive of annual leave but inclusive of all other holidays or rostered days off occurring during the taking of any period of long service leave.

16.—GENERAL CONDITIONS

(1) (a) The employer shall provide all employees with an issue of company uniforms, initially to be issued after 3 months' satisfactory service, at no cost to the employee.

(i) For Males: Each uniform issue shall consist of 3 shirts (or T-shirts) and 2 pairs of trousers, or at the request of the employee an equivalent number of shorts and short-sleeved shirts in lieu thereof.

(ii) For Females: The design of uniforms may vary so that the issue of uniforms may extend to 3 sets with skirts and slacks optional to the individual.

(b) All employees shall be provided with a green winter windcheater (with company emblem) free of cost.

(c) The employer will subsidise the purchase of approved safety footwear up to 100% of the purchase price.

(d) Wearing of uniforms is compulsory at all times once an employee commences in the scheme. Uniforms shall be replaced on an exchange basis, subject to fair wear and tear.

(e) Laundering is the responsibility of the employee.

(f) Uniforms remain the property of the employer and should be surrendered on termination.

(g) An employee who is required to launder his work clothing in accordance with this clause shall be paid an allowance of $2.35 per week.

(2) Day employees will be given 5 minutes for cleaning up prior to cessation of the day's work. Such time will be spent inside the plant. Shift workers will hand over on the job.

(3) When necessary for the performance of their duties, employees shall be provided with and shall wear suitable protective clothing, footwear or equipment as is necessary for the job. Any laundering required under this subclause will be the responsibility of the company.

17.—COMPASSIONATE LEAVE

(1) An employee shall, on the death within Australia of a wife, husband, brother, sister, father, mother, parent-in-law, child, step-child, grandchild or grandparent, of the employee be entitled to leave including the day of the funeral of such relation. Such leave for a period not exceeding 2 days in respect of any such death shall be without loss of any ordinary pay which the employee would have received if he had not been on such leave.

(2) The right to such paid leave shall be dependent on compliance with the following conditions—

(a) satisfactory evidence of such death shall be furnished by the employee to the employer; and

(2) (b) The employee shall not be entitled to leave under this clause in respect of any period which coincides with any other period of leave entitlement under this award, or in respect of a rostered day off duty or otherwise.

(3) For the purpose of this clause, the words "wife" and "husband" shall include a wife or husband from whom the employee is separated and shall include a person who lives with the employee as a de-facto wife or husband.

(4) An employee shall be entitled to a maximum of two days' leave without loss of ordinary pay on each occasion and on the production of satisfactory evidence of the death outside of Australia of the employee's husband, wife, father or mother and where such employee travels outside of Australia to attend the funeral. Where an employee does not travel to attend the funeral but a memorial service is held in Australia he shall be allowed one day's leave on the day the memorial service is held.

(5) The provisions of this clause shall not apply to casual employees.

18.—RIGHT OF ENTRY

(1) On notifying the employer or his representative an accredited representative of the union shall be permitted to interview an employee during the recognised meal hour on the business premises of the employer at the place at which the meal is taken but this permission shall not be exercised without the consent of the employer.

(2) In the case of a disagreement existing or anticipated concerning any of the provisions of this award an accredited representative of the union, on notifying the employer or his representative, shall be permitted to enter the business premises of the employer to view the work the subject of any such disagreement, but shall not interfere in any way with the carrying out of such work.

19.—MATERNITY LEAVE

(1) Eligibility for Maternity Leave

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

For the purposes of this clause:

(a) An employee shall include a part-time employee but shall not include an employee engaged upon casual or seasonal work.

(b) Maternity leave shall mean unpaid maternity leave.

(2) Period of Leave and Commencement of Leave.

(a) Subject to subclauses (3) and (6) hereof, the period of maternity leave shall be for an unbroken period of from 12 to 52 weeks and shall include a period of 6 weeks' compulsory leave to be taken immediately before the presumed date of confinement and a period of 6 weeks' compulsory leave to be taken immediately following confinement.

(b) An employee shall, not less than 10 weeks prior to the presumed date of confinement, give notice in writing to her employer stating the presumed date of confinement.

(c) An employee shall give not less than 4 weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave, stating the period of leave to be taken.

(d) An employee shall not be in breach of this order as a consequence of failure to give the stipulated period of notice in accordance with paragraph (c) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

(3) Transfer to a Safe-Job.

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

If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (7), (8), (9) and (10) hereof.

(4) Variation of Period of Maternity Leave.

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

(b) The period of leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(5) Cancellation of Maternity Leave.

(a) Maternity leave, applied for but not commenced shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.

(b) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed 4 weeks from the date of notice in writing by the employee to the employer that she desires to resume work.

(6) Special Maternity Leave and Sick Leave.

(a) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then:

(i) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, or

(ii) for illness other than the normal consequences of confinement she shall be entitled either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a duly qualified medical practitioner certifies as necessary before her return to work.

(b) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled

and such further unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed 52 weeks.

(c) For the purposes of subclauses (7), (8) and (9) hereof, maternity leave shall include special maternity leave.

(d) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (3), to the position she held immediately before such transfer.

Where such position no longer exists but there are other positions available, for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(7) Maternity Leave and Other Leave Entitlements

Provided the aggregate of leave including leave taken pursuant to subclauses (3) and (6) hereof does not exceed 52 weeks:

(a) An employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is then entitled.

(b) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.

(8) Effect of Maternity Leave on Employment.

Notwithstanding any award or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of the award.

(9) Termination of Employment.

(a) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.

(b) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(10) Return to Work After Maternity Leave.

(a) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than 4 weeks prior to the expiration of her period of maternity leave.

(b) An employee, upon the expiration of the notice required by paragraph (a) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (3), to the position which she held immediately before such transfer. Where such position no longer exists but there are no other positions available for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(11) Replacement Employees.

(a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.

(b) Before an employer engages a replacement employee under this subclause, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

(c) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

(d) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

(e) A replacement employee shall not be entitled to any of the rights conferred by this clause except where her employment continues beyond the 12 months qualifying period.

20.—MORNING TEA

Employees shall be entitled to a period of ten minutes in the morning, or once each shift, as a tea-break, provided that there is no interruption to the work process.

21.—JURY SERVICE

An employee required to attend for jury service during his ordinary work hours shall be reimbursed by the company an amount equal to the difference between the amount paid in respect of his attendance for such jury service and the amount of wage he would have received in respect of the ordinary time he would have worked had he not been on jury service. An employee shall notify the company as soon as possible of the date upon which he is required to attend for jury service. Further, the employee shall give the company proof of his attendance, the duration of such attendance and the amount received in respect of such jury service.

22.—ATTENDANCE AT REPATRIATION CENTRES

Employees being ex-service personnel, shall be allowed as time worked, lost time incurred whilst attending repatriation centres for medical examination and/or treatment; provided that:

(a) such lost time does not exceed four hours on each occasion;

(b) payment shall be limited to the difference between ordinary wage rates for time lost and any payment received from the Repatriation Department as a result of each such visit;

(c) the employee produces evidence satisfactory to the employer that he is so required to and subsequently does attend a repatriation centre;

(d) the provisions of this clause will apply to a maximum of four such attendances in any year of service.

23.—SETTLEMENT OF DISPUTES

(1) As soon as practicable after a dispute or claim has arisen, the employee concerned shall take the matter up with his or her immediate supervisor allowing the supervisor the opportunity to remedy the situation.

(2) Where any such attempted settlement has failed, or where the nature of the dispute or claim is such that direct discussion between the employee and his/her immediate supervisor is inappropriate, the employee shall notify the duly appointed union delegate who will attempt to resolve the matter with the employee's supervisor. Where the matter cannot be resolved the union representative will raise the matter with the Production Manager (Gyprock) or Senior Production Supervisor (Bradford) for further discussion and possible resolution.

(3) If a resolution still cannot be reached, the matter shall be discussed by the State Manager (Gyprock) or the Operations and/or State Manager (Bradford) and/or their representative and an accredited official of the FMWU.

(4) If the matter is still not settled either party may submit the issue to the Western Australian Industrial Relations Commission in an attempt to resolve the matter by conciliation. Where the matter cannot be resolved by conciliation then it shall be referred for arbitration.

(5) Without prejudice to either party, work should continue in accordance with the award while the matter(s) in dispute are being dealt with in accordance with this procedure.

(6) Any dispute arising concerning the classification of any employee pursuant to clause 9.—Wages of this award shall be settled in accordance with this clause.

24.—TERM

This award shall operate from the beginning of the first pay period to commence on or after the 1st day of March, 1982 a period of 15 months.

25.—TRADE UNION TRAINING LEAVE

(1) Subject to subclause (2) hereof, employees at each place of employment covered by this award who are members of The Federated Miscellaneous Worker's Union shall with the approval of the union and upon application in writing, be granted leave with pay to attend courses conducted by the Australian Trade Union Training Authority (TUTA) which are designed to promote good industrial relations and industrial efficiency. In total up to ten days' leave for each workplace may be granted each calendar year on a non-cumulative basis in respect of Bradford and Gyprock factories.

(2) Leave to attend courses approved by the TUTA shall also be granted following agreement between the union and employer.

(3) Where the number of employees at a particular place of employment exceeds 100, it is open to the parties to review the number of employees who may be eligible for leave available under this clause.

(4) The granting of leave shall be subject to the employee giving reasonable notice of the intention to attend such course. The taking of leave shall be dependant upon the employer being able to make adequate staffing arrangements amongst his/her current employees.

(5) This notice to the respondent employer must include details of the type, content and duration of the course to be attended.

(6) Leave of absence granted pursuant to this clause shall count as service for all purposes of this award.

(7) Each employee on leave approved in accordance with this clause shall be paid ordinary time earnings. Ordinary time earnings for the purpose of this clause shall mean classification rate, and shift loading where appropriate. No payment will be made by the respondent employer should the employee fail to attend the nominated course. The respondent employer reserves the right to seek documented proof of attendance by the employee at the nominated course.

26.—PART-TIME EMPLOYMENT

(1) A part-time employee shall mean an employee who is covered by this award and is specifically engaged by the week for a number of hours less than 38 but no less than 18 hours in any one week.

(2) The rate of pay for a part-time employee shall be the appropriate ordinary hourly rates calculated by dividing the appropriate weekly rates as prescribed by 38 and shall include all penalties and entitlements provided by the award.

(3) Sick leave and annual leave entitlements shall be calculated on pro-rata basis as per clause 12.—Holidays and Annual Leave and clause 13.—Sick Leave of this award.

(4) Where part-time employees usually work on a day of the week on which a public holiday occurs and they are not required to work on that day they shall be paid for the hours that they would have worked on that day.

(5) Any part-time employee who works in excess of the hours fixed under the contract of employment, shall be paid overtime in accordance with this Award.

(6) Prior to the creation of any new part-time position, agreement shall be reached with the consultative committee. Where agreement cannot be reached within the committee, the matter shall be settled in accordance with the disputes settlement procedure of this award.

27.—STRUCTURAL EFFICIENCY

(1) Training

(a) The employer in conjunction with the consultative committee agree to conduct a skills audit for all positions classified pursuant to clause 9.—Wages of this award.

(b) The parties to this award recognise that in order to increase the efficiency, productivity and competitiveness of industry, a greater commitment to training and skill development is required.

(c) Following proper consultation with the consultative committee and employees the employer shall develop a training program consistent with:

(i) the current and future needs of the enterprise;

(ii) the size, structure and nature of the operation of the enterprise;

(iii) the need to develop vocational skills relevant to the enterprise through courses conducted on-the-job or by accredited educational institutions and providers where appropriate.

(d) To assist the employer in developing and maintaining a training program consistent with the previously mentioned objectives, the consultative committee will be called upon to advise the employer on the design, content and evaluation of the training program. The committee shall have access to external expertise when additional advice is required and is not available inhouse.

(e) Training will occur in line with the program developed by management after proper consultation with employees and the consultative committee specified in subclause (3) of this clause.

(f) Any developments that occur in the area of training shall be discussed with the employer, employees, consultative committees and the Union. Where agreement cannot be reached the matter shall be settled in accordance with clause 23.—Settlement of Disputes of this award.

(2) Access to Training

(a) The parties to this award recognise that efficiency and productivity are enhanced by appropriate training and agree to ensure that all employees have access to the appropriate training program developed pursuant to subclause (1) of this clause.

(b) Where training takes place the parties agree to provide adequate cover to ensure production, product quality and safety standards are maintained.

(c) All employees agree to undergo training to enable them to competently fill the position for which they were employed.

(d) Notwithstanding the above, the parties to this award agree that to be effective, training needs to be conducted on a voluntary basis. Where an employee elects not to undergo training designed to enable him/her to competently fill a higher position then the said employee must accept that they cannot be promoted to a higher position.

(e) This clause in no way limits the employers right to dismiss or demote any employee for poor performance.

(f) Leave of absence granted may include any necessary travelling time in normal working hours immediately before or after the course or seminar.

(g) In the event that a scheduled rostered day off resulting from a work arrangement established in accordance with this award falls within a period of leave approved pursuant to this clause, no alternative day off shall be substituted in lieu.

(3) Consultative Committee

(a) To enhance consultation in the workplace, the parties to this award agree to establish a consultative committee consisting of employees from each section/shift together with employer representatives. The consultative committee shall where possible consist of equal numbers of employees and employer representatives.

(b) Notwithstanding the employees' right to elect any employee to the consultative committee, it is intended that employee representation will be as broad based as possible and cover as many shifts, sections and positions as is practical.

(4) Technological Change

(a) Where the employer intends to introduce major changes in technology which will have a significant effect upon employees, the employer agrees to consult with the consultative committee and any employee who may be effected by the change.

(b) Where a dispute arises between the employer and employees, the matter shall be settled in accordance with clause 23.—Settlement of Disputes of this award.

SCHEDULE A—PARTIES TO THE AWARD

The following organisation is a party to this award:

The Federated Miscellaneous Workers' Union of Australia, W.A. Branch.

SCHEDULE B—RESPONDENTS

CSR Limited

CHILD CARE (SUBSIDISED CENTRES) AWARD No. A 26 of 1985.

PURSUANT to section 93(6) of the Industrial Relations Act 1979 the following award has been consolidated and is published hereunder for general information.

Dated at Perth this 2nd day of January 1995

J. CARRIGG,
Registrar.

Child Care (Subsidised Centres) Award
No. A 26 of 1985.

1.—TITLE

This award shall be known as the Child Care (Subsidised Centres) Award and shall replace the Child Care Centres (Aides) Award No. A 2 of 1983, and the Child Care Centres (Pre School Teachers) Award No. A 3 of 1983 and the Child Care Centres (Child Care Workers) Award No. A 4 of 1983 insofar as those awards relate to government subsidised centres.

1A.—STATEMENT OF PRINCIPLES DECEMBER 1994

It is a condition of this Award/Industrial Agreement that any variation to its terms on or from the 30th day of December 1994, including the $8.00 per week Arbitrated Safety Net Adjustments, shall not be made except in compliance with the Statement of Principles set down by the Commission in the Reasons for Decision in Matter No. 985 of 1994.

2.—ARRANGEMENT

1. Title
1A. Statement of Principles December 1994
2. Arrangement
3. Area
4. Scope
5. Term
6. Definitions
7. Contract of Service
8. Hours of Work
9. Overtime
10. Absence Through Sickness
11. Wages
11A. Process of Transition for Directors
12. District Allowances
12A. Fares and Travelling Allowances
13. Special Leave
14. Annual Leave
15. Public Holidays
16. Long Service Leave
17. Payment of Salaries
18. Time and Wages Record and Right of Entry
19. Casual and Part Time Employees
20. Maternity Leave
21. Bereavement Leave
22. Meal Breaks and Allowances
23. Shift and Weekend Work
24. Liberty to Apply
25. Superannuation
26. Award Modernisation and Enterprise Consultation
27. Classification Definitions and Skill Descriptors
Schedule A—Parties to the Award
Schedule B—Respondents

3.—AREA

This award shall have effect over the whole of the State of Western Australia.

4.—SCOPE

This award shall apply to all employees employed in the classifications set out in Clause 11.—Wages in government subsidised nurseries, child care of day care services, excluding persons employed pursuant to the Hospital Workers (Ngal-a) Award, No. 6 A of 1958.

Provided that this award shall not apply to Administrators/Directors who are directly employed by local government authorities.

5.—TERM

The term of this award shall be for a period of 6 months from the date hereof.

6.—DEFINITIONS

"Casual Employee" shall mean an employee who is regularly employed for less than four weeks.

"Part Time Employee" shall mean an employee who is regularly employed for less than that prescribed in Clause 8.—Hours of Work of this award, for a full week's work.

"Government Subsidised Centre" shall mean a centre which is provided with funding under children's services programmes or their successors of the Federal Government or State Government through the Department for Community Development or its successors and which includes funding for the Family Centres Programme. Provided that any such funding including Fee Relief, which is provided for the operation of centres which are covered by the Children's Services (Private) Award No. A10 of 1990, does not render those centres within the scope of this definition.

"Sponsoring Body" shall include the Management Committee of the Centre.

"Union" shall mean The Federated Miscellaneous Workers' Union of Australia, Hospital, Service and Miscellaneous, W.A. Branch.

"Year of Experience" shall mean experience in the appropriate classification. Where there is a dispute as to whether the employee's previous experience shall count for determining the "year of experience" it shall be determined by the Western Australian Industrial Relations Commission.

7.—CONTRACT OF SERVICE

(1) The contract of service may be terminated by either party by the giving of two weeks' notice on any day to the other party, or by the forfeiture of payment as the case may be of two weeks' pay in lieu of such notice. Provided that by mutual consent, this notice period may be waived. Provided that this shall not affect the right of the employer to dismiss an employee for misconduct, in which case salary shall be paid up to the time of dismissal only.

(2) (a) If an employee's work or conduct falls to an unsatisfactory level, to a point where the employee's contract of service is in jeopardy, the sponsoring body shall notify the employee in writing, detailing the areas of dissatisfaction and explaining that the employee has four weeks to reach a satisfactory level.

(b) The employee has the right to appeal against the allegations of dissatisfaction specified in paragraph (a) of this subclause and shall have the right to speak on his/her own behalf, or to Union representation before the sponsoring body or it's nominated representative/s.

(3) An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of the award provided that such duties are not designed to promote de-skilling.

8.—HOURS OF WORK

(1) The ordinary hours of work shall be 38 per week for Child Care Givers and Support Employees Grade One and Grade Two and 37.5 per week for other employees, to be worked as not more than 8 hours per day between the hours of 7am and 6pm Monday to Friday inclusive. Such hours shall be worked continuously except for meal breaks.

(2) Where by agreement between the employer and the employee, the hours of work are arranged to allow an employee to regularly accumulate time off without loss of wages, the daily hours may be extended without payment of overtime to the extent of the agreed accumulation.

(3) Where, immediately prior to the coming into operation of this award an employer provided an employee with non-contact time for the purpose of planning, preparation and reading, such non-contact time shall not be discontinued because of the operation of this award.

(4) Where it is agreed between the employer and the employee, contact staff shall be allowed non-contact time for the purpose of planning, preparation and reading.

(5) Where the regulations governing the staffing level of a child care centre so require, then replacement staff shall be employed during the absence of employees observing non-contact time.

(6) Any dispute regarding the provision of non-contact time shall be referred to the Industrial Relations Commission for determination.

9.—OVERTIME

(1) For all work performed on Monday to Friday beyond the ordinary hours or outside the spread of hours as prescribed in subclause (1) of Clause 8.—Hours of Work, payment shall be made at the rate of time and one-half for the first two hours and double time thereafter.

(2) Work performed on a Saturday or Sunday shall be paid at the rate of double time.

(3) The provisions of this clause shall not apply to shift workers as defined by Clause 23.—Shift and Weekend Work.

10.—ABSENCE THROUGH SICKNESS

(1) (a) An employee who is unable to attend or remain at her place of employment during the ordinary hours of work by reason of personal ill health or injury shall be entitled to payment during such absence in accordance with the following provisions.

(b) Entitlement to payment shall accrue at the rate of 1/6th of a week for each completed month of service with the employer.

(c) If in the first or successive years of service with the employer an employee is absent on the ground of personal ill health or injury for a period longer than her entitlement to paid sick 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 sick leave during that year of service.

(2) The unused portions of the entitlement to paid sick leave in any one year shall accumulate from year to year and subject to this clause may be claimed by the employee if the absence by reason of personal ill health or injury exceeds the period for which entitlement has accrued during the year at the time of the absence. Provided that an employee shall not be entitled to claim payment for any period exceeding ten weeks in any one year of service.

(3) To be entitled to payment in accordance with this clause the employee shall as soon as reasonably practicable advise the employer of her inability to attend for work, the nature of her illness or injury and the estimated duration of the absence. Provided that such advice, other than in extraordinary circumstances shall be given to the employer within 24 hours of the commencement of the absence.

(4) The provisions of this clause do not apply to an employee who fails to produce a certificate from a medical practitioner dated at the time of the illness or who fails to supply such other proof of the illness or injury as the employer may reasonably require provided that the employee shall not be required to produce a certificate from a medical practitioner with respect to absences of two days or less unless after two such absences in any year of service the employer requests in writing that the next and subsequent absences in that year, if any, shall be accompanied by such certificate.

(5) (a) Subject to the provisions of this subclause, the provisions of this clause apply to an employee who suffers personal ill health or injury during the time when she is absent on annual leave and an employee may apply for and the employer shall grant paid sick leave in place of paid annual leave.

(b) Application for replacement shall be made within seven days of resuming work and then only if the employee was confined to her place of residence or a hospital as a result of her personal ill health or injury for a period of seven consecutive days or more and she produced a certificate from a registered medical practitioner that she was so confined. Provided that the provisions of this paragraph do not relieve the employee of the obligation to advise the employer in accordance with subclause (3) of this clause if she is unable to attend for work on the working day next following her annual leave.

(c) Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the employee was entitled at the time she proceeded on annual leave and shall not be made with respect to fractions of a day.

(d) Where paid sick leave has been granted by the employer in accordance with paragraphs (a), (b) and (c) of this subclause, that portion of the annual leave equivalent to the paid sick leave is hereby replaced by the paid sick leave and the replaced annual leave may be taken at another time mutually agreed to by the employer and the employee or, failing agreement, shall be added to the employee's next period of annual leave or, if termination occurs before then, be paid for in accordance with the provisions of Clause 14.—Annual Leave.

(e) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in Clause 14.—Annual Leave shall be deemed to have been paid with respect to the replaced annual leave.

(6) Where a business has been transmitted from one employer to another and the employee's service has been deemed continuous in accordance with subclause (3) of Clause 2 of the Long Service Leave provisions published in Volume 65 of the Western Australian Industrial Gazette at pages 1 to 4 inclusive, the paid sick leave standing to the credit of the employee at the date of transmission from service with the transmittor shall stand to the credit of the employee at the commencement of service with the transmittee and may be claimed in accordance with the provisions of this clause.

(7) The provisions of this clause with respect to payment to do not apply to employees who are entitled to payment under the Workers' Compensation Act nor to employees whose injury or illness is the result of the employee's own misconduct.

(8) The provisions of this clause do not apply to casual employees.

11.—WAGES

(1) (a) The total minimum weekly rate of wage payable to persons employed pursuant to this award, operative from the beginning of the first pay period on or after 25 May 1995 shall be:

		COLUMN D $ (Per Week)
Child Care Support Employee—Grade One—Cleaner		380.60
Child Care Support Employee—Grade One—Kitchen Hand		387.30
Child Care Support Employee—Grade Two	Step I	391.50
	Step II	399.80
Child Care Giver	Step I	380.60
	Step II	390.00
	Step III	399.50
	Step IV	409.00

		COLUMN D $ (Per Week)
Qualified Child Care Giver	Step IA	456.00
	Step IB	474.00
	Step II	488.40
	Step III	502.60
	Step IV	517.10

(b)

	$ D	$ E	$ F
Assistant Director Grade One			
Step I	488.20	506.55	524.90
Step II	517.40	532.40	532.40
Step III	527.50	540.00	540.00
Step (IV)	540.00	540.00	540.00
Assistant Director Grade Two			
Step I	493.20	512.80	532.40
Step II	523.25	540.00	540.00
Step III	533.65	547.50	547.50
Step (IV)	539.70	547.50	547.50
Step (V)	547.50	547.50	547.50
Assistant Director Grade Three			
Step I	498.25	519.20	540.00
Step II	527.50	547.50	547.50
Step III	543.80	561.50	561.50
Step (IV)	548.85	561.50	561.50
Step (V)	561.50	561.50	561.50

(c) The rate payable to persons pursuant to the relevant classification in subclause (1) Column D of this clause shall be operative from the beginning of the first pay period on or after 10 November 1994.

(d) The rate payable to persons pursuant to the relevant classification in subclause (1) Column E of this clause shall be operative from the beginning of the first pay period on or after 10 May 1995.

(e) The rate payable to persons pursuant to the relevant classification in subclause (1) Column F of this clause shall be operative from the beginning of the first pay period on or after 10 November 1995.

(f) Childrens Programme Co-ordinator (Family Centre)	$
Step I	474.00
Step II	487.60
Step III	517.10
Step IV	542.60
Step V	568.10
Step VI	591.70
Step VII	621.20
Step VIII	653.60

(g) (i) Except as provided for in placetum (ii) hereunder all Children's Programme Co-ordinators (Family Centres) will move from their rate of pay applying prior to 10 May, 1994 to the next highest rate of pay on the new structure.

(ii) A Children's Programme Co-ordinator (Family Centre) with two years training and who is, prior to the beginning of the first pay period on or after 10 May, 1994 receiving $547.70 per week shall move to the Step V rate and shall remain on that rate until 10 May, 1995 and thereafter the anniversary date for annual increments will be 10 May each year.

(iii) An employee who commences employment as a Children's Programme Co-ordinator (Family Centre) and has previous experience as a qualified Child Care Giver or Assistant Director moves onto the next highest rate of pay on the Children's Programme Co-ordinator (Family Centre) structure than the rate of pay he/she has been receiving as a Qualified Child Care Giver or Assistant Director.

(iv) A Children's Programme Co-ordinator (Family Centre) with two years training enters the wage structure at Step I and exits at Step VI.

(v) A Children's Programme Co-ordinator (Family Centre) with three years training enters the wage structure at Step II and exits at Step VIII.

(vi) Where a two year trained Children's Programme Co-ordinator (Family Centre) completes the Diploma in Children's Services (Management) Course then completion of such training will be considered to be equivalent to a three year trained employee.

(vii) Where a two year trained Children's Programme Co-ordinator (Family Centre) undertakes additional training considered relevant to the Children's Services industry on application the employer may consider such training to be equivalent to a three year trained Children's Programme Co-ordinator (Family Centre).

(viii) Where the parties to this award are unable to reach agreement on the question of "training relevant to the children's services industry" then that matter may be referred to the Western Australian Industrial Relations Commission for conciliation and, where necessary, arbitration.

(ix) Where a two year trained Children's Programme Co-ordinator (Family Centre) undertakes additional training considered equivalent to the level of a three year trained employee pursuant to placetum (vi) or (vii) or (viii) of this paragraph then the employee shall immediately progress by one additional increment and from that point, subject to subclause (2) (a) herein, progress by annual increment through to Step VIII.

(x) A Children's Programme Co-ordinator (Family Centres) is as defined in Clause 27.—Classification and Skill Descriptors of this Award.

(h) Qualified Occasional Care/Limited Time (State Government)	$ (per hour)
Step 1A	14.50
Step 1B	15.07
Step II	15.52
Step III	15.99
Step IV	16.45

(2) (a) Except as provided hereunder, in paragraphs (b) and (d) of this subclause progression from step to step for Child Care Support Employees Grade One and Two, Child Care Giver, Qualified Child Care Giver, Qualified Occasional Care/Limited Time (State Govt), Childrens Programme Co-Ordinator (Family Centre), Assistant Director Grade One, Assistant Director Grade Two, Assistant Director Grade Three and Pre-School Teacher will be contingent upon:

(i) 12 months' service at each step; and

(ii) satisfactory performance at each step.

(b) An employee employed as a Child Care Giver on completion of an introductory child care course shall immediately progress by one additional step beyond that previously determined in accordance with paragraph (a) of this subclause. Additional steps shall be determined in accordance with paragraph (a) of this subclause.

(c) An employee under the age of 21 years who is employed as a Child Care Giver shall be paid a percentage of the rate applicable to an adult employee, taking into account the provisions for progression specified in paragraphs (a) and (b) of this subclause. The percentages of the adult rate shall be:

	% of adult rate
At or under 16 years of age	50
At 17 years of age	60
At 18 years of age	75
At 19 years of age	85
At 20 years of age	95
Thereafter the adult rate	

(d) An employee at Step IA Qualified Child Care Giver and Step IA Qualified Occasional Care/Limited Time (State Govt.) shall be a person with no previous experience in the industry. At the completion of twelve months satisfactory performance that person shall be paid the Step II rate.

(e) An employee at Step IB Qualified Child Care Giver and Step IB Qualified Occasional Care/Limited Time (State Govt.)

shall be a person with previous experience in the industry. At the completion of twelve months satisfactory performance that person shall be paid the Step II rate.

(f) A person who is appointed Assistant Director Grade One, Assistant Director Grade Two or Assistant Director Grade Three will be appointed in accordance with the relevant grades outlined in Clause 27.—Classification Definitions and Skill Descriptors subclause (4) of this award, provided that an employer may appoint an Assistant Director to a higher grade.

(g) Where an employee is appointed to act as the Director of a Centre for more than four days, they shall be paid for the whole of that period as Director according to their level of qualification.

(3) Pre-School Teachers:

The minimum weekly rates of salary payable to Pre-School Teachers engaged in the undermentioned classifications, operative from the beginning of the first pay period on or after 25 May 1995 shall be:

(a)

Salary Level	$ (per annum)	$ (per week)
Step I	25,436	487.60
Step II	26,975	517.10
Step III	28,410	544.60
Step IV	29,636	568.10
Step V	30,867	591.70
Step VI	32,406	621.20
Step VII	34,095	653.60
Step VIII	35,478	680.10
Step IX	36,710	703.70
Step X	38,249	733.20
Step XI	39,782	762.60

(b) Three year trained teacher holding a Diploma of Teaching, or equivalent, or a teacher holding a University Degree (other than a Bachelor of Education):

Enter Step I
Exit Step VII

(c) Teacher holding:

(i) University degree and Diploma of Education; or

(ii) University degree and Teacher's Certificate; or

(iii) Bachelor of Education degree

Enter Step III
Exit Step XI

(d) Teacher holding the qualifications outlined in (c) above plus a second degree or higher degree such as a graduate diploma or a degree at honours level:

Enter Step IV
Exit Step XI

(e) To transfer Pre-school Teachers from the rates applying prior to the 10 May, 1993 to the new structure and rates applying after the beginning of the first pay period on or after the 10 May, 1993 the following process shall occur:

(i) Those weekly rates applicable immediately prior to the beginning of the first pay period on or after 10th May, 1993 will be increased to the next highest rate of pay on the new structure as contained in subclause (3), paragraph (a) of this clause.

(ii) Where the increase resulting from transfer is less than $15.00 per week that increase will be paid operative from the beginning of the first pay period on or after the 10th May, 1993.

(iii) Where the increase is between $15.00 per week and $30.00 per week the amount will be split into two equal parts, the first increase operative from the beginning of the first pay period on or after 10 May, 1993 and the second increase operative from the beginning of the first pay period on or after 10 November, 1993.

(iv) Where the increase resulting from transfer is in excess of $30.00 per week then that amount will be split into three equal increases, the first increase operative from the beginning of the first pay period on or after the 10th May, 1993, the second increase operative on or after the 10th November 1993, the third increase operative from the beginning of the first pay period on or after the 10th May, 1994.

(4) (a) The minimum weekly rate of wage payable to persons employed as Director, operative from the beginning of the first pay period on or after 25 May 1995 shall be:

	$ (per week)
Step I	561.50
Step II	589.50
Step III	612.10
Step IV	642.60
Step V	674.00
Step VI	701.50
Step VII	716.30
Step VIII	754.60
Step IX	783.00

(b) To transfer a Director from those rates and the structure applying prior to the beginning of the first pay period on or after 10 May, 1993 to the new rates and structure, a two stage transition period shall operate in accordance with Schedule C—First Stage Transitional Arrangements for Directors and Clause 11A.—Process of Transition for Directors of this award to operate from the first pay period to commence on or after 10 May, 1993 until the target rate is reached in respect of the relevant step on the classification structure.

(c) A Director will be graded in accordance with paragraphs (d) and (e) of this subclause.

(d) Within the grades of Director the following categories of progression shall apply:

(i) Director Grade One (as defined in Clause 27 of this award):

— a Director with two year or three year training, (as defined in paragraph (f) of this subclause):

Enter Step I
Exit Step IV

— a Director with four year training (as defined in paragraph (f) of this subclause):

Enter Step III
Exit Step VI

(ii) Director Grade Two (as defined in Clause 27 of this award):

— a Director with two year or three year training, (as defined in paragraph (f) of this subclause):

Enter Step III
Exit Step VI

— a Director with four year training (as defined in paragraph (f) of this subclause):

Enter Step V
Exit Step VIII

(iii) Director Grade Three (as defined in Clause 27 of this award):

— a Director with two year or three year training, (as defined in paragraph (f) of this subclause):

Enter Step V
Exit Step VIII

— a Director with four year training (as defined in paragraph (f) of this subclause):

Enter Step VII
Exit Step IX

(e) In addition to the grading, level of training and experience relevant to determining the appropriate rate of pay for a Director an employer may advance a Director beyond the steps/increments provided for, taking into account such factors as:

(i) number of sites supervised, size of centre(s) including number of places centre(s) licensed to cover and/or total number of children taken into care; and/or

(ii) hours of operation of the centre; and/or

(iii) other factors relevant to the exercise of increased skills and responsibilities by the Director.

(f) "Two year, three year and four year trained" refers to a tertiary or post secondary qualification which is relevant to the position of Director. Where there is a dispute as to whether a qualification is relevant to the position of Director it shall be determined by the Western Australian Industrial Relations Commission.

(g) Except as provided hereunder, in paragraphs (b) and (e) of this subclause progression from step to step for Director will be contingent upon:

(i) 12 months' service at each step; and

(ii) satisfactory performance at each step.

(5) On ceasing employment with an employer, the employee shall be given a written statement of the current Level and Step if appropriate and the date of commencement at that Level and Step to be passed on to the next employer.

(6) It is a condition that no employee shall suffer a reduction in wages by reasons of the coming into operation of any order of the Western Australian Industrial Relations Commission in the implementation of the minimum rates adjustments.

(7) The rates of pay in this award include the first $8.00 per week arbitrated safety net adjustment payable under the December 1994 State Wage Decision. This first $8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November 1991. Increases made under previous State Wage Case Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

(8) The rates of pay in this award include the second $8.00 per week arbitrated safety net adjustment payable under the December 1994 State Wage Decision. This second $8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase payable since 1 November 1991, pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment. Increases made 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 arbitrated safety net adjustments.

11A.—PROCESS OF TRANSITION FOR DIRECTORS

(1) Transfer of Directors from the rates applying immediately prior to 10 May, 1993 to the new structure shall occur in two stages:

(a) the first stage shall involve transfer to the new structure and rates applying to that structure in accordance with Schedule C—First Stage Transitional Arrangements for Directors, of this award;

(b) the second stage shall involve transfer from those rates applying in paragraph (a) herein to the rate appropriate to the grading, training and years of experience of the employee set out in Clause 11.—Wages of this award.

(2) The objective of this two stage transition/implementation period is:

(a) to enable all parties to the award to familiarise themselves with the new Director classification and definition structure;

(b) for each centre to apply (subject to the transitional arrangements set out in the schedule attached to this award and this clause) the new Director classification and definition structure set out in subclause (4) of Clause 11.—Wages of this award.

(3) The process of transition for the Director onto the new structure is as follows:

First Stage

(a) employees will transfer to the new classification structure for Directors, without loss of pay, in accordance with Schedule C—First Stage Transitional Arrangements for Directors and the operative dates contained within that schedule.

Second Stage

(b) as soon as is practicable following the beginning of the first pay period on or after 10 May, 1993 the employer shall determine in consultation with the Director:

(i) the grading relevant to the position of Director as defined in subclause (7) of Clause 27.—Classification Definitions and Skill Descriptors of this award;

(ii) the training relevant to subclause (4) of Clause 11.—Wages of this award;

(iii) the number of years of experience the Director has had, relevant to determining a target rate on the new structure; and

(iv) other factors considered relevant to the rate of pay for a Director in accordance with paragraph (e), subclause (4) of Clause 11.—Wages of this award.

(c) From the determination made under paragraph (b) of this clause the employer shall determine, in consultation with the Director:

(i) the target rate of wage on the new structure relevant to the Director's skill, responsibility, training and grading (as defined);

(ii) where the target rate of wage is in excess of the rate applying immediately after the beginning of the first pay period on or after 10 May, 1993 a schedule of implementation rates to reach the target rate shall be developed.

(d) The schedule of implementation rates referred to in paragraph (c)(ii) shall include:

(i) increases in rates provided for in Schedule C—First Stage Transitional Arrangements for Directors;

(ii) prospective consideration of service undertaken within the implementation period;

(iii) increase in rates of pay that are in addition to paragraphs (i) and (ii) herein.

(4) Where a Director considers the determination by his/her employer, made in accordance with paragraphs (3)(b) and (c) of this clause requires review, that matter may be referred to an Industry Panel of Review made up of industry representatives in accordance with subclause (5) of this clause.

(5) The structure and procedure for the Industry Panel of Review shall be determined in consultation between employer representatives and the union as soon as practicable after the 10th May, 1993 and advised to all centres respondent to the award.

(6) Where the Panel of Review is unable to resolve the question in dispute the matter may be referred to the Western Australian Industrial Relations Commission for consideration.

12.—DISTRICT ALLOWANCES

(1) For the purposes of this clause the following terms shall have the following meaning:

"Dependant" in relation to an employee means:

(a) a spouse; or

(b) where there is no spouse, a child or any other relative resident within the State who relies on the employee for their main support;

who does not receive a district or location allowance of any kind.

"Partial Dependant" in relation to an employee means:

(a) a spouse; or

(b) where there is no spouse, a child or any other relative resident within the State who relies on the employee for their main support;

who receives a district or location allowance of any kind less than that applicable to an employee without dependants under any award, agreement or other provision regulating the employment of the partial dependant.

"Spouse" means an employee's spouse including de facto spouse.

"De facto Spouse" means a person of the opposite sex to the employee who lives with the employee as the husband or wife of the employee on a bona fide domestic basis, although not legally married to that person.

(2) For the purpose of this clause, the boundaries of the various districts shall be as described hereunder and as delineated on the plan at subclause (6) of this clause.

District:

1. The area within a line commencing on coast; thence east along latitude 28 to a point north of Tallering Peak; thence due south to Tallering Peak; thence southeast to Mt. Gibson and Burracoppin; thence to a point southeast at the junction of latitude 32 and longitude 119; thence south along longitude 119 to coast.
2. That area within a line commencing on the south coast at longitude 119 then east along the coast to longitude 123; then north along longitude 123 to a point on latitude 30; thence west along latitude 30 to the boundary of No. 1 District.
3. The area within a line commencing on coast at latitude 26; thence along latitude 26 to longitude 123; thence south along longitude 123 to the boundary of No. 2 District.
4. The area within a line commencing on the coast at latitude 24; thence east to the South Australian border; thence south to the coast; thence along the coast to longitude 123; thence north to the intersection of latitude 26; thence west along latitude 26 to the coast.
5. That area of the State situated between the latitude 24 and a line running east from Carnot Bay to the Northern Territory border.
6. That area of the State north of a line running east from Carnot Bay to the Northern Territory border.

(3) An employee shall be paid a district allowance at the standard rate prescribed in Column II of subclause (6) of this clause, for the district in which the employee's headquarters is located. Provided that where the employee's headquarters is situated in a town or place specified in Column III of subclause (6) of this Clause, the employee shall be paid a district allowance at the rate appropriate to that town or place as prescribed in Column IV of subclause (6) of this Clause.

(4) An employee who has a dependant shall be paid double the district allowance prescribed by subclause (3) of this clause for, the district, town or place in which the employee's headquarters is located.

(5) Where an employee has a partial dependant the total district allowance payable to the employee shall be the district allowance prescribed by subclause (3) of this Clause plus an allowance equivalent to the difference between the rate of district or location allowance the partial dependant receives and the rate of district or location allowance the partial dependant would receive if he or she was employed in a full time capacity under the Award, Agreement or other provision regulating the employment of the partial dependant.

(6) The weekly rate of district allowance payable to employees pursuant to subclause (3) of this Clause shall be as follows:

COLUMN I DISTRICT	COLUMN II STANDARD RATE	COLUMN III EXCEPTIONS TO STANDARD RATE	COLUMN IV RATE
	$ per week	Town or Place	$ per week
6	52.70	Nil	Nil
5	43.10	Fitzroy Crossing Halls Creek Turner River Camp Nullagine	57.90
		Liveringa (Camballin) Marble Bar Wittenoom	53.90
		Karratha	50.70
		Port Hedland	47.20
4	21.60	Warburton Mission	58.40
		Carnarvon	20.40
3	13.70	Meekatharra Mount Magnet Wiluna Laverton Leonora Cue	21.60
2	9.70	Kalgoorlie Boulder	3.30
		Ravensthorpe Norseman Salmon Gums Marvel Loch Esperance	13.00
1	Nil	Nil	Nil

Note: In accordance with subclause (4) of this clause employees with dependants shall be entitled to double the rate of district allowance shown.

The allowances prescribed in this subclause shall operate from the beginning of the first pay period commencing on or after January 1, 1995.

(7) When an employee is on approved annual recreation leave, the employee shall for the period of such leave, be paid the district allowance to which the employee would ordinarily be entitled.

(8) When an employee is on long service leave or other approved leave with pay (other than annual recreational leave), the employee shall only be paid district allowance for the period of such leave if the employee, dependants or partial dependants remain in the district in which the employee's headquarters is situated.

(9) When an employee leaves his or her district on duty, payment of any district allowance to which the employee would ordinarily be entitled shall cease after the expiration of two weeks unless the employee's dependant/s or partial dependant/s remain in the district or as otherwise approved by the employer.

(10) Except as provided in subclause (9) of this Clause, a district allowance shall be paid to any employee ordinarily entitled thereto in addition to reimbursement of any travelling transfer or relieving expenses or camping allowance.

(11) Where an employee whose headquarters is located in a district in respect of which no allowance is prescribed in subclause (6) of this Clause, is required to travel or temporarily reside for any period in excess of one month in any district or districts in respect of which such allowance is so payable, the employee shall be paid for the whole of such period a district allowance at the appropriate rate pursuant to subclauses (3), (4) or (5) of this Clause, for the district in which the employee spends the greater period of time.

(12) When an employee is provided with free board and lodging by the employer or a public Authority the allowance shall be reduced to two-thirds of the allowance the employee would ordinarily be entitled to under this clause.

(13) An employee who is employed on a part-time basis shall be entitled to district allowance on a pro-rata basis. The allowance shall be determined by calculating the hours worked by the employee as a proportion of the full-time hours prescribed by the Award under which the employee is employed. That proportion of the appropriate district allowance shall be payable to the employee.

(14) The rates expressed in subclause (6) of this Clause shall be adjusted every twelve (12) months ending on December 31 in accordance with the official "Consumer Price Index" for Perth as published by the Australian Bureau of Statistics.

The adjustment of rates shall be effective from the beginning of the first pay period to commence on or after the first day of January each year.

12A.—FARES AND TRAVELLING ALLOWANCES

(1) Where an employee is required during their usual working hours, by their employer, to work outside their usual place of employment, the employer shall pay the employee any reasonable travelling expenses incurred except where an allowance is paid in accordance with subclause (2) of this clause.

(2) (a) Where an employee is required and authorised to use their own motor vehicle in the course of their duties they shall be paid an allowance not less than that provided for in the schedules set out hereunder. Notwithstanding anything contained in this subclause the employer and the employee

may make any other arrangement as to car allowance not less favourable to the employee.

(b) Where an employee in the course of a journey travels through two or more of the separate areas, payment at the rates prescribed herein shall be made at the appropriate rate applicable to each of the separate areas traversed.

(c) A year for the purpose of this clause shall commence on the first day of July and end on the 30th day of June next following.

Schedule 1—Motor Vehicle Allowances

Area and Details	Engine Displacement (in cubic centimetres)		
Rate per kilometre	Over 2600cc	Over 1600cc 2600cc	1600cc & Under
Metropolitan Area	49.4	43.5	37.9
South West Land Division	50.5	44.6	38.9
North of 23.5° South Latitude	56.2	50.0	43.5
Rest of the State	52.2	46.0	40.0

Schedule 2—Motor Cycle Allowances

Distance travelled during a year on official business	Rate ¢/km
Rate per kilometre	17.1

Motor vehicles with rotary engines are to be included in the 1600-2600cc category.

13.—SPECIAL LEAVE

(1) (a) All contact employees shall be entitled to one week's leave without loss of pay on two separate occasions during each year of service performed pursuant to this award.

(b) If any award holiday falls within an employee's period of special leave and is observed on a day which in the case of that employee would have been an ordinary working day there shall be added to that period one day being an ordinary day for each such holiday observed as aforesaid.

(c) The leave prescribed in paragraph (a) of this subclause shall be given and taken at a time agreed by the employer and employee, provided that the first week's leave in any year shall commence between the beginning of the 5th month and the end of the 6th month of service, and the 2nd week's leave in any year shall commence between the beginning of the 11th month and the end of the 12th month of service. Except that in special circumstances, where it is agreed between the employer and employee, the leave prescribed in paragraph (a) may be given and taken at times other than those prescribed in this paragraph.

(d) If, after one month's continuous employment, an employee lawfully terminates his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid pro rata according to weeks of service for the special leave which would have accrued to the employee pursuant to this subclause.

(e) If the services of an employee terminated and the employee has taken a period of leave in accordance with this clause and if the period of leave so exceeds that to which the employee would become entitled pursuant to paragraph (a) of this subclause the employee shall be liable to pay the amount representing the difference between that taken and the amount which would have accrued in accordance with paragraph (c) of this subclause. The employer may deduct this amount from monies due to the employee by reason of other provisions of this award at the time of termination.

(2) In lieu of the provisions of Clause 9.—Overtime of this award, the Administrator/Director shall be entitled to take leave as prescribed by subclause (1) of this clause in recognition of duties performed outside regular hours, and in recognition of the importance of all aspects of the Centre being accessible to visitors during regular hours.

(3) Where, immediately prior to the coming into operation of this award, the employer made provision for an employee to take leave with pay or leave without pay, for professional or personal reasons, such practice shall not be discontinued because of the operation of this award.

(4) Nothing contained in this clause shall prevent an employer from granting leave with pay or leave without pay to an employee for professional or personal reasons.

(5) Any dispute concerning the interpretation of this clause shall be referred to the Industrial Relations Commission for determination.

14.—ANNUAL LEAVE

(1) Except as hereinafter provided a period of four consecutive weeks' leave with payment of ordinary wages as prescribed shall be allowed annually to an employee by her employer after a period of 12 months' continuous service with such employer.

(2) (a) In addition to her payment for annual leave an employee shall be paid a loading of 17.5 per cent for 4 weeks leave calculated on her ordinary wage as prescribed.

(b) The loading prescribed by this subclause shall not apply to proportionate leave on termination.

(3) If any award holiday falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day there shall be added to that period one day being an ordinary day for each such holiday observed as aforesaid.

(4) (a) An employee whose employment terminates after she has completed a 12 monthly qualifying period and who has not been allowed the leave prescribed under this clause in respect of that qualifying period shall be given payment as prescribed in subclauses (1) and (2) hereof in lieu of that leave or, in lieu of so much of that leave as has not been allowed unless—

(i) she has been justifiably dismissed for misconduct; and

(ii) the misconduct for which he has been dismissed occurred prior to the completion of that qualifying period.

(b) If after one month's continuous service in any qualifying 12 monthly period, an employee lawfully leaves her employment, or her employment is terminated by the employer through no fault of the employee, the employee shall be paid .077 of a week's pay at her ordinary rate of wage in respect of each completed week of continuous service.

(5) When computing the annual leave due under this clause, no deduction shall be made from such leave in respect of the period an employee is on annual leave, long service leave, observing a public holiday prescribed by this award, absence through sickness with or without pay except for that portion of an absence that exceeds three months, or absence on workers' compensation except for that portion of an absence that exceeds 6 months in any one year.

(6) In special circumstances and by mutual consent of the employer and the employee annual leave may be taken in not more than two periods, and in such circumstances and by mutual consent of the employer, employee and the Union, annual leave may be taken in not more than three periods.

(7) Notwithstanding anything else herein contained an employer who observes a Christmas closedown for the purpose of granting annual leave may require an employee to take her annual leave in not more than two periods but neither of such periods shall be less than one week.

(8) In the event of an employee being employed by an employer for a portion only of a year, she shall only be entitled, subject to subclause (4) of this clause, to such leave on full pay as is proportionate to her length of service during that period with such employer, and if such leave is not equal to the leave given to the other employees she shall not be entitled to work or pay whilst the other employees of such employer are on leave on full pay.

(9) The provisions of this clause shall not apply to casual employees.

(10) (a) An employer may allow annual leave to an employee before the completion of 12 months' continuous service as prescribed in subclause (1) of this clause.

(b) Where a period of leave has been granted pursuant to this subclause and the services of an employee are terminated and where the period of leave so taken exceeds that which would become due, pursuant to subclause (4) of this clause, the employee shall be liable to pay the amount representing the difference between the amount received by the employee for the period of leave taken and the amount which would have accrued. The employer may deduct this amount from the

monies due to the employee by reason of the other provisions of this award at the time of the termination.

15.—PUBLIC HOLIDAYS

(1) The following days or the days observed in lieu thereof shall, subject as hereinafter provided, be allowed as holidays without deduction of pay, namely: New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day. Provided that another day may be taken as a holiday by arrangement between the parties in lieu of the days named in this subclause.

(2) Where any of the days mentioned in subclause (1) except Anzac Day, hereof fall on a Saturday or Sunday the holiday shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday.

(3) Any employee who is required to work on the day observed as a holiday prescribed in this clause shall be paid for the time worked at the rate of double time and one-half or, if the employer agrees, be paid for the time worked at the rate of time and one-half and, in addition, be allowed to observe the holiday on a day mutually acceptable to the employer and the employee.

(4) When an employee is absent on leave without pay, sick leave without pay or workers' compensation any day observed as a holiday on a day falling during such absence shall not be treated as a paid holiday. Where the employee is on duty or available on the whole of the working day immediately preceding a holiday, or resumes duty or is available on the whole of the working day immediately following a day observed as a holiday prescribed by this clause, the employee shall be entitled to be paid for such holiday.

(5) Where—

(a) a day is proclaimed as a holiday or as a public half holiday under Section 7 of the Public and Bank Holidays Act, 1972; and

(b) that proclamation does not apply throughout the State or to the metropolitan areas of the State,

that day shall be a whole holiday or as the case may be, a half holiday for the purposes of this award within the district or locality specified in the proclamation.

(6) A part-time employee shall be entitled to the benefits of this clause only where that employee would normally have worked on the day or day observed in lieu of a Public Holiday prescribed by this clause.

(7) This clause shall not apply to casual employees.

16.—LONG SERVICE LEAVE

(1) The Long Service Leave conditions which apply to State Government Wages Employees shall apply to employees covered by this award.

(2) An employee employed by a Local Government Authority shall be allowed long service leave in accordance with the provisions of the Local Government (Long Service Leave) Regulations.

17.—PAYMENT OF WAGES

(1) Wages shall be paid weekly or fortnightly, by cash, direct bank transfer or cheque at the option of the employer. Where an employee's service is terminated in accordance with the provisions of this award, payment of all wages due shall be made within two working days of the time the employee ceased employment.

(2) Each employee shall be provided with a pay advice slip on each day that wages are paid. The pay advice slip shall detail:

(a) The rate of wage.

(b) The gross wage.

(c) The net wage.

(d) Any allowances and overtime paid, and any deductions made.

(e) The composition of any annual leave payment.

(f) The composition of any termination payment.

(3) No deduction shall be made from an employee's wages without written approval of the employee.

18.—TIME AND WAGES RECORD AND RIGHT OF ENTRY

(1) A record of the time worked and wages paid to each employee employed under this award shall be maintained by the employer and shall be available for inspection by an accredited representative of the Union upon the giving of reasonable notice to the employer.

(2) Accredited representatives of the Union shall be permitted to interview employees on the business premises of the employer during non-working times and meal breaks. Provided that the duly accredited representative shall notify the employer beforehand of their intention to exercise their rights under this clause.

19.—CASUAL AND PART-TIME EMPLOYEES

(1) Casual employees shall be paid 20 per cent in addition to the rates prescribed in Clause 11.—Wages of this award in lieu of the provisions of Clauses 15.—Public Holidays, 14.—Annual Leave and 10.—Absence Through Sickness of this Award.

(2) A part-time employee who is employed to regularly work less than 20 hours per week may, with the consent of the employer, elect to be paid as a "casual".

(3) An employee who is employed as a Qualified Occasional Care/Limited Time (State Govt.) employee as referred to in Clause 11.—Wages, subclause (1), paragraph (a) of this award may be paid as a casual in accordance with the hourly rate in that clause which is inclusive of the 20 per cent casual loading.

(4) An employee of a state government funded programme for four year old children which operates for less than 41 weeks in a calendar year and who is employed for less than 20 hours per week shall be paid as a "casual".

20.—MATERNITY LEAVE

(1) Eligibility for Maternity Leave

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

For the purposes of this clause:

(a) An employee shall include a part time employee but shall not include an employee engaged upon casual or seasonal work.

(b) Maternity leave shall mean unpaid maternity leave.

(2) Period of Leave and Commencement of Leave

(a) Subject to subclauses (3) and (6) hereof, the period of maternity leave shall be for an unbroken period of from 12 to 52 weeks and shall include a period of six weeks' compulsory leave to be taken immediately before the presumed date of confinement and a period of six weeks' compulsory leave to be taken immediately following confinement.

(b) An employee shall, not less than 10 weeks prior to the presumed date of confinement, give notice in writing to her employer stating the presumed date of confinement.

(c) An employee shall give not less than four weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave, stating the period of leave to be taken.

(d) An employee shall not be in breach of this order as a consequence of failure to give the stipulated period of notice in accordance with paragraph (c) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

(3) Transfer to a Safe-Job

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

leave. If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (7), (8), (9) and (10) hereof.

(4) Variation of Period of Maternity Leave

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

(b) The period of leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(5) Cancellation of Maternity Leave

(a) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.

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

(6) Special Maternity Leave and Sick Leave

(a) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then—

(i) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work.

(ii) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a duly qualified medical practitioner certifies as necessary before her return to work.

(b) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed 52 weeks.

(c) For the purposes of subclauses (7), (8) and (9) hereof, maternity leave shall include special maternity leave.

(d) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to safe job pursuant to subclause (3), to the position she held immediately before such transfer.

Where such position no longer exists but there are other positions available, for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(7) Maternity Leave and Other Leave Entitlements

Provided the aggregate of leave including leave taken pursuant to subclauses (3) and (6) hereof does not exceed 52 weeks.

(a) An employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is then entitled.

(b) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.

(8) Effect of Maternity Leave on Employment

Notwithstanding any award, or other provisions to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of the award.

(9) Termination of Employment

(a) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.

(b) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(10) Return to Work After Maternity Leave

(a) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.

(b) An employee, upon the expiration of the notice required by paragraph (a) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (3), to the position which she held immediately before such transfer. Where such position no longer exists but there are other positions available for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(11) Replacement Employees

(a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.

(b) Before an employer engages a replacement employee under this subclause, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

(c) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

(d) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

(e) A replacement employee shall not be entitled to any of the rights conferred by this clause except where her employment continues beyond the 12 months qualifying period.

21.—BEREAVEMENT LEAVE

An employee shall, on the death within Australia of a wife, husband, de-facto wife or de-facto husband, father, father-in-law, mother, mother-in-law, brother, sister, child or stepchild be entitled on notice, of leave up to and including the day of the funeral of such relation and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in two ordinary working days. Proof of such death shall be furnished by the employee to the satisfaction of the employer.

Provided that payment in respect of compassionate leave is to be made only where the employee otherwise would have been on duty and shall not be granted in any case where the employee concerned would have been off duty in accordance with her roster, or on long service leave, annual leave, sick

leave, workers' compensation, leave without pay, or on a public holiday.

22.—MEAL BREAKS AND ALLOWANCES

(1) Where an employee, without being notified on the previous day, is required to continue working after the usual ceasing time for two hours or more she/he shall be provided with a meal free of charge or be paid $5.80 for such meal.

(2) Not less than 30 minutes nor more than one hour shall be allowed for an uninterrupted meal but such time shall not be counted as time worked unless there is no other person present to relieve during an employee's meal break. A maximum of five hours may be worked prior to a meal break.

(3) All employees shall be allowed a tea break of ten minutes daily between the 2nd and 3rd hour from starting time each day. Such tea breaks shall be counted as time worked: Provided that employees responsible for supervising children continue such supervision during the tea break.

(4) Where an employee is required by the employer to obtain a first aid qualification, the employer shall be responsible for the costs incurred in the acquisition of that qualification.

23.—SHIFT AND WEEKEND WORK

(1) (a) "Night Shift" means any shift finishing subsequent to midnight and at or before 8.00 a.m. or commencing between midnight and 5.00 a.m.

(b) "Day Shift" means the period from 7.00 a.m. to 6.00 p.m.

(c) "Afternoon Shift" means any shift finishing after 6.00 p.m. and at or before midnight.

(d) "Early Morning Shift" means any shift commencing at or after 5.00 a.m. and before 7.00 a.m.

(e) "Shift Employees" means only those employees working at Centres which are licensed by the Western Australian Department for Community Services to operate outside of the hours specified in subclause (1) of Clause 8.—Hours of Work of this award.

(f) The following shift allowances shall be paid in addition to the ordinary hourly rate for all time worked—

Early Morning shift	10%
Afternoon shift	15%
Rotating Night shift	17.5%
Permanent Night shift	30%

(2) (a) All time worked between midnight on Friday and midnight on Saturday shall be paid for at the rate of time and one half.

(b) All time worked between midnight on Saturday and midnight on Sunday shall be paid for at the rate of double time.

(c) The rates prescribed in this subclause shall be in substitution for and not cumulative upon the rates prescribed in subclause (1) of this clause.

24.—LIBERTY TO APPLY

Liberty is reserved to the parties to this award to apply to amend this award in respect of non-contact time, long service leave and maternity leave, wage relativities associated with an Assistant Director and Children's Programme Co-ordinator (Family Centre), progression for part-time employees and progression within classifications of Child Care Support Employees, rates associated with the classification of Director beyond Step IX and rates associated with junior employees.

25.—SUPERANNUATION

Subclause (1) shall apply to all employees other than employees of local government authorities.

(1) (a) In this subclause:

"The Fund" means Westscheme;

"Ordinary time earnings" means the salary, wages or other remuneration periodically received by the employee in respect of the time worked in ordinary hours and shall include shift work penalties in the case of the employee being a shift worker, payments which are made for the purpose of District or Location Allowances or any other rate paid for all purposes of the award to which the employee is entitled for ordinary hours of work PROVIDED THAT "ordinary time earnings" shall not include any payment which is of a similar nature to or is paid for the same reasons as, or is paid in lieu of payments for overtime, disability payments, vehicle allowances, fares or travelling time allowances (including payments made for travelling related to distant work), commission or bonus;

"Eligible employee" means a full-time, part-time or casual employee for whom 3% of ordinary time earnings is greater than $3.00 in the case of part-time and casual employees, and greater than $4.00 in the case of full-time employees.

(b) The employer shall make monthly superannuation contributions to the Fund for and on behalf of eligible employees, and such contributions shall be not less than 3% of the employee's ordinary time earnings.

(2) This subclause shall apply only to employees of local government authorities.

(a) Definitions

(i) "Employee" means an employee of a respondent to this award who has been employed for at least 30 days but shall exclude an employee who is paid $50.00 per week or less. For the purpose of this definition, 30 days means a date 30 days from commencement with the employer.

(ii) "Fund" means the W.A. Local Government Superannuation Scheme.

(iii) "Ordinary time earnings" means the base classification rate, in charge rates, shift penalties, overaward payments, location allowance and any other all purpose allowance or penalty and casual loadings, but excludes overtime payments.

(b) Employer Contributions

(i) (aa) Each local government employer shall in respect of each employee who has completed 30 days of continuous service, contribute to the Fund, an amount equal to three percent (3%) of ordinary time earnings of such employee.

(bb) The employer contribution shall be effective from the date the employee commences employment or the date of operation of this clause whichever is the later.

(ii) No contributions shall be made for:

(aa) periods of unpaid leave or unauthorised absences; or

(bb) termination payments including annual leave.

(iii) Each respondent employer shall make such contributions monthly or at such other times as may be agreed in writing between the trustees of the Fund and the employer from time to time.

(c) Additional Voluntary Employee Contributions

Where the rules of the fund allow an eligible employee to make additional voluntary contributions, an eligible employee may elect to make additional contributions to the Fund and the employer shall, where an election is made upon the direction of the employee, deduct contributions from the employee's wages and pay them to the Fund in accordance with the direction of the employee and the rules of the Fund, provided that such contributions shall be in units of 1% of wage to a maximum of 4%.

(d) Employee Entry Into Fund

(i) The employer must provide an employee with an application to join the Fund and a membership information leaflet within 21 days of the operative date of issue of this order or within 7 days of an employee's commencing employment, whichever is the later.

(ii) the employer is not obliged to make contributions to the Fund—

(aa) where an employee has completed a letter of denial in accordance with paragraph (iv); or

(bb) where an employee has not completed and returned the application referred to in paragraph (i) within 35 days of the operative date of this clause or within 21 days of an employee commencing employment, whichever is the later.

Provided that an employer shall make contributions to the Fund from the date on which the employee subsequently completes an application form, notwithstanding that a letter of denial may have previously been completed.

(iii) If the employer fails to provide the employee with the application form referred to in paragraph (c)(i) within the time prescribed in that paragraph the employer shall be obliged to make contributions as if the application had been provided within the prescribed time, provided that the employee returns the application within 14 days of being provided with the application by the employer.

(iv) The letter of denial shall be in the following form:

To (employer)

I have received an application for membership of the non-contributory W.A. Local Government Superannuation Scheme and understand:

1. that should I sign such form you will make contributions on my behalf; and
2. that I am not required to make contributions of my own; and
3. that no deductions will be made from my wages for superannuation without my consent.

However, I do not wish to be a member of the Scheme or have any contributions made on my behalf.

_____

Signature

_____

Name

_____

Address

_____

Classification

_____

Date

(e) Date of Operation

This clause shall operate with effect from 6 December, 1989 in respect of three percent (3%) of ordinary time earnings.

26.—AWARD MODERNISATION AND ENTERPRISE CONSULTATION

(1) The parties to this award are committed to co-operating positively to increase the efficiency and productivity of the industry, and to enhance the career opportunities and job security of employees in the industry.

(2) At each centre or service a consultative mechanism may be established by the employer, or where requested by the employees or their union, shall be established. The consultative mechanism and procedure shall be appropriate to the size, structure and needs of the particular centre or service.

(3) Where a consultative mechanism is established, it shall be free to address any matters which are consistent with the objectives as outlined in subclause (1) of this clause.

(4) Discussions that take place within the framework of the consultative mechanism will have regard to the following requirements:

(a) the changes sought shall not affect provisions reflecting state standards;

(b) the majority of employees affected by any proposed change at the centre or service must be informed of the proposed change, and the majority of such employees, must genuinely agree with the proposal;

(c) any proposed agreement shall not, in the context of a total package, provide for a set of conditions of a lesser standard than that provided by the award, and no employee shall have a lesser income as a result of the conditions proposed in the agreement;

(d) when discussions affect wages and/or conditions of employment, the union must be invited to participate;

(e) the parties to the award, shall not unreasonably oppose any proposed agreement which results from the consultative process outlined in this clause;

(f) any agreement proposed pursuant to this clause, relating to an award matter, shall be subject to ratification by the Western Australian Industrial Relations Commission and, if it is approved, such agreement shall then operate as a schedule to this award and take precedence over any provision of this award to the extent of any inconsistency;

(g) if agreement to any proposal arising out of the consultative process outlined in this clause cannot be reached, then the matter may be referred to the Western Australian Industrial Relations Commission for determination.

27.—CLASSIFICATION DEFINITIONS AND SKILL DESCRIPTORS

(1) Child Care Support Employee

(a) Grade One

Definition: An untrained ancillary employee employed to clean or work as a kitchen hand.

Skill Descriptors: Such an employee is:

— Responsible for the quality of the employees own work subject to direct supervision;

— Works under direct supervision either individually or in a team environment;

— Exercises discretion within the level of the employee's skills in the performance of tasks.

(b) Grade Two

Definition: An untrained ancillary employee who is employed to undertake cooking or gardening duties.

Skill Descriptors: Such an employee:

— Works under routine supervision either individually or in a team environment;

— Is responsible for assuring the quality of the employee's own work subject to routine supervision;

— Is required to exercise discretion during the course of their own work.

(2) Child Care Giver

(a) Definition: An employee at this level shall be a child care giver working under routine supervision, engaged to assist in the supervision and care of children and generally to assist in the functioning of the centre.

(b) Step I

* An employee with no prior industry experience.
* Is able to perform routine duties requiring the exercise of knowledge and skills at a primary level.

Responsibilities of an employee at this step may include the following:

— Maintain a clean, hygienic environment

— Maintain and attend to personal hygiene of children

— Maintain and attend to own personal hygiene
— Attend to nutritional needs of children
— Respond to child's apparent ill-health
— Respond to accident, emergency or threat
— Implement routines which enhance well being
— Interact positively and appropriately with children
— Participate in the planning and preparation of programmes
— Assist to prepare an environment based on programme requirements
— Assist in the implementation of programmes
— Contribute to team approach
— Seek to further professional development
— Liaise effectively with parents
— Uphold the Centre's philosophy
— Participate in appropriate administrative processes
— Contribute to maintenance and care of buildings and equipment
— Implement Centre policies and procedures

(c) Step II
* An employee at this step shall be competent to perform work above and beyond the level of skill of an employee at Step I.

(d) Step III
* An employee at this step shall be competent to perform work above and beyond the level of skill of an employee at Step II.

(e) Step IV
* An employee at this step shall be competent to work over and above the level of skill of an employee at Step III. Additional duties may include the following:
— Assist in the facilitation of programmes suited to the needs of individual children and groups
— Provide input to trained staff by observations of individual children and groups
— Work under direction with individual children with special needs.

(3) Qualified Child Care Giver

(a) Definition: An employee at this level shall be an employee who holds the qualification of Associate Diploma Social Science (Child Care) or an approved equivalent qualification which is recognised and approved by the Child Care Services Board authorising the employee to be in charge of children 0-6 years and who are so appointed. It shall also include persons employed as supplementary service grants (SUPS) employees and persons who do not hold approved qualifications but who have obtained an exemption from the Child Care Services Board to work at this level and who are so appointed.

(b) Step IA and IB
* Responsibilities of an employee at this step may include the following:
— Ensure the Centre or Service's policies are adhered to
— Ensure the maintenance of a safe working environment
— Liaise with parents in consultation with the Director
— Display various methods and techniques of child management
— Direct other staff members as required
— Participate in a team approach to the delivery of care
— Possess observational skills in excess of a Child Care Giver
— In consultation with the Director and Senior Staff develop, implement and monitor a developmental programme
— Develop, implement and maintain daily routines
— Work under direction with individual children with special needs.

(c) Step II
* An employee at this step shall be competent to perform work above and beyond the level of skill of an employee at Step I.
* In addition to the responsibilities of an employee at Step I, responsibilities may also include the following:
— Provide advice to Child Care Givers on reasons for the developmental programme
— Guide untrained staff in methods and techniques of child management
— In conjunction with the Director and Senior Staff, review developmental programmes
— Assist the Director with the assessment of students on placement
— Where appointed work as the person in charge of a group of children in the age range 0-6 years
— Possess observational skills in excess of an experienced Child Care Giver and the ability to programme for a child's development based on these observations.

(d) Step III
* An employee at this step shall be competent to perform work above and beyond the level of skill of an employee at Step II.
* In addition to the responsibilities of Step II, responsibilities may also include the following:
— Advise the Director of changes perceived as necessary to developmental programmes
— Participate in a team approach to delivery of the programme and advise untrained care givers and junior trained care givers on reasons for the programme
— Possess the ability to formulate and implement a child's special needs programme.

(e) Step IV
* An employee at this step shall be competent to perform work above and beyond the level of an employee at Step III.
* In addition to the responsibilities at Step III, responsibilities may also include the following:
— Liaise with parents
— Initiate changes to the children's programmes including special needs programmes
— Develop, implement, evaluate and maintain daily routines independently
— Provide advice to Director on Centre's needs.

(4) Assistant Director

(a) Description: An Assistant Director with qualifications and experience as Qualified Child Care Giver who assists the Director with the administration of the Centre and is appointed as such.

(b) Skill Descriptor: An employee at this level shall be expected to perform skills above and beyond those as Qualified Child Care Giver. That person:
— Performs work under limited supervision either individually or in a team environment;
— Provides guidance and assistance as part of a work team;
— Assists in the provision of on-the-job training to other employees;
— Exercises broad discretion.

(c) An Assistant Director shall be appointed:
(i) Assistant Director Grade One:
A person responsible for the co-ordination of programming within the Centre, or
(ii) Assistant Director Grade Two:
A person who, undertakes, in addition to Grade One responsibilities, administrative andsupervisory functions, or
(iii) Assistant Director Grade Three:
A person whose tasks are predominantly non-contact or a person whose Director has responsibilities for more than one Centre.

(5) Children's Programme Co-ordinator (Family Centre)

(a) Description: An employee at this level shall hold qualifications as for Qualified Child Care Giver and shall be responsible for the overall implementation and co-ordination of the four year old Family Centre Programme, except where the co-ordinator has a Diploma of Education (Early Childhood Education) or equivalent qualifications in which case they shall be paid as a Pre-School Teacher.

(b) Skill Descriptor: Responsibilities of Children's Programme Co-ordinator (Family Centre) may include the following:
• To promote and work within the Family Centre philosophy;
• To facilitate the development of an environment that meets the individualised emotional, social, educational and physical needs of the children;
• Create links and maintain a good working relationship between staff, Committee, parents, Community, User Groups and the Centre;
• To be sensitive to the cultural diversity and individual rights and needs of each child;
• To ensure the Service operates in accordance with the requirements of the Community Services (Child Care) Regulations 1988 and Family Centre Programme Guidelines;
• To supervise the Assistant Early Childhood Worker (Assistant Children's Activity Leader);
• To plan and implement a Social Development Programme for four year old children within the Family Centre Programme Guidelines;
• To encourage parents to feel they are a part of the Centre and can participate in any of the programmes;
• To provide monthly reports to the Management Committee;
• To oversee administration and maintenance, order stock and develop inventories in relation to the four (4) year old programme;
• To supervise and train students on placement;
• To prepare draft budgets for the Management Committee; and
• To take enrolments for places in the Family Centre.

(6) Pre-School Teachers

(a) Three year trained teacher holding a Diploma of Teaching, or equivalent, or a teacher holding a University Degree (other than a Bachelor of Education):

(b) Teacher holding:
(i) University degree and Diploma of Education; or
(ii) University degree and Teacher's Certificate; or
(iii) Bachelor of Education degree

(c) Teacher holding the qualifications of a second degree or higher as outlined in the award.

(7) Director

(a) Definition: A Director shall be a person who meets the minimum requirements for a Co-ordinator in accordance with the Community Services (Child Care) Regulations 1988 and who undertakes the duties and responsibilities outlined in paragraph (b) of this clause.

(b) A person appointed as a Director shall be graded as follows:
(i) Director Grade One: a person appointed with overall responsibility for programming who is not directly responsible for the effective supervision of the child care service or, is subject to supervision in the day to day operation of the centre; or
(ii) Director Grade Two: a person who, in addition to the duties and responsibilities of a Director Grade One, may be required to undertake a basic role in financial control on a day to day basis eg. administering fee relief; or
(iii) Director Grade Three: a person who, in addition to the duties and responsibilities of a Director Grade Two, may be required to, in part or in whole:
— Prepare annual budgets;
— Provide reports and policy proposals to Committees of Management;
— Exercise discretion within the budget in operating the service on a day to day basis.

(c) Responsibilities of a Director may include the following:
— Be responsible for the administration and supervision of the service;
— Ensure that a consistently high quality of child care is maintained, through the planning, organisation and implementation of a program that will adequately meet the intellectual, physical, emotional and social needs of children;
— Supervise and appraise staff;
— Select and train staff as required;
— Develop and promote the aims and policies of the service, in conjunction with the service sponsors/management committees/proprietors;
— Maintain personnel records and be responsible for the application of relevant industrial awards and legislation;
— Keep accounts and handle clerical matters, as required;
— Assist the service sponsors/proprietor with financial management, budgeting and planning, as required;
— Ensure that the service adheres to all relevant regulation and meets all accountability requirements;
— Provide reports to the management committee/sponsor/proprietor, as required;
— Provide parents with information relating to the service's operations;
— Ensure that adequate enrolment procedures are established;
— Provide opportunities for staff development;

— Liaise with other associated organisations, agencies and Government departments;

— Co-ordinate and supervise the placement of students within the service.

SCHEDULE A—PARTIES TO THE AWARD

The following organisation is a party to this award:

The Federated Miscellaneous Workers' Union of Australia, W.A. Branch.

SCHEDULE B—RESPONDENTS

Catherine McAuley Day Care Centre
Station Street
WEMBLEY WA 6014

Bassendean Town Council
48 Old Perth Road
BASSENDEAN WA 6054

City of Bayswater Child Care Centre Association (Inc.)
27 Silverwood Street
EMBLETON WA 6062

City of Bayswater Neighbourhood Centre
42 Rudloc Road
MORLEY WA 6062

City of Belmont
215 Wright Street
CLOVERDALE WA 6105

City of Nedlands
71 Stirling Highway
NEDLANDS WA 6009

Girrawheen Day Care Centre
68 Hudson Avenue
GIRRAWHEEN WA 6064

Goldfields Residential and Day Care Centre (Inc.)
26 Whitlock Street
KALGOORLIE WA 6430

Salvation Army Child Care Services
14/18 Lavant Way
BALGA WA 6061

Shire of Mandurah
Mandurah Terrace
MANDURAH WA 6210

Len Taplin Day Care Centre (Inc.)
Dempster Street
PORT HEDLAND WA 6721

Shire of Rockingham
Council Avenue
ROCKINGHAM WA 6168

Town of Albany
Mercer Road
ALBANY WA 6330

Town of Kwinana
Gilmore Avenue
KWINANA WA 6167

Murdoch University Child Care
Association Inc.)

South Lake Ottey Family Centre Inc.
2 Southlake Drive
SOUTHLAKE WA 6164

Leeming Family Centre Inc.
Cnr Farrington and Almondbury Roads
LEEMING WA 6155

Beechboro Family Centre Inc.
Amazon Drive
BEECHBORO WA 6063

Roberta Jull Childcare Association Inc.
41 Chipper Close
BEDFORDALE WA 6112

DATED at Perth this 27th day of February, 1986

CLERKS (RACING INDUSTRY—BETTING) AWARD 1978 No. R 22 of 1977.

PURSUANT to section 93(6) of the Industrial Relations Act 1979 the following award has been consolidated and is published hereunder for general information.

Dated at Perth this 4th day of January, 1996.

J. CARRIGG.
Registrar.

Clerks (Racing Industry—Betting) Award 1978

No. R 22 of 1977.

1.—TITLE

This award shall be known as the Clerks (Racing Industry—Betting) Award 1978 and replaces awards numbered 13A of 1970 and 16 of 1971.

1A.—STATEMENT OF PRINCIPLES DECEMBER 1994

It is a condition of this Award/Industrial Agreement that any variation to its terms on or from the 30th day of December 1994, including the $8.00 per week Arbitrated Safety Net Adjustments, shall not be made except in compliance with the Statement of Principles set down by the Commission in the Reasons for Decision in Matter No. 985 of 1994.

2.—ARRANGEMENT

1. Title
1A. Statement of Principles December 1994
2. Arrangement
2A. No Extra Claims
3. Area
4. Scope
5. Term
6. Definition
7. Engagement
8. Rates of Pay
9. Payment of Wages
10. Refreshment Break
11. Higher Duties Allowance
12. Shortages
13. Record
14. Right of Entry
15. Long Service Leave
16. Posting of Awards and Notices
17. Superannuation
18. Award Modernisation (Enterprise Agreements)
Schedule A— Respondents
Schedule B—Named Union Party
Schedule C—Enterprise Agreement—Totalisator Agency Board of Western Australia

2A.—NO EXTRA CLAIMS

It is a term of this award (arising from the decision of the Commission in Court Session in Application No. 704 of 1991) that the Union will not pursue prior to 15th November 1991 any extra claim, award or overaward, except where consistent with the State Wage Principles.

3.—AREA

This award shall operate throughout the State of Western Australia.

4.—SCOPE

This award shall apply to employees who are employed in or in connection with the receipt of money from totalisator bettors and/or the issuance of tickets and/or the payment of dividends to such bettors and to employees who supervise this work by others, all of whom are referred to in Clause 8.—Rates of Pay and defined in Clause 6.—Definition, and employed only on days when betting facilities are available to the public.

5.—TERM

The term of this award shall be for a period of eighteen months commencing on and from January 16, 1978.

6.—DEFINITIONS

'Clerk' means a employee carrying out all or any of the following functions: operating or attending a computer terminal for the receipt and payment of bets, operating a telex outlet, paying wages, receiving bets or giving or receiving information relating to betting by telephone, preparing betting information for display purposes or completing returns in relation to betting.

'Supervising Clerk' or 'Banker' means a employee supervising clerks as defined and/or carrying out banking duties in relation to monies received by or paid to bettors.

7.—ENGAGEMENT

(1) Employees may be engaged for a single work period or for a sequence of work periods week by week at the option of the employer. Where the engagement is of a continuing nature the contract may be varied from time to time by agreement between the employee and the employer.

(2) An employee who is engaged for a work period and who commences such work period, shall be paid for a minimum of two hours work.

(3) Where the engagement is of a continuing nature the employee or the employer may terminate the contract at any time by giving notice no later than the day before the day on which the next work period would have been worked but for the termination. In lieu of the notice referred to in this subclause an amount equal to two hours pay shall be paid by the terminator.

(4) The contract shall terminate if an employee fails to present himself for a work period required to be worked in accordance with the contract unless the employee produces proof satisfactory to the employer that the employee was reasonably absent during that work period in which case service shall be continuous notwithstanding the absence.

(5) An employee engaged to work a particular work period whether part of a continuous engagement or not shall be paid as for one hour's work if the employer is unable to provide work for that period unless notice has been given at least two hours before the time of commencement of that work period.

(6) Once in any year at a time convenient to the employer an employee may elect to be absent for a period of not more than four weeks. Such absence shall not break the continuity of service.

(7) Nothing contained in this clause prevents the employer from instantly dismissing an employee committing a misconduct justifying instant dismissal and the contract thereby terminates. When such a dismissal has taken place wages shall be paid up to the time of dismissal only.

(8) An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training.

8.—RATES OF PAY

(1) The minimum rates of pay per hour payable to the employees classified hereunder shall be:

	Base Rate Per Hour $	Supplementary Payment Per Hour $	Total Rate Per Hour $
(a) Clerk	9.97	0.42	10.39
(b) Supervising Clerk and/or Banker	10.41	0.42	10.83

(c) (i) The rates of pay in this award include the first $8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This first $8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November, 1991. Increases made 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 arbitrated safety net adjustments.

(ii) The rates of pay in this award include the second $8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This second $8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase payable since 1 November, 1991, pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment. Increases made 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 arbitrated safety net adjustments.

(2) Employees under the age of 21 years who are not regularly operating or attending a computer terminal shall be paid 80% of the rate prescribed for a Clerk in subclause (1) hereof.

(3) In addition to the rates prescribed in subclauses (1) and (2) hereof employees shall be paid a loading calculated in the following manner:

(a) Employees employed by the W.A. Turf Club	62%
(b) Employees employed by the W.A. Greyhound Racing Association	46%
(c) Employees employed by the W.A. Trotting Association	27%
(d) All others	31%

(e) The loadings referred to in paragraphs (a), (b), (c) and (d) hereof include amounts in compensation for the fact that annual leave, annual leave loading and sick leave are not otherwise provided for in this award.

9.—PAYMENT OF WAGES

(1) Wages due to an employee shall be either paid at the completion of each work period or, subject to agreement between the employer and the Union, at any time within seven days of the completion of the work period for which payment is due.

(2) Subject to agreement between the employer and the Union, wages may be paid by direct funds transfer to the credit of an account nominated by the employee.

10.—REFRESHMENT BREAK

An unpaid refreshment break of fifteen minutes duration shall be allowed by the employer to the employee during the course of the work period. Such break shall be taken at a time convenient to the employer.

11.—HIGHER DUTIES ALLOWANCE

(1) An employee who is engaged for less than half time on work covered by a higher classification than the one for which the employee was employed on that day shall be paid the higher rate for the time so employed in such higher classification.

(2) An employee who works for more than half the total time employed in a higher classification than the one for which the employee was engaged on that day shall receive payment for the whole of the time at the rate applicable to such higher classification.

12.—SHORTAGES

(1) Where a shortage is claimed in the money of an employee, the money shall be held and the employee shall be given the opportunity of re-checking as soon as conveniently possible.

(2) Employees shall be responsible for the repayment of all shortages and such shortages may be deducted from payment due in accordance with the award, provided that shortages which are the result of the faulty operation of the ticket issuing machines or electrical or mechanical systems shall not be classified as shortages for the purpose of this clause.

(3) In order that this clause shall be fully effective it shall be a condition of this award that full disclosure is made of each and every variance in employees' cash balances.

(4) Employees shall be notified, as soon as possible, of any shortages and where any dispute arises in connection with a shortage the secretary or other accredited officer of the union shall have the right to discuss the matter with the employer for the purpose of settling the dispute. Failing agreement at such discussion the dispute may be referred to the Industrial Commission for determination.

13.—RECORD

The employer shall keep at his registered office a record wherein shall be kept—

(1) the full name and postal address of each employee;

(2) the hours worked, classification of and wages paid to each employee for each work period.

The record shall be open for inspection during the normal business hours at the registered office of the employer by an accredited officer of the union.

14.—RIGHT OF ENTRY

With the consent of the employer an accredited officer of the union on legitimate union business shall be permitted to enter the premises of the employer.

15.—LONG SERVICE LEAVE

The Long Service Leave provisions published in Volume 58 of the Western Australian Industrial Gazette at pages 1 to 6 both inclusive are hereby incorporated in and shall be deemed to be part of this award.

16.—POSTING OF AWARDS AND NOTICES

(1) A copy of this award, if supplied, by the union, shall be placed by the employer in a suitable place agreed upon by both the employer and the union or in default of agreement as decided by the Industrial Commission.

(2) The union shall in addition have the right to use such notice board for union notices.

17.—SUPERANNUATION

(1) Definitions:

In this clause—

(a) "Approved Occupational Superannuation Fund" means a superannuation fund which complies with the Occupational Superannuation Standards Act, 1987.

(b) "Fund" means—

(i) the Clerical, Administrative and Retail Employees' Superannuation Plan; or

(ii) Westscheme; or

(iii) The Racing Industry Superannuation Fund (WA); or

(iv) any other approved occupational superannuation fund; or

(v) any other approved occupational superannuation fund to which an employer or employee who is a member of the religious fellowship known as the Brethren elects to contribute.

(c) "Ordinary time earnings" means the base classification rate, including supplementary payments where appropriate, in charge rates, shift penalties and any over-award payments, together with any other all purpose allowance or penalty payment for work in ordinary time and shall include in respect of casual employees the appropriate casual loadings prescribed by this award, but shall exclude any payment for overtime worked, vehicle allowances (including payments made for travelling relating to distant work), commission or bonus.

(d) "Eligible Employee" means an employee whose employment is regulated by this Award and who is or becomes a member of a Fund.

(e) "Relevant Work Period" means the period of six months which elapses between the dates of 1 January and 30 June and 1 July to 31 December in each calendar year.

(f) "Trustee" means the trustee of the relevant fund.

(2) Choice of Fund:

(a) Existing employers as at the date of this Order must notify the Union of the fund in subclause (1)(b)(iv) to which they intend to contribute and the date of commencement of contributions.

(b) The Union must be notified in writing of the choice of fund and the date of commencement of contributions referred to in paragraph (a) within 30 days of the date of this Order.

(c) Future employers must notify the Union in writing of the fund in subclause (1)(b)(iv) into which they intend to contribute and the intended date of the commencement of contributions at least 30 days prior to the payment of the first contributions to the fund.

(d) Within 30 days of the notice referred to in paragraphs (b) and (c) the Union may challenge the suitability of the proposed fund by notifying both the Commission and the employer of a dispute.

(3) Contributions:

(a) An employer shall, subject to subclauses (10) and (11), contribute to a fund in respect of each eligible employee an amount equal to 3% of each employee's ordinary time earnings for each relevant work period; provided that no contribution shall be made in cases where 3% of ordinary time earnings during that period is less than $52.00.

(b) Subject to the provisions of the relevant trust deed, employer contributions together with any employee contributions shall be paid upon the completion of each relevant work period.

(c) In the event that an eligible employee is terminated prior to the completion of a relevant work period, the employer shall contribute 3% of the employee's ordinary time earnings for that period, provided that such employer contribution shall not be made when the amount is less than $52.00.

(4) Alternative Calculation of Payments:

Notwithstanding the provisions of this clause the payment required to be made to a fund may be calculated on a basis agreed in writing between the Union and the employer.

(5) Employer to Continue Participation:

An employer who participates in a fund shall not cease participation in that fund whilst employing any eligible employee.

(6) Employer Failure to Participate in Fund:

(a) Where an employer has failed to make application to participate in a fund or has failed to make payments to a fund, the employer shall be required to make application to participate in a fund or to make payments to a fund within seven days of the failure being brought to the employer's attention by any person.

(b) Where there has been a failure to make application to participate in a fund, upon acceptance by the trustee the employer shall make a once only contribution to a fund in respect of each eligible employee equivalent to the contributions which would otherwise have been payable in accordance with this clause.

(c) Where there has been a failure to make payments to a fund the employer shall make a once only contribution to a fund in respect of each eligible employee equivalent to the contribution which the employer has failed to pay.

(7) Employees Voluntary Contributions:

Where the rules of a fund allow an employee member to make contributions the employee may elect to make contributions to the fund and the employer shall, where an election is made upon the direction of the employee, deduct contributions from the employee's wages and pay them to the fund in accordance with the provisions of subclause (3)(b) hereof.

(8) Existing Superannuation Arrangements:

No employer shall be excluded from this clause on the basis of existing voluntary superannuation arrangements.

(9) Supersession by Other Award or Agreement:

Nothing contained in this clause shall prevent any or all of the parties to this award from entering into other awards or agreements which have the effect of superseding the superannuation provisions contained in this clause.

(10) Suspension:

(a) Where, pursuant to subclause (2)(d) the Union challenges an employer's choice of fund, the employer shall not make contributions to that fund until the dispute has been resolved by the Commission.

(b) The contributions not made pursuant to paragraph (a) shall be made to the appropriate fund in accordance with subclause (3)(a) following the resolution of the dispute by the Commission.

(11) Employee Entry into Fund:

(a) The employer must provide an employee with an application to join a fund within 28 days of the operative date of this clause or the employee commencing employment, whichever is the later.

(b) The employer is not obliged to make contributions to a fund—

(i) Where an employee has completed a letter of denial; or

(ii) where an employee has not completed and returned the application referred to in paragraph (a) hereof.

Provided that an employer shall, pursuant to the provisions of subclause (3), commence to make such contributions upon the subsequent completion of an application form by an employee; but such contributions shall not be made for any relevant work period which has been completed prior to the date upon which the employee submits the completed application form.

(c) In the event that an employee member of a fund terminates employment with one employer and commences employment with another employer, the latter employer being a participating employer in the same fund as the former employer, then the provisions of this subclause do not apply to the latter employer.

(d) The letter of denial shall be in the following form—

"To (employer)

I have received an application for member ship of the non-contributory Superannuation Fund and understand:

(1) that should I sign such form you will make contributions on my behalf; and

(2) that I am not required to make contributions of my own; and

(3) that no deductions will be made from my wages for superannuation without my consent.

However, I do not wish to be a member of the fund or have contributions made on my behalf.

.....

(Signature)

.....

(Name)

.....

(Address)

..../...../.....

(Classification) (Date)

(e) A copy of the letter of denial shall be forwarded to the Union.

(12) Preservation:

The provisions of this paragraph shall not apply to any employer who has entered into an arrangement to pay superannuation contributions into any other approved occupational superannuation fund and such arrangement has been ratified by either the Western Australian Industrial Relations Commission or the Australian Industrial Relations Commission.

18.—AWARD MODERNISATION (ENTERPRISE AGREEMENTS)

(1) The parties are committed to modernising the terms of this Award.

(2) Employers and employees covered by this Award may reach agreement at the level of individual enterprises to provide for more flexible working arrangements, improved quality of working life, enhanced skills and job satisfaction. Such Enterprise Agreements may involve a variation in the application of award provisions in order to meet the requirements of individual enterprises and their employees. Agreements may be negotiated and consequential award variations processed in accordance with subclause (3) of this clause.

(3) The Union will discuss all matters relating to increased flexibility that are raised by the employer. Any such discussion with the Union shall be on the premise that—

(a) The majority of employees at the enterprise must genuinely agree.

(b) No employee will lose income as a result of the change.

(c) The Union must be party to the agreement, in particular, where enterprise level discussions are considering matters requiring any award variation, the Union shall be invited to participate.

(d) The Union shall not unreasonably oppose any agreement.

(e) Agreements are to be submitted for ratification by the Commission.

SCHEDULE A—RESPONDENTS

B.P.D. Brookes
TAB Agency 14
228 Main Street
OSBORNE PARK WA 6017

Ellar Investments & L.S. Perron
TAB Agency 48
214 Canning Highway
COMO WA 6152

H. & V. Gisler & H. Bradley
TAB Agency 65
60 Russell Street
MORLEY WA 6062

R & G. Kitch
TAB Agency 17
280-282 Beaufort Street
PERTH WA 6000

Leanam Pty Ltd
TAB Agency 28
6 Webber Road
WILLAGEE WA 6156

Merryfield Pty Ltd
TAB Agency 117
Sylvia Street
NOLLAMARA WA 6061

B.T. & L.M. Shelley
TAB Agency 96
Shop 44, Kalamunda Shopping Centre
Haynes Road
KALAMUNDA WA 6076

Totalisator Agency Board of Western Australia
14 Hasler Road
OSBORNE PARK WA 6017

Western Australian Greyhound Racing Association
Station Street
CANNINGTON WA 6107

Western Australian Trotting Association
Nelson Crescent
EAST PERTH WA 6000

Western Australian Turf Club
70 Grandstand Road
BELMONT WA 6104

Dated at Perth this 16th day of March, 1978.

SCHEDULE B—NAMED UNION PARTY

The Federated Clerks' Union of Australia, Industrial Union of Workers, W.A. Branch is a named party to this Award.

SCHEDULE C—ENTERPRISE AGREEMENT—TOTALISATOR AGENCY BOARD OF WESTERN AUSTRALIA

(1) Application:

(a) The provisions of this Schedule shall apply only to the Totalisator Agency Board and its employees.

(b) The provisions of this Schedule shall be read in conjunction with the provisions of this award and, where these provisions are inconsistent with, or different from, the provisions of the award, the provisions of this Schedule shall prevail.

(2) Rates of Pay:

(a) The minimum hourly rates of pay payable to the employees classified hereunder shall be:

Trainee	$14.70
Clerk	$15.05
Senior Casual and/or Banker	$15.63

(b) An additional payment of 10% above the Clerk rate is made to employees engaged in the capacity of Account Betting Senior and Control Centre Clerk. An additional payment of 20% above the Clerk rate is made to employees engaged in the capacity of Control Centre Senior. Such additional payments are in recognition of the increased responsibilities associated with managing the raceday.

(c) The Trainee rate shall apply to all new employees for a period of 2 months.

(d) The minimum rates of pay incorporate a 36% loading in compensation for the fact that annual leave, annual leave loading, sick leave and penalty rates for work performed on Sundays are not otherwise provided for in this award.

(e) (i) The loading referred to at (d), in relation to penalty rates for work performed on Sundays, is based on the requirement that employees will be required to be rostered to work 16 Sundays during the 1995/96 Racing Calendar.

(ii) The number of Sundays which incorporate Race Days will be regularly reviewed prior to the commencement of each Racing Calendar. Should the number of such Race Days increase the loading shall be increased accordingly.

(3) Sunday Work:

(a) All casual employees shall be available to be rostered to work on Sundays as required.

(b) If an employee is rostered to work on a Sunday he/she may choose not to work that shift provided that the employee makes arrangements to ensure that another employee shall work that shift.

(4) Duration of Schedule

(a) This Schedule shall come into effect on and from the 6th day of December 1995 and remain in force until 31 July 1996.

(b) The parties are committed to renegotiating this agreement prior to its expiry.

COUNTRY HIGH SCHOOL HOSTELS AWARD, 1979
No. R7A of 1979.

PURSUANT to section 93(6) of the Industrial Relations Act 1979 the following award has been consolidated and is published hereunder for general information.

Dated at Perth this 3th day of January, 1996.

J. CARRIGG.
Registrar.

Country High School Hostels Award No.R7A of 1979.

1.—TITLE

This award shall be known as the Country High School Hostels Award, 1979 and shall replace Award No. 21A of 1969 insofar as it relates to workers employed in the Hostels which are subject to the authority constituted under the Country High School Hostels Authority Act, 1960.

1A.—STATEMENT OF PRINCIPLES DECEMBER 1994

It is a condition of this Award/Industrial Agreement that any variation to its terms on or from the 30th day of December 1994, including the $8.00 per week Arbitrated Safety Net Adjustments, shall not be made except in compliance with the Statement of Principles set down by the Commission in the Reasons for Decision in Matter No. 985 of 1994.

2.—ARRANGEMENT

1. Title
1A. Statement of Principles December 1994
2. Arrangement
3. Scope
4. Term
5. Area
6. Hours
7. Contract of Service
8. Rosters
9. Overtime
10. Public Holidays
11. Long Service Leave
12. Sick Leave
13. Conditions and Allowances
14. Annual Leave
15. Weekend Work
16. Mixed Functions
17. Laundry and Uniforms
18. Casual Employees
19. Shift Work
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21. Special Rates and Provisions
22. Under Rate Employees
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24. Wages

Schedule A—Parties to the Award
Schedule B—Respondent
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3.—SCOPE

This award shall apply to Cooks, Groundsmen and/or Gardeners, and Domestic Workers employed in Hostels for the purposes of the Country High School Hostels Authority Act, 1960.

4.—TERM

This award shall be for a term of two years from the first day of February, 1980.

5.—AREA

This award shall have effect throughout the State of Western Australia.

6.—HOURS

(1) (a) The ordinary working hours shall be an average of 38 per week in accordance with (b) below. The hours worked shall not exceed forty in any one week or at the option of the employer eighty hours per fortnight and shall not exceed eight in any one day and shall be worked on any five days of the week.

(b) As the means of working a 38 hour week, an employee shall be entitled to payment including shift and weekend penalties for the following days on which the employee shall not be required to attend for work:

(i) 3 agreed days during the first school term vacation in each year.

(ii) 2 agreed days during each of the other school term vacations.

(iii) 5 agreed days during the Christmas vacation.

(2) Subject to clause 9.—Overtime, the spread of shift in any one day shall not exceed twelve and a half hours.

(3) An employer shall not change from a forty hour week to an eighty hour fortnight, except upon giving one month's notice of the intention so to do to the Union.

(4) Meal breaks shall not be counted as time worked.

(5) A morning tea break shall be allowed by the employer. The time allowed for such break shall not exceed ten minutes which shall be taken when convenient to the employer without deduction of pay for such time.

7.—CONTRACT OF SERVICE

(1) Except in the case of dismissal for misconduct an employee's service shall not be terminated unless they have received one week's previous notice or payment for such period in lieu thereof.

(2) Except by agreement with the employer no employee shall resign without first giving one week's notice and in the absence of such notice the employer may withhold holiday or other pay up to the amount of a week's wages.

(3) This clause shall not apply to casual employees.

(4) Notwithstanding the foregoing, during the first four weeks of employment, an employer may dismiss an employee or an employee may leave the employment by either one giving the other not less than one hour's notice.

(5) (a) Subject to the provisions of subclause (1) of Clause 6.—Hours, during the school vacation periods the employer shall be relieved of the obligation to provide work and the employee shall not be entitled to the payment of wages in respect of any such period during which no work is performed other than any period during which the employee is on annual leave or a public holiday which falls on a day the employee would normally have worked.

(b) A part-time employee shall be given payment for the days referred to in subclause (1)(b) of Clause 6.—Hours of this Award in the proportion that the hours worked each week bear to 40.

(6) Where an employee is dismissed for misconduct, wages shall be paid up to the time of dismissal only.

(7) An employer may direct an employee to carry out such duties as are within the limits of the employees skill, competence and training, including work which is incidental or peripheral to the employee's main tasks or functions.

8.—ROSTERS

(1) The ordinary hours of duty prescribed in Clause 6.—Hours of this Award shall be set out in a roster which shall be posted in a convenient place where it can be readily seen by the employees concerned.

(2) The roster shall set out the time each employee starts and finishes each shift and also the break in the shift, together with the days each employee is rostered off duty.

(3) No more than two breaks shall be allowed in any one shift, including meal breaks, provided that the maximum period worked between breaks in the shift shall be five hours. This provision shall not apply to night shift employees who shall work a shift of eight hours straight.

(4) Except as provided for in subclause (3) of this clause meal breaks shall be for a period of at least thirty minutes but not greater than one hour for each meal.

(5) Except at the change of roster, no employee shall be rostered for duty until at least ten hours have elapsed from the time their previous rostered shift ended.

(6) The roster shall be posted at least 48 hours before it comes into operation. No alteration shall be made to the roster unless the employee concerned is notified before the conclusion of their rostered shift immediately before the changed shift.

9.—OVERTIME

(1) Except as hereinafter provided, all time worked in excess of the ordinary working hours prescribed in Clause 6.—Hours, or Clause 23.—Part-Time Employees, of this Award, shall be overtime and shall be paid for at time and one-half for the first two hours and double time thereafter.

(2) All work performed by employees on any day on which they are rostered off duty or days worked in excess of those provided for in Clause 6.—Hours, or Clause 23.—Part-Time Employees shall be paid for at the rate of double time with a minimum engagement of four hours.

(3) All overtime worked on a Saturday or Sunday shall be paid for at the rate of double time.

(4) An employee recalled to work shall be paid a minimum of three hours at overtime rates and for all reasonable expenses incurred in returning to work.

(5) Where the employee and the employer so agree, time off in lieu of payment for overtime may be allowed proportionate to the payment to which they are entitled. Such time off to be taken at the convenience of the employer provided that:

(a) such time off is in unbroken periods according to each period of overtime worked; and

(b) the time off in lieu of overtime is taken within twenty-eight days from the time when it was worked.

(6) Where an employee has not been notified the previous day or earlier that they are required to work overtime the employer shall ensure that employees working such overtime for an hour or more shall be provided with any of the usual meals occurring during such overtime or be paid $6.10 each meal.

10.—PUBLIC HOLIDAYS

(1) The following days or the days observed in lieu thereof shall, subject as hereinafter provided, be allowed as holidays without deduction of pay, namely, New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day. Provided that another day may be taken as a holiday by arrangement between the parties in lieu of the days named in this subclause.

(2) (a) Where any of the days mentioned in subclause (1) hereof fall on a Saturday or Sunday, the holiday shall be observed on the next succeeding Monday or when Boxing Day falls on a Monday, the holiday shall be observed on the next succeeding Tuesday.

(b) When any of the days observed as a holiday in this clause fall during a period of annual leave, the holiday or holidays shall be observed on the next succeeding work-day or days as the case may be after completion of that annual leave.

(3) Where—

(a) a day is proclaimed as a public holiday or as a public half-holiday under Section 7 of the Public and Bank Holidays Act, 1972; and

(b) that proclamation does not apply throughout the State or to the metropolitan area of the State, that day shall be a public holiday or, as the case may be a public half-holiday for the purposes of this award within the district or locality specified in the proclamation.

(4) Any worker who is required to work on the day observed as a holiday as prescribed in this clause in her/his normal hours of labour shall be paid for the time worked at the rate of double time and a half, or if the worker agrees to be paid for the time worked at the rate of time and one half and in addition be allowed to observe the holiday on a day mutually acceptable to the employer and the worker.

(5) When a worker is absent on leave without pay, sick leave without pay or workers' compensation, any day observed as a holiday on a day falling during such absence shall not be treated as a paid holiday. Where the worker is on duty or available on the whole of the working day immediately preceding a holiday, or resumes duty or is available on the whole of the working day immediately following a day observed as a holiday as

prescribed by this clause, the worker shall be entitled to be paid for such holiday.

(6) This clause shall not apply to casual workers.

11.—LONG SERVICE LEAVE

The conditions governing the granting of long service leave due to full-time government wages employees generally shall apply to workers covered by this award. Provided that all time during term vacation periods when the worker cannot be usefully employed shall count as service for the purposes of those conditions.

12.—SICK LEAVE

(1) (a) A worker shall be entitled to payment for non-attendance on the grounds of personal ill health or injury for one sixth of a week's pay for each completed month of service.

(b) Payment hereunder may be adjusted at the end of each accruing year, or at the time the worker leaves the service of the employer, in the event of the worker being entitled by service subsequent to the sickness in that year to a greater allowance than that made at the time the sickness occurred.

(2) The unused portion of the entitlement prescribed in paragraph (a) hereof in any accruing year shall be allowed to accumulate and may be availed of in the next or any succeeding year.

(3) In order to acquire entitlement to payment in accordance with this clause the worker shall as soon as reasonably practicable advise the employer of her inability to attend for work, the nature of her illness or injury and the estimated duration of the absence. Provided that such advice, other than in extraordinary circumstances shall be given to the employer within 24 hours of the commencement of the absence.

(4) No worker shall be entitled to the benefit of this clause unless she produces proof to the satisfaction of the employer or his representative of such sickness provided that the employer shall not be entitled to a medical certificate for absences of less than three consecutive working days unless the total of such absences exceeds five days in any one accruing year.

(5) (a) Subject to the provisions of this subclause, the provisions of this clause apply to a worker, who suffers personal ill health or injury during the time when she is absent on annual leave and a worker may apply for and the employer shall grant paid sick leave in place of paid annual leave.

(b) Application for replacement shall be made within seven days of resuming work and then only if the worker was confined to her place of residence or a hospital as a result of her personal ill health or injury for a period of seven consecutive days or more and she produces a certificate from a registered medical practitioner that she was so confined. Provided that the provisions of this paragraph do not relieve the worker of the obligation to advise the employer in accordance with subclause (3) of this clause if she is unable to attend for work on the working day next following her annual leave.

(c) Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the worker was entitled at the time she proceeded on annual leave and shall not be made with respect to fractions of a day.

(d) Where paid sick leave has been granted by the employer in accordance with paragraphs (a), (b) and (c) of this subclause that portion of the annual leave equivalent to the paid sick leave is hereby replaced by the paid sick leave and the replaced annual leave may be taken at another time mutually agreed to by the employer and the worker or, failing agreement, shall be added to the worker's next period of annual leave or, if termination occurs before then, be paid for in accordance with the provisions of Clause 9—Annual Leave.

(e) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in Clause 9— Annual Leave shall be deemed to have been paid with respect to the replaced annual leave.

(6) The provisions of this clause with respect to payment do not apply to workers who are entitled to payment under the Workers' Compensation Act nor to workers whose illness or injury is the result of the worker's own misconduct.

(7) The provisions of this clause do not apply to casual workers.

(8) For the purposes of this clause, all time during term vacation periods when a worker cannot be usefully employed, shall count as service.

13.—CONDITIONS AND ALLOWANCES

The provisions of the Miscellaneous Government Conditions and Allowances Award No. A 4 of 1992 shall apply mutatis mutandis to all employees covered by this award.

14.—ANNUAL LEAVE

(1) Except as hereinafter provided, a period of four weeks' leave shall be allowed to an employee by the employer after each period of twelve months' continuous service with such employer.

(2) Prior to commencing leave, each employee shall be paid for that period of leave:

(a) At the rate of wage the employee would have received had they not proceeded on leave. In the case of rostered employees that wage shall include the shift work and weekend penalties that employee would have received had they not proceeded on leave.

Where it is not possible to calculate the shift and weekend penalties the employee would have received, the employee shall be paid the average of such payments made each week over the four weeks prior to taking leave;

or

(b) At the rate of wage shown in Clause 24.—Wages, of this Award for their class of work and in addition be paid a loading of 17.5 per cent,

whichever is the greater benefit to the employee.

(3) (a) Except as provided in paragraph (b) of this subclause if after one month's continuous employment an employee lawfully terminates their employment or their employment is terminated by the employer through no fault of the employee the employee shall be paid 3.08 hours' pay (at the rate prescribed by subclause (2) of this clause) in respect of each completed week of continuous service for which annual leave has not already been taken.

(b) An employee who is dismissed for misconduct which occurred after the completion of a twelve monthly qualifying period, but before they have taken annual leave in respect of that qualifying period shall, subject to Clause 7.—Contract of Service, be given payment for the leave accrued but not taken.

(4) The annual leave prescribed in subclause (1) of this clause may, by consent between the employer and the employee, be taken in three portions provided that no portion shall be less than one week.

(5) Any time in respect of which an employee is absent from work except school vacation periods, paid sick leave or unpaid sick leave up to three months, the first twenty-six weeks of any absence on workers' compensation, annual leave, long service leave and compassionate leave, shall not count for the purpose of determining annual leave entitlements.

(6) Leave shall be given as soon as practicable after falling due and shall not accumulate except with the consent of the employee, but in no case shall it accumulate for more than two years.

(7) Before going on annual leave each employee shall be given at least two weeks' notice of the date leave is to be taken, unless the employee and the employer agree on a lesser period.

(8) The provisions of this clause shall not apply to casual employees.

15.—WEEKEND WORK

All ordinary hours of work performed between midnight on Friday and midnight on Sunday shall be paid for at the rate of time and one half.

16.—MIXED FUNCTIONS

(1) Workers employed at work for which a higher rate is fixed shall be paid such higher rate whilst so employed.

(2) If employed for two hours or more on the higher class of work she shall be paid the higher rate for the whole of that day.

17.—LAUNDRY AND UNIFORMS

(1) Each employee shall be entitled to all laundering of uniforms at the expense of the employer, but where the employer elects not to launder the uniforms the employee shall be paid an allowance of 92 cents per week.

(2) The employer shall provide all uniforms which shall at all times remain the property of the employer. Provided that in lieu of providing uniforms, the employer may make an allowance of $2.65 per week.

(3) Where an employee is required by the employer to wear special clothing, such clothing shall be provided and laundered by the employer at the employer's expense.

18.—CASUAL EMPLOYEES

A casual employee shall be engaged for a period of up to four weeks and shall be paid twenty per cent over the rates specified herein for their class of work.

19.—SHIFT WORK

(1) (a) Where on any day a worker commences her ordinary hours of work before 4 a.m. or after 12 noon, she shall be paid a loading with respect to those ordinary hours of fifteen per cent.

(b) The provisions of paragraph (a) of this subclause do not apply to a worker who on any day commences her ordinary hours of work after 12 noon and completes those hours before 6 p.m. on that day.

(c) Where a worker works a broken shift each portion of that shift shall be considered a separate shift for the purpose of this clause. Provided that a shift broken by a meal break of one hour or less shall not constitute a broken shift.

(2) (a) Subject to the provisions of subclause (4) of this clause all work performed during ordinary hours on a Saturday or Sunday shall be paid at the rate of time and one half.

(b) The rates prescribed in this subclause shall be in substitution for and not cumulative on the rates prescribed in subclause (1) of this clause.

(3) Where a worker's rostered hours of duty in any day are extended by an early start or a late finish the shift work or weekend rates as the case may be shall be paid for such additional time worked in addition to any overtime payable under clause 9.—Overtime of this award.

(4) Where the ordinary hours of work span 12 midnight on a Friday night or Sunday night the additional payments for shift work and work during the weekend may be made at the option of the employer :

(a) by calculation for the whole shift according to the rate of the additional payment for the greater part of the shift; or

(b) by the calculation for each part of the shift according to the rate applicable for additional payment for shift work and work during the weekend as the case may be.

Provided that having decided on one method of calculation the employer shall give at least two week's notice of intention to change to the other method and any such change shall be given effect with respect to the shift commencing on a Friday.

20.—MEAL MONEY

(1) An employee required to work overtime for more than two hours, without being notified on the previous day or earlier that they will be so required to work, shall be supplied with a meal by the employer or paid $6.10 for a meal.

(2) No such payment need be made to employees living in the same locality as the place of their employment who can reasonably return home for such meals.

(3) If an employee in consequence of receiving such notice has provided themselves with a meal or meals and is not required to work overtime or is required to work less overtime than notified, they shall be paid the amount above prescribed in respect of the meals not then required.

21.—SPECIAL RATES AND PROVISIONS

(1) (a) All employees called upon to clean closets, connected with septic tanks or sewerage shall receive an allowance of 46 cents per closet per week.

(b) For the purposes of this clause one metre of urinal shall count as one closet and three urinal stalls shall count as one closet.

(2) Where employees are required to work in water they shall be supplied with rubber boots.

(3) Employees required to clean toilets, use acids, wash dishes, handle detergents, acids, soaps or injurious substances shall be supplied with rubber gloves.

(4) Where the conditions of work are such that employees are unable to avoid their clothing becoming wet or dirty, they shall be supplied with suitable protective clothing free of charge by the employer.

(5) Where suitable protective clothing is supplied by the employer to an employee such clothing shall remain the property of the employer.

22.—UNDER RATE EMPLOYEES

(1) Any employee who by reason of old age or infirmity is unable to earn the minimum wage may be paid such lesser wage as may from time to time be agreed upon in writing between the Union and the employer.

(2) In the event of no agreement being arrived at, the matter may be referred to the Western Australian Industrial Relations Commission for determination.

(3) After application has been made to the Commission, and pending the Commission's decision the employee shall be entitled to work for and be employed at the proposed lesser rate.

23.—PART-TIME EMPLOYEES

(1) Notwithstanding anything contained in this Award, employees may be regularly employed to work less hours per week than are prescribed in Clause 6.—Hours, of this Award, and such employee shall be remunerated at a weekly rate pro rata to the rate prescribed for the class of work on which they are engaged in the proportion which their hours of work bear to the hours fixed by Clause 6.—Hours, hereof, for their class of work.

Provided that part-time employees engaged to work less than twenty hours per week shall be remunerated at a weekly rate pro rata to the rate prescribed for the class of work on which they are engaged, plus an additional 10 per cent.

(2) When an employee is employed under the provisions of this clause, they shall receive payment for wages, for annual leave, for holidays and for sick leave on a pro rata basis in the same proportion as the number of hours regularly worked each week bears to 40 hours.

(3) Subject to the provisions of subclause (2) of Clause 9.—Overtime, part-time employees shall be engaged for a minimum of two hours on each day on which they are required to work.

(4) The Secretary of the Union shall be advised within 28 days of the date of this Award of all employees employed in a part-time capacity.

(5) The Secretary of the Union shall be advised within seven days of any part-time position created after the date of this Award.

(6) Any dispute as to whether a part-time position is necessary shall be referred to the Western Australian Industrial Relations Commission.

(7) Liberty is reserved to either party to apply to delete or amend this clause at any time.

24.—WAGES

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

	Base Rate	1st & 2nd Arbitrated Safety Net Adjustment	Minimum Award Rate
	$	$	$
Cook			
1st year of employment	397.70	16.00	413.70
2nd year of employment	402.00	16.00	418.00
3rd year of employment and thereafter	406.10	16.00	422.10
Groundsperson and/or Gardener			
1st year of employment	383.60	16.00	399.60
2nd year of employment	385.10	16.00	401.10
3rd year of employment and thereafter	392.30	16.00	408.30
Domestic Employee			
1st year of employment	369.70	16.00	385.70
2nd year of employment	374.30	16.00	390.30
3rd year of employment and thereafter	378.40	16.00	394.40

The classification Domestic Employee includes the following designations:

Kitchen Attendant, Cleaner, Yard Assistant, Dining Room Attendant, and Laundry Attendant.

(b) The rates of pay in this award include the first $8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This first $8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November, 1991. Increases made under previous State Wage Case Principles or under the current Statement of Principles, except those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

(c) The rates of pay in this award include the second $8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This second $8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase payable since 1 November, 1991, pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment. Increases made 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 arbitrated safety net adjustments.

(2) General Conditions:

(a) Senior employees appointed as such by the employer shall be paid $14.65 per week in addition to the rates prescribed herein.

(b) A leading hand placed in charge of not less than three other employees shall be paid $14.65 per week extra.

SCHEDULE A—PARTIES TO THE AWARD

The following organisation is a party to this award:

The Federated Miscellaneous Workers' Union of Australia, W.A. Branch.

SCHEDULE B—RESPONDENT

Country High School Hostels Authority
37 Havelock Street
WEST PERTH W.A. 6005

SCHEDULE C—LIBERTY TO APPLY

Liberty is reserved to the employer to apply to amend clause 20.—Board and Lodging.

Dated at Perth this 18th day of December 1979.

SCHOOL TEACHERS TRIBUNAL— Matters dealt with—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

State School Teachers Union of WA (Inc.)
and
Minister for Education.

No. T 15 of 1994.

GOVERNMENT SCHOOL TEACHERS TRIBUNAL
COMMISSIONER A.R. BEECH, Chairperson.
MR R.J. POLLARD, Member.
MRS M. BEAMAN, Deputy Member.

2 January 1996.

Reasons for Decision.
Preliminary Point.

THE COMMISSIONER: The Tribunal has before it an application for certain orders in relation to the conduct of an enquiry being held pursuant to s.7C of the Education Act 1928 into allegations concerning Mr Burrows. On the 14th February 1995 the Tribunal ordered that the enquiry be stayed pending the hearing and determination of that application.

The respondent appealed that Order to the Full Bench. With the agreement of the parties the Tribunal then adjourned the proceedings on the understanding that it would be re-listed once the outcome of the appeal is known. The decision of the Full Bench dismissing the appeal issued on the 27 September 1995. On the 16th October 1995 the Tribunal received a request from the respondent requesting that the matter be listed for mention only and this occurred on the 14th December 1995.

On that occasion the Tribunal was informed that the respondent had initiated an appeal from the Full Bench to the Industrial Appeal Court. The Tribunal was informed that that appeal had been lodged one day out of time and a separate application had been made to extend the time for filing the appeal. The Tribunal was then faced with the unusual submission from the respondent that the application now be listed for hearing before the Tribunal notwithstanding the lodging of that appeal and the equally unusual submission of the applicant that the Tribunal not proceed with the matter but await the outcome of that appeal.

It was not submitted that there was any legal reason why the Tribunal should not now embark upon the hearing. It is not suggested that the Tribunal is prevented from doing so by any order either of the Full Bench nor of the Industrial Appeal Court. On that understanding the issue which falls for consideration is whether the Tribunal should proceed at this stage to hear and determine the application before it, given that there is an appeal to the Industrial Appeal Court on the question of the jurisdiction of the Tribunal to issue the Order which it issued on the 14th February 1995.

The Tribunal takes into account the fact that the enquiry into allegations concerning Mr Burrows commenced in at least December 1994. It appears that the enquiry relates to events which occurred, in some cases, years before that date. There is every reason why the Tribunal should attempt to deal with the issues alleged by the union in the conduct of that enquiry with the utmost expedition. Indeed, it sought to do so. In addition, it must surely be in Mr Burrows' own interest to have this issue resolved as quickly as possible. For entirely valid reasons, more than twelve months will have passed between the initiating of the enquiry and the dealing by this Tribunal with the complaints allegedly made regarding the conduct of that enquiry.

As against that, the union argues that there will be costs incurred in proceeding before the Tribunal which may be thrown away if the Industrial Appeal Court rules that there is no jurisdiction in the Tribunal to have issued the Order as sought. Whilst that may be the case it is also a consideration that the appeal to the Industrial Appeal Court is out of time and is principally directed to the issue of the jurisdiction to issue a stay Order. Whilst in the course of the appeal the jurisdiction of the Tribunal to deal with the matter before it as such might be canvassed, it is by no means certain that a decision of the Industrial Appeal Court on the appeal as lodged would necessarily affect the substantive application before the Tribunal.

In my view there is a serious matter to be tried before the Tribunal. But in my view there is insufficient in the facts of this matter to cause the Tribunal to delay any further the hearing of this matter. Accordingly I would propose that application T 15 of 1994 now be set down for hearing.

MR R.J. POLLARD: I agree with the findings of the Commission and have nothing to add.

MRS M. BEAMAN: I concur with the findings of the Commission and believe that the matter should be dealt with as expeditiously as possible.